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BENJAMIN S. FULD*

“We’re not against development, we’re against bad deals”:¹ How Baltimore Negotiated the Port Covington Community Benefits Agreement

I. INTRODUCTION

The approval of the Port Covington \$660 million Tax Increment Financing (“TIF”) and Memorandum of Understanding (“MOU”) between Sagamore Development and Baltimore City in September 2016 continues to be a controversial issue in the city of Baltimore.² The MOU is a legally binding contract which evoked strong feelings both from supporters of the TIF who argued that the development would bring jobs and prosperity into the city and those against the deal who argued that its approval would only serve to line the pockets of the wealthy developers while giving little of value back to the city.³ While the MOU was signed by Baltimore City and the development company behind the project, Sagamore Development, multiple community groups negotiated on behalf of the city for an agreement that would require the developer to provide community benefits in return for the city’s approval of the TIF.⁴

The deal went through negotiations between Sagamore Development, Baltimore City, neighborhood associations and community organizations before a final deal was eventually approved by the City Council and signed by Mayor Stephanie Rawlings-Blake on September 28, 2016.⁵ The first agreement between

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1. Luke Broadwater, *As Port Covington Debate Heats Up, Influential Baltimore Pastors Take Sides*, BALT. SUN (July 28, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-pastors-port-covington-20160727-story.html>.

2. *See id.*

3. *See id.*

4. *See infra* Section III.

5. Yvonne Wenger, *Rawlings-Blake Signs Off on Port Covington Public Financing*, BALT. SUN (Sept. 28, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-port-covington-bill-signing-20160928-story.html>.

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Sagamore Development and Baltimore City on April 20, 2016 gave an exemption from the city’s inclusionary housing law which requires 20 percent of the project’s housing to be affordable as part of the agreement.⁶ The exemption allowed Port Covington to reserve only 10 percent of its residences for affordable housing.⁷ Instead, Sagamore Development set a goal of hiring 20 percent of total employees and 51 percent of new hires from Baltimore City residents.⁸ The deal faced strong opposition from community groups.⁹ The ACLU of Maryland, in a letter to the Baltimore City Department of Planning, stated that this agreement would “perpetuate Baltimore’s racial and economic segregation.”¹⁰ The widespread opposition to the first MOU announced in April 2016 led to a community benefits agreement signed in July 2016 between Sagamore Development and the SB6, a coalition of neighborhood associations geographically close to the development, along with a new MOU with the City signed in September 2016.¹¹

This article will first survey the history of community benefits agreements and what makes for a successful community benefits agreement.¹² It will then examine what Tax Increment Financing is, the history of TIF in Baltimore, and how community organizations leveraged the TIF to begin negotiating with Sagamore.¹³ Lastly it will look at the final agreements between neighborhood coalitions, the City, and Sagamore Development and the positions of the negotiating parties to evaluate the community benefits agreement.¹⁴ This article will conclude the agreement may not have properly been a CBA because it was not truly an agreement between the developer and the community.¹⁵ In addition, while there were tangible benefits to the broader Baltimore community included in the agreement, there were also significant shortcomings in both the affordable housing and hiring provisions.¹⁶

6. Natalie Sherman, *Baltimore Reaches Hiring, Affordable Housing Deals in Port Covington*, BALT. SUN (Apr. 19, 2016), <http://www.baltimoresun.com/business/bs-bz-port-covington-inclusionary-exempt-20160419-story.html>; see BALTIMORE, MD. CITY CODE art. 13, § 2B-21 (2014), <http://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf>.

7. Sherman, *supra* note 6.

8. PORT COVINGTON TIF APPLICATION 40 (2016).

9. Luke Broadwater, *As Port Covington Debate Heats Up, Influential Baltimore Pastors Take Sides*, BALT. SUN (July 28, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-pastors-port-covington-20160727-story.html>.

10. Letter from ACLU of Maryland & Public Justice Center to Thomas Stosur, Director, Baltimore City Department of Planning (June 16, 2016) at 4, http://www.aclu-md.org/uploaded_files/0000/0837/port-covington_master_plan_comments-use_this_version.pdf.

11. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 1 (2016).

12. *See infra* Section II.

13. *See infra* Sections II.B, II.C, III.

14. *See infra* Section III.

15. *See infra* Section IV.

16. *See infra* Section IV.

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II. BACKGROUND AND HISTORY OF COMMUNITY BENEFITS AGREEMENTS AND TIF

A. What is a Community Benefits Agreement?

1. The history of community organizations negotiating with developers

A community benefits agreement (“CBA”) is a “legally binding agreement[] between developers and coalitions of community organizations, addressing a broad range of community needs.”¹⁷ CBAs allow communities to gain bargaining power over developers to “ensure that local residents share in the benefits of major developments in their communities.”¹⁸

CBAs were first used in California in the early 2000s and have since spread across the country.¹⁹ One of the first development projects with a major CBA was the Los Angeles Staples Center expansion in 2001.²⁰ The original Staples Center construction had caused a drastic negative effect on the surrounding community, including increased crime, traffic congestion, and a loss of nearby parks.²¹ When the owners of the Staples Center announced plans for a 250,000-foot expansion to the Staples Center, the local community organized and eventually negotiated an agreement with the developers for “an unprecedented package of concessions demanded by community groups, environmentalists and labor” as a requirement for receipt of an estimated \$70 million in public subsidies.²² The CBA included agreements by the developers to hire local labor, provide jobs that pay a “living wage,” and provide affordable housing units and new parks for the local community.²³

Communities leverage the use of local government powers like the development requested for the Staples Center expansion to force developers to the table in order to get the subsidy approved by the local government.²⁴ When a coalition of communities is large enough, it can use its sway on public opinion or elected officials to encourage the developer to negotiate with the group.²⁵ For

17. P'SHIP FOR WORKING FAMILIES, COMMON CHALLENGES IN NEGOTIATING COMMUNITY BENEFITS AGREEMENTS 2 (2016), <http://www.forworkingfamilies.org/sites/pwf/files/publications/Effective%20CBAs.pdf>.

18. *Id.*

19. *Id.* at 3.

20. David A. Marcello, *Community Benefit Agreements: New Vehicle for Investment in America's Neighborhoods*, 39 URB. LAW. 657, 658 (2007); Lee Romney, *Community Developers Agree on Staples Plan*, L.A. TIMES (May 31, 2001), <http://articles.latimes.com/2001/may/31/news/mn-4715>.

21. Marcello, *supra* note 20, at 658.

22. Romney, *supra* note 20; Marcello, *supra* note 20, at 659.

23. Romney, *supra* note 20.

24. See Marcello, *supra* note 20, at 660.

25. Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 CARDOZO L. REV. 1773, 1785 (2016).

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example, in 2006 a coalition of Denver neighborhood associations effectively negotiated with a developer to produce a CBA that had many of the same benefits as the Staples Center expansion because the development needed Denver’s Urban Renewal Authority “to declare the site blighted, creating an urban renewal district that would qualify for financial redevelopment incentives.”²⁶ The community was able to convince Denver’s Planning Board to delay its decision because the developer’s plans were incomplete, effectively forcing the developer to the negotiating table.²⁷ The final CBA included 350 housing units affordable to those making between 30 and 50 percent of area median income, 1000 project-related construction jobs paid at the prevailing wage, and preference to hiring workers from adjacent neighborhoods for 10,000 temporary and permanent jobs.²⁸ Without the leverage provided by a developer’s need for public infrastructure improvements, public financing, or other regulatory challenges such as the need to rezone, it can be difficult for communities to negotiate effectively with the developer.²⁹

2. Putting the “C” in CBA: How does a negotiating party represent the community?

As a starting point, it is valid to ask what community a negotiating party in a CBA represents. In the CBA context, the community is often defined as residents affected by the development, “particularly those in low-income neighborhoods.”³⁰ But defining who is affected by the development and ensuring a negotiating party properly represents that community is a challenging task.³¹ In some cases, it is easy to discern what community is affected by those that are displaced or directly affected by the impacts of the development.³² This was evident in the Staples Center CBA, which had a direct effect on the surrounding community.³³ But it is a more difficult question to answer when looking at a development like Port Covington where the entire city feels the effects of lost tax revenue and other externalities such as the potential for decreased school funding.³⁴ Further, a CBA often provides benefits to

26. Marcello, *supra* note 20, at 659.

27. *Id.*

28. TORY READ, THE GATES CHEROKEE REDEVELOPMENT PROJECT: “A HUGE STEP FORWARD FOR LOW-INCOME PEOPLE IN DENVER,” 9 (2006), <http://www.forworkingfamilies.org/sites/pwff/files/documents/Annie%20E%20Casey%20Report.pdf>.

29. Marcello, *supra* note 20, at 660.

30. JULIAN GROSS, GREG LEROY & MADELINE JANIS-APARICIO, COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 5 (2005), <https://www.goodjobsfirst.org/sites/default/files/docs/pdf/cba2005final.pdf>.

31. See Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme*, Vicki Been, 77 U CHI. L. REV 5, 22–24 (2010).

32. See Matthew Raffol, *Community Benefits Agreements in the Political Economy of Urban Development*, ADVOCATES FORUM 35 (2012) (discussing the LAX airport expansion).

33. See *supra* Section II.A.1.

34. See *supra* Section IV.A.

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communities directly affected by increased traffic congestion, pollution, or displacement of the community to the detriment of those indirectly affected by the loss in public funds that could be used elsewhere.³⁵

A good analogy to Port Covington may be the Oakland Army Base CBA in which a large coalition of community stakeholders gained significant “requirements for local hire, disadvantaged hire, living wages, limitations on use of temporary workers, and community oversight and enforcement” in return for “at least \$300 million in public resources.”³⁶ The project was on a publicly held closed army base and the 30-organization community coalition negotiating with the developer included a broad group of “faith leaders, unions, youth organizers, and advocates for communities of color.”³⁷ In this instance it can be inferred from the use of public resources, diversity of the negotiating coalitions, and buy-in from city officials that the Oakland CBA was intended to benefit the broader Oakland community.³⁸ In either case, the question of what community should be represented in a CBA negotiation can often be answered by determining who is affected by the development.³⁹ Further, the negotiating party should pay closest attention to the “most vulnerable members of the impacted community” to effectively negotiate on behalf of the community as a whole.⁴⁰

The local government could represent the entire community when a developer’s plans affect the entire community and could require conditions such as living wages and affordable housing without the need for private parties to negotiate with the developer.⁴¹ Critics of CBAs “contend that these issues should be confronted citywide, rather than on a neighborhood-by-neighborhood basis.”⁴² The government could implement policies generally that encourage or require developers to include affordable housing and local hiring initiatives in their projects.⁴³ Further, a city could do away completely with localized subsidies or incentives that allow developers to pull money away from other priorities and instead focus on more generalized development policies such as uniformly lowering property taxes.⁴⁴ A citywide plan that ensures sustainable development with wide-ranging benefits while addressing

35. Been, *supra* note 31, at 25.

36. Policy & Tools: Community Benefits Agreements and Policies in Effect, PARTNERSHIP FOR WORKING FAMILIES, <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect> (last visited Feb. 22, 2018).

37. Rayna Smith, *Port of Opportunity: Landmark Jobs Deal in Oakland, California*, POLICY LINK (Dec. 18, 2013), <http://www.policylink.org/sites/default/files/americas-tomorrow-december182013.pdf>.

38. *See id.*

39. *See* PARTNERSHIP FOR WORKING FAMILIES, *supra* note 17, at 7.

40. *See id.*

41. Raffol, *supra* note 32, at 37.

42. Been, *supra* note 31, at 25.

43. Raffol, *supra* note 32, at 37.

44. *See id.*

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negative externalities it may cause would theoretically be the best approach.⁴⁵ But most cities “have deferred the potential responsibility for mitigating imbalanced growth onto private individuals.”⁴⁶

CBA’s in the most basic sense fill this void left by a government not fully fulfilling its purpose to protect its constituents.⁴⁷ In this way, the negotiating party or parties opposite the developer purport to represent the community affected by the development,⁴⁸ but the negotiating party opposite the developer is often “neither elected nor appointed by the community or its elected representatives.”⁴⁹ There are no requirements that CBA negotiators are representative of the community the development affects, and the final agreements are rarely put to a community-wide vote.⁵⁰ As a result, a negotiating party must take steps to ensure that it properly represents that community’s interests.⁵¹ Ideally, a negotiating coalition has both a constant flow of communication with the community as a whole to ensure that it is representative of their needs and a strong enough relationship with the city so that whenever there is urban planning that affects the community, the coalition is included early in the process to provide for “maximum community input.”⁵²

A party negotiating on behalf of a community must also involve and be accessible to the community.⁵³ To achieve this, the community must have a way to receive information and news about the process and negotiations.⁵⁴ The community also needs the ability to give feedback to those negotiating on its behalf so that any community concerns are properly addressed before the project is approved.⁵⁵ Finally, there must be processes in place to protect against conflicts of interest to ensure that the negotiations reflect the will of the community.⁵⁶ Having safeguards in place to protect against conflicts of interest ensures that the parties negotiating the deal are looking out for the general whole instead of a small subsection of the community that may stand to benefit from a specific provision in the CBA.⁵⁷ A transparent negotiating process with safeguards in place to prevent conflicts can benefit the

45. See Been, *supra* note 31, at 26.

46. Raffol, *supra* note 32, at 37.

47. *Id.* at 36–37.

48. *See id.*

49. Been, *supra* note 31, at 21.

50. *Id.* at 22–23.

51. P’SHIP FOR WORKING FAMILIES, *supra* note 17, at 6.

52. Lane K. Holden, *Negotiating the Neighborhood: The Role of Neighborhood Associations in Urban Planning Processes*, MACALESTER COLL. SOCIOLOGY DEP’T, 8–9 (2015), http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1053&context=soci_honors.

53. P’SHIP FOR WORKING FAMILIES, *supra* note 17, at 6.

54. *Id.*

55. *Id.*

56. *Id.*

57. Been, *supra* note 31, at 24.

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developer in addition to the local community by allowing the developer to demonstrate that it is working with the local community to ensure that the project will benefit the public interest, not just that of the developer.⁵⁸

As an individual or small group, a community often has limited options for stopping a government-supported development project.⁵⁹ By creating a coalition among multiple community groups, a community threatened by development can leverage its increased influence on public opinion due to the size and breadth of representation to increase its bargaining power against a developer and force it to the negotiating table.⁶⁰ A community coalition in the context of a CBA is an organized group of community organizations “who represent groups of people most immediately affected by the proposed development” organized to “win community economic benefits tied to specific projects, furthering equitable development and social justice ends.”⁶¹ Creating a coalition prevents developers from gaining the support of one community group while ignoring the others.⁶² A coalition of negotiating organizations is also more likely to properly reflect the sentiment of the community and negotiate in a way that allows for “deep, active connections to the community, representing those most threatened by project impacts and frequently excluded from participation in decisions about economic development.”⁶³

But, while broad based community organizations with strong internal processes may accurately reflect the will of the community they represent, weaker organizations may be used by local government and developers as a way to “satisfy their community engagement requirements, not for genuine input.”⁶⁴ Organizations that do not adequately represent the will of the community can harm the community by allowing for agreements that in theory represent the will of the people, but in reality do not.⁶⁵ For example, the 2003 Atlantic Yards CBA in New York City involved eight community organizations in favor with over fifty community groups organized against the CBA.⁶⁶ Of the community groups that supported the CBA, one was created “days before it announced its support for the development” and was given \$100,000 along with space and overhead for an office by the developer shortly after the CBA was signed.⁶⁷ The deal was widely criticized not just for this clear

58. Marcello, *supra* note 20, at 666.

59. Barbieri, *supra* note 25, at 1784–85.

60. Gross, *supra* note 30, at 22; Barbieri, *supra* note 25, at 1785.

61. Barbieri, *supra* note 25, at 1785.

62. *See id.* at 1784–85.

63. P'SHIP FOR WORKING FAMILIES, *supra* note 17, at 6.

64. Holden, *supra* note 52, at 8.

65. *See, e.g.,* Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 ASIAN PAC. AM. L.J. 1 (2000).

66. Been, *supra* note 31, at 23–24.

67. *Id.* at 24.

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conflict of interest, but also as unrepresentative of the community affected by the development with “no mechanism to insure that the ‘community’ in the CBA is representative of the community.”⁶⁸

3. *Bringing the Benefits: what makes a Community Benefits Agreement effective?*

When CBAs are effective, they deliver meaningful benefits to the community and hold the developer accountable to the terms of the agreement.⁶⁹ CBAs tend to be ineffective when there is limited community participation, the negotiation process is not transparent, the commitments do not have clear quantitative measurements or timelines, and there are no ways to hold the developer accountable to their promises.⁷⁰

An effective CBA establishes concrete benefits that directly address the concerns of the community with specific terms “detailing which party is responsible, for what and where, and on what timeframe, and not deferring decisions for a future negotiation date when community leverage may be gone.”⁷¹ These benefits often include a living wage requirement for employees working on the development, targeting the job opportunities that arise from the development to low-income neighborhoods, limiting environmental pollution, creating community centers or child care centers, constructing parks or recreational areas, mandating inclusion of affordable housing, and requiring continued community input on tenant selection in residential units.⁷²

A CBA must also have mechanisms for keeping the developer and any contractor working on the development accountable for the obligations they agree to in the negotiations.⁷³ This includes clearly identifying obligations and parties responsible for their fulfillment; clear timeframes and processes by which the developer can implement each provision; a monitoring system to ensure that the developer adheres to the benchmarks and obligations set forth in the CBA; and real remedies that give the community the ability to force developer compliancy with no barriers to seeking judicial enforcement, allowing for enforcement against commercial tenants, contractors in the development, and anyone who may succeed the developer in ownership of any part of the development.⁷⁴ One example of a CBA

68. *Id.* at 23.

69. P’SHP FOR WORKING FAMILIES, *supra* note 17, at 5.

70. *Id.* at 9.

71. *Id.* at 7.

72. Gross, *supra* note 30, at 10.

73. P’SHP FOR WORKING FAMILIES, *supra* note 17, at 7.

74. Gross, *supra* note 30, at 11–14, 70–72. CBAs can allow the negotiating party to a CBA (usually a private entity) to sue and enforce the contract in court under a breach of contract claim. *Id.* CBAs can also provide administrative remedies available through the local government’s enforcement arm. *Id.* at 72. In this way who is

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clause that keeps the developer accountable by having both a detailed process for fulfilling the obligation and a monitoring system in place comes from a North Hollywood, California CBA from 2001.⁷⁵ The agreement has precise date requirements specifying when the developer must take specific actions (30 days prior to any lease agreement signing).⁷⁶ The clause allows the coalition that negotiated the CBA to mandate a meeting between the coalition and the developer before any tenant signs a lease agreement.⁷⁷

B. What is Tax Increment Financing (“TIF”)?

TIF is one type of public financing that community groups use as a basis to begin negotiating a community benefits agreement.⁷⁸ It is a method of stimulating development that allows a city to use the increase in property tax revenue from a designated development area to fund improvements benefiting the area where the TIF zone is located.⁷⁹ Municipalities use TIF to redevelop areas where it may be difficult to find a developer willing to take the financial risk.⁸⁰ TIF is currently legal in forty-nine states and the District of Columbia.⁸¹ The TIF Baltimore City intended to grant to the Port Covington development zone spurred the public response to the

actually a party to the CBA is important as only those who are parties to a contract can typically sue under breach of contract. *Id.* at 11.

75. *Id.* at 70. The clause reads as follows:

“At least 30 days before signing a lease agreement or other contract for space within the Proposed Development, the Developer will arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests. At such a meeting, the Coalition and the Developer will discuss with the prospective Tenant the Living Wage Incentive Program and the Health Insurance Trust Fund, and will assist the Coalition in encouraging participation in these programs. [If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.” *Id.*

76. *Id.*

77. *Id.*

78. See Jeffrey Kleeger, *Flexible Development Tools: Private Gain and Public Use*, 46 URB. LAW. 377, 377 (2014).

79. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 66 (2010).

80. See Laura M. Bassett, *Tax Increment Financing as a Tool for Redevelopment: Attracting Private Investment to Serve a Public Purpose—The Example of Michigan*, 41 URB. LAW. 755, 755–756 (2009).

81. Briffault, *supra* note 79, at 65.

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subsidy.⁸² Because the TIF was such a central part of the negotiations,⁸³ this section will examine the history and legal requirements of TIF development.

1. *TIF history*

TIF was first introduced in California in 1952 to raise the local share of funds required for the federal urban renewal program.⁸⁴ TIF began as a mechanism to redevelop depressed urban areas and in many states require there to be “blight” – serious deterioration – as a precondition for TIF investment, although this requirement differs by state and can include areas that are “threatened with the prospect of blight but not currently blighted.”⁸⁵

TIF provides municipalities benefits over using general tax revenues to fund a project. For example, a government can spend public money in a TIF district without increasing tax rates on the general municipal population by pledging to spend solely future property tax revenues from increases in property values on the project.⁸⁶ TIF also allows municipalities to avoid issuing general obligation bonds that may impact the municipality’s credit ratings and debt limitations.⁸⁷ Lastly, TIF “provides local governments with a flexible funding source for redevelopment activity that avoids much of the red-tape and delay associated with grant programs.”⁸⁸

If not carefully considered, TIF benefits the private developer more than the community as a whole.⁸⁹ This occurs when the “value of the business incentives is greater than the amount necessary to attract a given level of economic development” and harms the local community “because the incentives may be so costly that the firm will capture all of the benefits” of the TIF.⁹⁰ Further, in some TIF developments, if the project does not increase the property values as much as the projections used to calculate the TIF amount, the municipality is responsible for any shortfall.⁹¹ As

82. See Luke Broadwater, *Port Covington Developer Pushes Request for Record Tax Deal with Unprecedented Ad Campaign*, BALT. SUN (May 31, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-port-covington-ads-20160530-story.html>.

83. See *id.*

84. Briffault, *supra* note 79, at 69.

85. *Id.* at 71–72.

86. MARYLAND DEPARTMENT OF PLANNING, USER GUIDE FOR MARYLAND SUSTAINABLE COMMUNITY REVITALIZATION 11 (2013).

87. Jonathan M. Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U. DET. J. URB. L. 405, 443 (1979).

88. *Id.* at 408.

89. Bassett, *supra* note 80, at 756.

90. Frank S. London, *The Use of Tax Increment Financing to Attract Private Investment and Generate Redevelopment in Virginia* 20 VA. TAX REV. 777, 790 (2001).

91. Scott Calvert, *In Baltimore, Tax Plan Gets a Hard Look*, WALL ST. J. (Sept. 6, 2016), <http://www.wsj.com/articles/in-baltimore-tax-plan-gets-a-hard-look-1473182498>.

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detailed below, this consideration was part of the concern raised by groups around Baltimore who believed the projections might have been overly optimistic.⁹²

A TIF plan generally goes through a four-step process from initiation to completion.⁹³ First, the city creates a district in the city to which the TIF will be tied.⁹⁴ Next, the city assesses the property value of the district to determine how much property taxes would continue to be levied if there were no increase in development.⁹⁵ After the property value has been assessed, the city issues bonds that are paid back from the increase in property taxes from the development.⁹⁶ Finally, the city uses the revenue from the bonds to make improvements in the TIF district.⁹⁷

2. *The legal framework of TIF programs*

States almost universally require taxpayer expenditures to be for a public purpose; TIF must abide by this requirement.⁹⁸ State constitutions also have uniformity clauses that require tax rates and assessments to be uniform within the jurisdiction, however state supreme courts have “consistently rejected uniformity challenges” to TIF projects.⁹⁹ State constitutions limit local government debt, but this is generally only applicable to general obligation debt which is debt backed by the full faith and credit of the municipality.¹⁰⁰ States are split over whether TIF bonds are backed by the full faith and credit of the municipality that issued the bonds.¹⁰¹

TIF is authorized by statute at both the state and local level.¹⁰² Many states require “that the TIF expenditure is the but-for cause of subsequent economic growth in the TIF district.”¹⁰³ A but-for cause is the requirement that if the subsidy was not provided, the development would not happen.¹⁰⁴ For example, an Illinois court struck down a TIF proposal because the municipality failed to meet its “but-for” requirement where there was evidence that “developers were interested in the Subject

92. See *infra* Section IV.C.

93. Briffault, *supra* note 79, at 67–68.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 74.

99. Briffault, *supra* note 79, at 75. TIF could be found to violate the uniformity principle of tax rates because the taxes from the TIF district are redirected back to that specific area, leaving other areas of the city with less revenue. Courts have rejected this argument because it is the spending that is unequal as opposed to the taxation. *Id.*

100. *Id.* at 76–77.

101. *Id.*

102. *Id.* at 70, 84.

103. *Id.* at 77.

104. Briffault, *supra* note 79, at 77.

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Property without TIF financing and the evidence that growth and development were occurring in the immediate area of the Subject Property.”¹⁰⁵ Maryland’s TIF statute does not contain a but-for requirement.¹⁰⁶

TIF was originally developed to reduce and remediate blight.¹⁰⁷ 33 states still require a finding of blight for the creation of a TIF district.¹⁰⁸ But even in these states, blight is broadly defined to include, for example, “inadequate planning of the area.”¹⁰⁹ Courts generally allow for a “blight” determination even “in the absence of a showing that an area is seriously deteriorated.”¹¹⁰

In addition, virtually every state requires that there be a public purpose for any expenditure of taxpayer dollars including TIF.¹¹¹ This closely aligns with the United States Supreme Court ruling in *Kelo v. City of New London*, which held that condemnation and transfer of private property for a private development may serve a valid public purpose under the United States Constitution.¹¹² State courts have consistently held that “government programs that promote economic development are now generally treated as serving a public purpose.”¹¹³ In the Port Covington negotiations, the community groups used the TIF’s requirement of approval from public officials, both for the TIF and for the development’s exemption from the inclusionary housing statute, to force the developer to the negotiating table.¹¹⁴

105. Bd. of Educ., Pleasant Dale Sch. Dist. No. 107, Cook Cnty. v. Vill. of Burr Ridge, 793 N.E. 2d 856, 867 (Ill. App. 2003).

106. See MD. CODE ANN. ECON. DEV. §12-201–213 (West 2017).

107. Briffault, *supra* note 79, at 78.

108. *Id.*

109. 53 PA. STAT. AND CONS. STAT. ANN. §6930.2(a)(1) (West 2017).

110. Briffault, *supra* note 79, at 78 (“Not surprisingly, these statutory standards tend to result in judicial acceptance of municipal blight claims even in the absence of a showing that an area is seriously deteriorated.”).

111. *Id.* at 74.

112. *Kelo v. City of New London*, 545 U.S. 469 (2005).

113. Briffault, *supra* note 79, at 74.

114. Natalie Sherman, *TIF Hearing Draws Port Covington Protest*, BALT. SUN (May 19, 2016), <http://www.baltimoresun.com/business/bs-bz-tif-protest-20160519-story.html>; BALTIMORE, MD. CITY CODE art. 13, § 2B (2017).

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C. The Harbor Point TIF: Baltimore's Cautionary Tale

In 2013, the Baltimore City Council granted \$107 million in TIF bonds for “new roads, sidewalks, a waterfront promenade, a 6.5-acre public park and an extension of [a local bridge]” in connection to a mixed use development called Harbor Point on the site of a former chromium processing plant.¹¹⁵ The Harbor Point TIF became a point of comparison with those who opposed the Port Covington TIF, who pointed to the Harbor Point TIF as a cautionary tale not to be repeated.¹¹⁶ The developer presented a but-for argument to the city that in order to invest the amount of money required to make the project successful, it needed the \$107 million TIF to be profitable, and that Exelon, one of the project's flagship future tenants, might leave Baltimore without the new development.¹¹⁷

The but-for analysis presented by the developer of Harbor Point does not appear to hold up under scrutiny. The developer projected a return on investment of 9.00 percent without public assistance and 12.55 percent with public assistance.¹¹⁸ The numbers on their face do not appear to require public assistance as the project would still have been profitable, but the city accepted the but-for analysis over the objections of community groups such as Baltimoreans United in Leadership Development (“BUILD”).¹¹⁹ Exelon had previously signed an agreement with the Maryland Public Service Commission in 2011 mandating the company build its new headquarters in the city.¹²⁰

Even so, the Baltimore Development Corporation, “a non-profit organization, which serves as the economic development agency for the City of Baltimore,”¹²¹ estimated that the project would create 7,175 construction jobs, 6,611 permanent jobs and 2,547 indirect jobs.¹²² The project had strong support of many city leaders

115. Luke Broadwater, *City Board Approves \$107 Million Harbor Point TIF*, BALT. SUN (May 20, 2013), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-exelon-tif-20130520-story.html>.

116. See, e.g., *The Marc Steiner Show: Development in Baltimore: TIFs, Port Covington, Harbor Point & More* (June 7, 2016), 8:00–11:00, <http://www.steinershow.org/podcasts/development-in-baltimore-tifs-port-covington-harbor-point-more/>.

117. Broadwater, *supra* note 115.

118. HARBOR POINT TAX INCREMENT FINANCE APPLICATION 17 (2013).

119. Luke Broadwater, *Harbor Point Developer to Buy Project's City-Issued Bonds*, BALT. SUN (Aug. 16, 2013), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-beatty-bonds-20130815-story.html>. BUILD will be discussed in depth in Section III, *infra*.

120. Broadwater, *supra* note 115.

121. *About BDC*, BALT. DEV. CORP., <http://baltimoredevelopment.com/about-bdc/> (last visited Feb. 24, 2018).

122. BALT. DEV. CORP., HARBOR POINT FACT AND INFORMATION SHEET 3 (2013), https://content.govdelivery.com/attachments/MDBALT/2013/06/03/file_attachments/215531/Harbor%2BPoint%2BFact%2BSheet.pdf.

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who stated that their motivating factor “was jobs, jobs, jobs and that’s what it is jobs, jobs, jobs.”¹²³

While there was opposition to the project, there were no large-scale negotiations with community organizations or coalitions.¹²⁴ The strongest opposition the TIF faced was a city councilman, Carl Stokes, who opposed the deal stating that the project did not need any city money in order to go forward and that “it is not the responsibility of the taxpayers of Baltimore to guarantee a large profit,” essentially arguing that the developer had not met its “but-for” requirement.¹²⁵

The developer of the project did agree to some concessions in response to criticism “that the project would do nothing to benefit low-income Baltimore residents,” including giving \$2 million to a nearby charter school and \$3 million to the city’s fund for low-income housing.¹²⁶ The developer also agreed to follow the city’s not-yet-in-effect local hiring ordinance by hiring 51 percent of new workers from Baltimore.¹²⁷ But the city gave the developer an exemption from its inclusionary housing requirement that new residential developments over 30 units preserve at least 20 percent of residential units for low-income housing.¹²⁸ As a result, the developer did not pledge any residential units to low-income housing.¹²⁹ The City Council ultimately approved the TIF in a 12-3 vote.¹³⁰

The failure of the Harbor Point TIF to provide any affordable housing or other significant local benefits while receiving \$107 million in public subsidies was a major impetus for the organizing effort to create a coalition to negotiate a better agreement

123. P. Kenneth Burns, *City Council Passes Harbor Point TIF*, WYPR (Sept. 10, 2013), <http://news.wypr.org/post/city-council-passes-harbor-point-tif>.

124. Alexander Pyles & Jason Ruiter, *Baltimore City Council Panel Passes Harbor Point TIF*, DAILY REC. (Aug. 7, 2013), <http://thedailyrecord.com/2013/08/07/baltimore-city-council-panel-passes-harbor-point-tif/>. The Downtown Management Authority of Baltimore, a downtown property owners group, voted to oppose the TIF and neighborhood associations including the Fells Point Residents Association withdrew support for the TIF but never voted to oppose it. *Id.*

125. Mark Reutter, *Council Suspends Rules, Approves Harbor Point TIF Subsidy Tonight*, BALT. BREW (Aug. 12, 2013), <https://www.baltimorebrew.com/2013/08/12/council-suspends-rules-approves-harbor-point-tif-subsidy-tonight/>.

126. Luke Broadwater, *Harbor Point Construction Could Begin Next Month*, BALT. SUN (Sept. 9, 2013), http://articles.baltimoresun.com/2013-09-09/news/bs-md-ci-harbor-point-council-vote-20130909_1_harbor-point-development-group-jack-young-tax-increment-financing.

127. *Id.* Baltimore City’s local hiring law went into effect on December 23, 2013 and requires certain City-subsidized projects over \$5,000,000 to employ 51 percent of new hires from Baltimore City residents. BALTIMORE, MD. CITY CODE art. 5, § 27-1-10 (2017).

128. Mark Reutter, *No Affordable Housing Planned at Harbor Point*, BALT. BREW (July 18, 2013), <https://baltimorebrew.com/2013/07/18/no-affordable-housing-planned-at-harbor-point>.

129. *Id.*

130. Reutter, *supra* note 125.

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with Sagamore Development.¹³¹ BUILD described the Harbor Point process as the developer telling the community group, “you can do whatever you want, I will get my TIF.”¹³² The project went forward without a CBA.¹³³

III. THE PORT COVINGTON TIF

In March 2016, Sagamore Development announced that the company was requesting a TIF bond issuance for \$535 million in infrastructure improvements from Baltimore City.¹³⁴ The proposed TIF district was a 266-acre redevelopment of an area of land that at the time housed a vacant Sam’s Club, Walmart, Baltimore Sun printing press and other industrial land.¹³⁵ Sagamore officially submitted a TIF application to Baltimore City on May 23, 2016.¹³⁶ While the project was not expected to directly displace any residents because of its location, the substantial use of public subsidy made the deal ripe for negotiations with community groups to obtain a CBA.¹³⁷

Sagamore Development first agreed on April 20 to MOUs with Baltimore City.¹³⁸ The original MOU was not negotiated with any community groups and is a normal part of the TIF process.¹³⁹ Baltimore City did not expect it to be the final agreement with Sagamore Development.¹⁴⁰ The MOU included a goal of making 10 percent of the residences affordable for families with incomes below 80 percent of the median household income in the Baltimore area, and loosening of the Inclusionary Housing law requiring all new residences of at least 30 units or more have at least 20 percent reserved for affordable housing.¹⁴¹ Sagamore Development

131. See *The Marc Steiner Show: Development in Baltimore: TIFs, Port Covington, Harbor Point & More* (June 7, 2016), <http://www.steinershow.org/podcasts/development-in-baltimore-tifs-port-covington-harbor-point-more/>; see also Mark Reutter, *Like Harbor Point, Port Covington Will Be Exempt From City’s Inclusionary Housing Law*, BALT. BREW (Apr. 19, 2016), <https://www.baltimorebrew.com/2016/04/19/like-harbor-point-port-covington-will-be-exempt-from-citys-inclusionary-housing-law/>.

132. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

133. *Id.*

134. Melody Simmons, *Exclusive: Kevin Plank’s Investment Arm, Water Taxi in Talks for ‘Partnership,’* BALT. BUS. J. (Mar. 17, 2016), <https://www.bizjournals.com/baltimore/blog/real-estate/2016/03/exclusive-kevin-planks-investment-arm-water-taxi.html>.

135. Natalie Sherman, *Baltimore’s New Economy Meets its Old One in Port Covington*, BALT. SUN (Mar. 6, 2015), <http://www.baltimoresun.com/business/bs-bz-port-covington-20150306-story.html>.

136. PORT COVINGTON TAX INCREMENT FINANCING APPLICATION (2016).

137. Mark Reutter, *Slow the Roll of the Port Covington TIF Subsidy, Protesters Say*, BALT. BREW (May 20, 2016), <https://baltimorebrew.com/2016/05/20/slow-the-roll-of-the-port-covington-tif-subsidy-protesters-say/>.

138. Sherman, *supra*, note 6.

139. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

140. *Id.*

141. Sherman, *supra*, note 6.

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also agreed to “strive” to employ 20 percent Baltimore City residents and fill 51 percent of new hires with Baltimore City residents.¹⁴² Lastly, Sagamore Development agreed to pay at least “\$150,000 annually for a minimum of five years to fund a city youth jobs program and as much as \$80,000 annually to hire a local hiring coordinator.”¹⁴³

The application and initial MOU quickly faced strong opposition from community groups who hoped to use the public financing as leverage to begin negotiating with Sagamore for a better agreement.¹⁴⁴ The main concern raised by community groups was that the development would primarily benefit the wealthy to the detriment of the lower income residents in the city.¹⁴⁵ The community groups focused on the weak affordable housing and local hiring provisions.¹⁴⁶ On June 16, 2016, the ACLU of Maryland wrote a public letter to the Baltimore City Department of Planning calling the Port Covington TIF master plan “an example of the economic development paradigm that has failed our City and should not be endorsed by the Planning Commission in its present form.”¹⁴⁷ The letter cited myriad reasons for its condemnation of the TIF master plan including criticizing the local hiring and affordable housing requirements benchmarks as too low and aspirational, not mandated, with Sagamore Development still exempted from the Inclusionary Housing law.¹⁴⁸ BUILD also joined the opposition to the Port Covington TIF proposal analogizing Port Covington to Harbor Point, which offered “goals but no guarantees, promises that were never kept and lost opportunities to build, indeed ‘One Baltimore.’”¹⁴⁹

Sagamore expected from the outset that they would need to negotiate with the community for a more “robust agreement” to gain the public support they would need for final approval by Baltimore City.¹⁵⁰ This agreement came in the form of two major negotiations: one with a coalition of community associations, called the SB6, and the other with the city, negotiated primarily by BUILD.¹⁵¹ Other groups were involved in the negotiating effort, but pulled out of the agreement due to concerns over the negotiating process and final MOU text.¹⁵²

142. PORT COVINGTON TAX INCREMENT FINANCING APPLICATION 41 (2016).

143. Sherman, *supra* note 6.

144. See e.g., Letter from ACLU of Maryland & Public Justice Center to Thomas Stosur, *supra* note 10.

145. See *id.*

146. See *id.*

147. *Id.* at 1.

148. *Id.* at 3, 8.

149. Fern Shen, *BUILD Joins Chorus of Critics Questioning Port Covington*, BALT. BREW (July 13, 2016), <https://www.baltimorebrew.com/2016/07/13/build-joins-chorus-of-critics-questioning-port-covington/>.

150. Sherman, *supra* note 6.

151. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 1, 29 (2016).

152. See *infra* Section IV.A.2.

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A. The SB6 Coalition Community Benefits Agreement and Memorandum of Understanding

The SB6 Coalition negotiated with Sagamore Development on behalf of six neighborhood associations that represent residential communities adjacent to the proposed Port Covington development.¹⁵³ On July 14, 2016, the SB6 Coalition and Sagamore Development announced they had come to an agreement for a Community Benefits Agreement and Memorandum of Understanding “expected to result in roughly \$40 million for the neighborhoods of Brooklyn, Cherry Hill, Curtis Bay, Lakeland, Mount Winans and Westport.”¹⁵⁴

In the final agreement, Sagamore Development agreed to fund a community development entity “to ensure that the Communities will share in the economic, educational, cultural, environmental, and social benefits associated with the New Port Covington.”¹⁵⁵ The entity will be created jointly by the two parties with both sharing in its governance and operations.¹⁵⁶ It will be funded by a combination of an initial \$10 million payment by Sagamore Development, transfer fees on property sales, and payments into a fund by all for-profit users of commercial space in Port Covington.¹⁵⁷ The agreement between Sagamore Development and the SB6 coalition helped Sagamore Development claim community buy-in from many neighborhoods that could be directly affected by the development.¹⁵⁸

B. The Amended and Restated Memorandum of Understanding Between Sagamore Development and Baltimore City

On September 25, 2016, Mayor Stephanie Rawlings-Blake signed legislation approving an Amended and Restated Consolidated Memorandum of Understanding with Sagamore Development.¹⁵⁹ While the MOU was ultimately agreed to by Sagamore Development and Baltimore City, Baltimore City deferred to private parties to negotiate and agree to a deal with Sagamore Development, which

153. Rachel Baye, *Port Covington Developer Inks \$40 Million Deal with South Baltimore Communities*, WYPR (July 14, 2016), <http://wypr.org/post/port-covington-developer-inks-40-million-deal-south-baltimore-communities>.

154. *Id.*

155. THE SB6 COALITION AND SAGAMORE DEVELOPMENT COMPANY COMMUNITY BENEFITS AGREEMENT AND MEMORANDUM OF UNDERSTANDING 2 (2016).

156. *Id.*

157. *Id.* at 3. The transfer fee is expected to be 10 percent of the amount Baltimore City charges in transfer taxes and the annual charge on for-profit users of commercial space are expected to start at \$0.25 per net square foot, but no less than \$0.15 per net square foot. *Id.* The total funding is expected to exceed \$19,000,000 over 20 years. *Id.*

158. Baye, *supra* note 153.

159. Wenger, *supra* note 5.

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Baltimore City would ultimately approve.¹⁶⁰ The deal was initially negotiated by the BUILD coalition, Build Up Baltimore, and the People Organized for Responsible Transformation, Tax Subsidies and TIFs (“PORT3”) coalition, but both Build Up Baltimore and PORT3 found the final deal unacceptable and walked away from the negotiations without an agreement.¹⁶¹ BUILD did agree to the final deal, and Baltimore accepted that outcome, approving the MOU as agreed to by BUILD.¹⁶²

The agreement Baltimore City struck with Sagamore Development through BUILD incorporated the SB6 CBA and included a total of \$135.9 million in anticipated financial commitment from Sagamore Development.¹⁶³ The agreement was intended to address the concerns of the community groups specifically regarding local hiring and affordable housing. The agreement included the following terms:¹⁶⁴

1. Local Hiring, Workforce Development and Wage Provisions

The hiring provisions in the agreement include an agreement to “work in good faith” to hire 30 percent of all on-site workers from Baltimore City residents and for at least 12 percent of work performed to be from formal apprenticeship programs with a goal of 20 percent of work performed from apprenticeship programs within the first 5 years of the project.¹⁶⁵ Sagamore Development also agreed to pay a minimum wage of “\$17.48 per hour plus \$5.93 per hour for health and pension benefits (or alternatively in additional wages) for all employees in all trades on the Packages within the TIF Infrastructure Project.”¹⁶⁶ Sagamore Development agreed to several financial commitments as well including funding for oversight by a City auditor,¹⁶⁷ the creation of a “Port Covington Workforce Opportunities Center,”¹⁶⁸ a local hiring advisory committee,¹⁶⁹ workforce development initiatives, and citywide programs.¹⁷⁰

160. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

161. The negotiating parties and their motivations for their negotiating positions are discussed in depth in *infra* Section IV.

162. Wenger, *supra* note 5.

163. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING SUMMARY OF TERMS 1 (2016).

164. While this article attempts to summarize the most important terms in the agreement, it is not a comprehensive list.

165. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 7 (2016).

166. *Id.* at 8.

167. *Id.* at 20.

168. *Id.* at 7.

169. *Id.* at 3, 8.

170. *Id.* at 7, 16.

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2. Affordable Housing Provisions

Sagamore Development agreed to provide affordable housing units at a rate of 20 percent of total residential units constructed at Port Covington with at least 60 percent of those units being on-site as long as doing so was “financially reasonable.”¹⁷¹ The developer also agreed to make at least 10 percent of these units affordable to households below 30 percent of Average Median Income (“AMI”) if housing vouchers are made available to Sagamore Development and at least 5 percent of the units affordable to households at or below 50 percent of AMI if the developer receives federal Low Income Housing Tax Credits (“LIHTC”) funding.¹⁷²

C. Public response to the final agreements

The agreements between Sagamore Development, the SB6 and Baltimore City (through BUILD) prompted the Baltimore Sun to strongly encourage the city to “Approve the Port Covington TIF” because the agreement marked “the most serious and productive negotiation between a developer, the city and advocates on issues like affordable housing and local hiring that we have seen on a major Baltimore project in recent memory.”¹⁷³ In addition, the paper stated, “if anyone has reason to be unhappy, it’s the other developers in town” because the deal “sets a new standard that future tax increment financing deals will be judged against.”¹⁷⁴ Carl Stokes, who fervently opposed the Harbor Point TIF, supported the bill giving final approval to the Port Covington TIF.¹⁷⁵ BUILD hailed the agreement as “an historic start” and stated that although the organization did not get everything they negotiated for, “significant steps have been taken that create a new development paradigm for Baltimore City.”¹⁷⁶

171. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 13–14 (2016). If Sagamore Development cannot construct on-site affordable units on a financially reasonable basis, they must make payments into Baltimore City’s Inclusionary Housing Offset Fund in increasing amounts depending on how many units they fail to construct. *Id.* at 14. For all units Sagamore develops offsite, Sagamore must also make payments into Baltimore City’s Inclusionary Housing Offset Fund in increasing amounts depending on how many off-site units Sagamore Development builds. *Id.* at 14–15.

172. *Id.* at 13–15. Sagamore Development is required to use “commercially reasonable efforts” to apply for LIHTC funding and if they do not receive this funding, all affordable housing is required to be affordable for households at or below 80 percent of AMI so long as it can be “constructed on a financially reasonable basis.” *Id.* at 13.

173. Editorial, *Approve the Port Covington TIF*, BALT. SUN (Sept. 9, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-port-covington-20160909-story.html>.

174. *Id.*

175. Melody Simmons, *Carl Stokes: Port Covington TIF Bill ‘is Ready to Move’*, BALT. BUS. J. (Sept. 12, 2016), <http://www.bizjournals.com/baltimore/blog/real-estate/2016/09/carl-stokes-port-covington-tif-bill-is-ready-to.html>

176. BUILD & Sagamore Reach Agreement on Citywide Benefits, BALTIMOREANS UNITED IN LEADERSHIP DEV. (Sept. 11, 2016), <http://www.buuildiaf.org/2016/09/build-sagamore-reach-agreement-citywide-benefits/>.

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There was still significant opposition to the deal. For example, the Public Justice Center (“PJC”) sent a letter to Baltimore City Council Chairman Carl Stokes stating that the agreement addressed their concerns about affordable housing “only in a superficial way.”¹⁷⁷ PORT3, in an open letter, stated that the agreement did not give “meaningful consideration to... issues such as: a good jobs guarantee; inclusionary housing; sharing an estimated \$1 billion profits with the taxpayers; or the possibility of City Schools losing millions of dollars in state funding.”¹⁷⁸

IV. EVALUATING THE RESULTS

This section will start by reviewing what a community benefits agreement is and whether there is sufficient community involvement to call the final MOU signed by Baltimore City a community benefits agreement.¹⁷⁹ As part of that discussion, this section will identify the negotiating parties and conclude the community was not sufficiently represented.¹⁸⁰ Second, this section will look at the final agreement to assess whether there were tangible enforceable benefits that respond to the community’s concerns in the agreement.¹⁸¹ This analysis concludes that while the agreement has the potential to bring benefits back to the community, there were still significant shortcomings in both the affordable housing and hiring provisions that could prevent it from achieving that result.¹⁸²

The following central participants in the negotiations with Sagamore were interviewed to help determine whether the Port Covington CBA was effective:¹⁸³

Monisha Cherayil of the PJC, who PORT3 designated to negotiate the housing provisions of the deal.¹⁸⁴ Cherayil is the lead attorney for the PJC’s education project.¹⁸⁵

177. Letter from Monisha Cherayil, Attorney, Public Justice Center, to Carl Stokes, Baltimore City Council Chairman (Sept. 8, 2016) (on file with author).

178. Press Release, People Organized for Responsible Transformation, Tax Subsidies and TIFs, PORT3 Coalition Decries Sagamore’s Affordable Housing Offer, Calls on Company to do More than the Bare Minimum (Sept. 2, 2016), http://www.marylandconsumers.org/penn_station/folders/press/statements_and_comments/PORT3Statement.pdf.

179. See *infra* Section IV.A.

180. See *infra* Section IV.A.

181. See *infra* Section IV.B..

182. See *infra* Section IV.B.

183. Sagamore Development did not return a request for interview.

184. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017).

185. *Id.*

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Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, who PORT3 collaborated closely with throughout the negotiations.¹⁸⁶

Jim Williams, a labor official at Build Up Baltimore.¹⁸⁷

Libby Cohen, an organizer at BUILD.¹⁸⁸

Lester Davis, Kara Kunst, and Michael Huber of Baltimore City Council President Jack Young's office.¹⁸⁹

A. The C in the CBA. What community was represented in the negotiations?

For an agreement to be a CBA, there must be "substantial community involvement" in the negotiations.¹⁹⁰ The CBA must represent the interests of the community affected by the development and be "transparent, inclusive, and accessible" to that community.¹⁹¹ The SB6 CBA on its face appears to have accomplished this by addressing the concerns of the neighborhoods directly affected by the development itself.¹⁹² The neighborhoods adjacent to the community, SB6, signed a CBA with Sagamore Development, which Jim Williams of Build Up Baltimore referenced as the type of agreement he wishes his group would have been allowed to negotiate for with Sagamore Development.¹⁹³ Because of the use of public funds in the TIF,¹⁹⁴ the Port Covington Amended and Restated Port MOU is more analogous to the Oakland Army Base CBA where the affected community is the entire jurisdiction affected by the loss of funds for use in other areas of the city.¹⁹⁵ The MOU was ultimately agreed to by Baltimore City, but the government deferred to BUILD, PORT3, and Build Up Baltimore to negotiate the agreement with Sagamore Development.¹⁹⁶ Ultimately, when only BUILD came to an agreement with Sagamore Development, Baltimore City accepted that agreement.¹⁹⁷

186. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

187. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

188. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

189. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

190. P'SHIP FOR WORKING FAMILIES, *supra* note 17, at 5.

191. *Id.*

192. See Section III.A.

193. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

194. See *supra* Section III.

195. See discussion of the Oakland Army Base CBA in Section II.A.2, *supra*.

196. See *supra* Section III.B.

197. See *supra* Section III.B.

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1. *Who are the negotiating parties*

What communities the negotiating parties represent and whether they agreed to the final MOU is essential to determining whether the community is well represented.¹⁹⁸ As stated above, BUILD was the only negotiating party that ultimately accepted the deal.¹⁹⁹ Baltimore City approved the deal negotiated by BUILD, disregarding the opinions of the community groups Build Up Baltimore and PORT3.²⁰⁰ This subsection will describe each group, who the group believed itself to be representing, and what area of the negotiations on which it was focused.

BUILD is a community organization that is part of the Industrial Areas Foundation (“IAF”), one of the first and oldest community organizing bodies in the United States.²⁰¹ BUILD was established by clergy in the 1970s and was heavily involved in the civil rights movement.²⁰² BUILD does not have individuals as members and does not consider itself an advocacy organization with a list of issues.²⁰³ Instead, it believes itself to operate as a conduit for its members to organize and participate in any policymaking decision that affects them.²⁰⁴ BUILD believes this differentiates it from issue advocacy organizations such as Build Up Baltimore and PORT3 because BUILD has member institutions that will be directly affected by the development to whom BUILD must report back.²⁰⁵ BUILD’s members are not tied to a specific neighborhood, but include “congregations, schools (both private and public), labor unions, business associations, nonprofits, neighborhoods and civic organizations,” and describes itself as “broadbased” to “stand for the whole.”²⁰⁶ In this way, BUILD attempts to speak for the entire city of Baltimore.²⁰⁷

PORT3 is a coalition of worker groups, consumer rights groups and others including the PJC, the Maryland Consumer Rights Coalition, Jews United for Justice, Housing Our Neighbors (“HON”) and the ACLU of Maryland.²⁰⁸ PORT3 intended to represent the whole of the City of Baltimore in its negotiations with Sagamore Development and formed in response to the proposed Port Covington development and TIF.²⁰⁹ PORT3 collaborated closely with Barbara Samuels of the ACLU of

198. See *supra* Section II.A.2.

199. See *supra* Section III.B.

200. See *id.*

201. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Members*, BUILD, www.builtiaf.org/members/ (last visited Feb. 26, 2018).

207. See *id.*

208. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017).

209. *Id.*

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Maryland throughout the negotiating process.²¹⁰ PORT3 designated Monisha Cherayil of PJC to negotiate housing provisions with the other parties.²¹¹

Build Up Baltimore grew out of the International Union of Painters and Allied Trades (“IUPAT”) after Freddie Gray’s death.²¹² IUPAT identified Baltimore as a location that the labor movement should be focusing on to create better pathways to careers and other opportunities.²¹³ Build Up Baltimore recognized early on that the community lacked a cohesive plan to level the playing field between workers and local developers and focused on the labor force provisions in the MOU more than the other provisions.²¹⁴ The organization believes that developers currently hold too much sway over city policy and are able to procure very favorable deals from the city with little public scrutiny to ensure their projects provide public benefits.²¹⁵

2. *Were the community’s interests adequately represented by BUILD?*

While PORT3, BUILD, and Build Up Baltimore all negotiated with Sagamore Development, only BUILD agreed to the final text.²¹⁶ Because the other two groups walked away from the negotiating table without an agreement, this article does not consider their representation of the community in whether the community’s interests were adequately represented.²¹⁷ Further, while the question of whether a local government truly represents its constituents is outside the purview of this article,²¹⁸ as the agreement was agreed to by BUILD, this section will focus on whether the community’s interests were adequately represented by BUILD. That said, the fact that PORT3 and Build Up Baltimore both determined the deal was not acceptable is telling as they both claimed to represent the Baltimore community.²¹⁹

210. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland’s Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

211. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017).

212. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

213. *Id.*

214. *Id.*

215. *Id.*

216. Yvonne Wenger, *Baltimore Officials Reach Deal with Port Covington Developer*, BALT. SUN (Sept. 7, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-port-covington-advance-20160907-story.html>.

217. *See id.*

218. The MOU was ultimately agreed to by Baltimore City and Sagamore Development and therefore anything Baltimore City adopted could be seen as the will of the community. *See Raffol, supra* note 32, at 37. That said, local government often does not act in the best interest of its less politically powerful community members leaving a void that CBAs are intended to fill. *See id.* at 37–38.

219. Build Up Baltimore claimed representation of Baltimore through its outreach to community partners and labor unions in different sectors of the Baltimore community. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017). PORT3 claimed representation of Baltimore though its consisting of a diverse coalition of worker groups, consumer rights groups, homelessness advocacy groups, the

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BUILD entered negotiations with the belief that they had very little bargaining power and would ultimately have to accept a final deal from Sagamore.²²⁰ According to Libby Cohen of BUILD, City Councilman Carl Stokes came to BUILD before the negotiating process and told BUILD that he would eventually have to say yes to the deal, but wanted BUILD to get as much as it could before he did.²²¹ As a result, BUILD’s mindset was to get any concessions the organization could from Sagamore Development even if the terms were not ideal, knowing the community organization would ultimately have to agree to whatever final offer Sagamore Development presented.²²² BUILD’s representative argued that if all the negotiating parties had walked away from the table, the next time a developer asked Baltimore City for a subsidy, they would not bother negotiating with groups like BUILD and would receive their requested public subsidy without providing any meaningful benefits to the community.²²³ BUILD recognizes the deal is not perfect, but believes its participation and agreement to the final deal led to more favorable terms than if they had walked away leaving the original April MOU in place.²²⁴ PORT3, the ACLU of Maryland, and Build Up Baltimore disagreed with this assessment, and believed that there would be great power in withholding legitimacy to a deal if it did not provide adequate and enforceable benefits to the community.²²⁵ Both Build Up Baltimore and the ACLU of Maryland indicated in interviews that BUILD may have been motivated to approve a less than ideal agreement to bolster its own reputation as a negotiator

ACLU of Maryland, Jews United for Justice and others. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017).

220. At the outset of negotiations, BUILD performed a power analysis where they attempted to determine what was likely to happen in negotiations and determined that the TIF would happen with or without them. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

221. *Id.*

222. *Id.*

223. *Id.* When this point was raised to PORT3 and Build Up Baltimore, both groups replied by stating that by agreeing to the deal, BUILD legitimized the deal and hurt their ability to fight the subsidy going forward. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland’s Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

224. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

225. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland’s Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

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on behalf of the Baltimore community.²²⁶ Build Up Baltimore does not believe that the final product can even be defined as a community benefits agreement because it was an agreement between the city and a developer rather than an agreement between the community affected and the developer.²²⁷

BUILD's negotiating process lacked several hallmarks of a representative negotiator, as defined in Section II.A.2. A negotiator must properly reflect the sentiment of the community and negotiate in a way that allows for "deep, active connections to the community, representing those most threatened by project impacts and frequently excluded from participation in decisions about economic development."²²⁸ BUILD did not provide public forums or other opportunities for the community to weigh in during negotiations which are common tools used by community organizations to "ensure that a broad range of concerns are heard and addressed prior to project approval."²²⁹ The negotiations were not open to public input before the agreement was made public before the final vote by the Baltimore City Council.²³⁰

The profit-sharing provisions between Baltimore City and Sagamore Development were negotiated privately without BUILD's involvement and a final agreement is still not available to the public.²³¹ Profit-sharing provisions are typically included in similar TIF deals.²³² BUILD initially demanded a profit-sharing plan on the TIF bonds between Sagamore Development and Baltimore City, but Baltimore

226. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

227. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

228. P'SHIP FOR WORKING FAMILIES, *supra* note 17, at 6.

229. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017); P'SHIP FOR WORKING FAMILIES, *supra* note 17, at 6. This can also partially be explained by the rushed timeframe in which the parties were negotiating. PORT3, BUILD and Build Up all mentioned in interviews how rushed the process was and that it precluded many of the steps and organizing the groups would have preferred to accomplish before finalizing negotiations. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

230. Fern Shen, *Deciphering the Deal Cut on Port Covington*, BALT. BREW (Sept. 13, 2016), <https://www.baltimorebrew.com/2016/09/13/deciphering-the-deal-cut-on-port-covington/>.

231. The bottom-line of the deal has been made public: Baltimore City will receive 25 percent of any additional profit above 15 percent. Luke Broadwater, *City Council Approves \$660 Million Bond Deal for Port Covington Project*, BALT. SUN (Sept. 19, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-port-covington-council-20160919-story.html>.

232. Luke Broadwater, *City Council Begins Work on Port Covington Tax Deal*, BALT. SUN (Aug. 16, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-port-covington-work-session-20160816-story.html>.

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Development Corp. stated it could not negotiate the profit-sharing provisions until after the bonds were authorized.²³³

Nevertheless, BUILD believes the community was well served and approved of the agreement because of the turnout to Baltimore City government TIF hearings, which suggests the institutional leaders properly informed their constituents of BUILD’s position and those constituents agreed with its conclusion.²³⁴

B. There were tangible benefits to the agreement, but there are significant shortcomings in both the affordable housing and hiring provisions

As discussed in Section II.a.3, *supra*, a CBA must provide “specific, concrete, meaningful benefits” while providing the community a mechanism for holding the developer accountable to its obligations.²³⁵ The major additions from the initial proposal presented to Baltimore City were in the areas of local hiring and affordable housing.²³⁶ As explained below, the deal on its face appears to offer real benefits to both the neighborhoods adjacent to the development and also to the city as a whole, but the benefits are not as robust as they seem.²³⁷

1. Affordable Housing

The affordable housing provisions were increased from 10 percent to 20 percent, but there is no provision in the MOU that makes this binding on developers other than Sagamore Development, who builds the housing.²³⁸ The affordable housing provision is therefore only applicable to units built by Sagamore Development, not other developers who build within the TIF district.²³⁹ Because Sagamore Development has no experience with a project this large, the company is likely to lean on other developers to build many of the residential buildings within Port Covington.²⁴⁰ This means large portions of the housing will be exempt from the affordable housing

233. *Id.*

234. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

235. P’SHIP FOR WORKING FAMILIES, *supra* note 17, at 5.

236. See *The Marc Steiner Show: Port Covington Vote* (Sept. 13, 2016), <http://www.steinershow.org/podcasts/port-covington-vote/>.

237. See generally NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING (2016).

238. *The Marc Steiner Show: Port Covington Vote* (Sept. 13, 2016), 7:15–8:50, <http://www.steinershow.org/podcasts/port-covington-vote/>.

239. *Id.*

240. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

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requirement rendering the formal provisions “meaningless” according to Barbara Samuels of the ACLU of Maryland.²⁴¹

In addition, the affordable housing requirement expires after 15 years of the first occupancy at 80 percent AMI or less for each residential unit,²⁴² which makes the affordability of the units provided transient and not a permanent benefit for city residents.²⁴³ The build out is expected to take over 25 years,²⁴⁴ which means the affordability period will not cover the entirety of the construction period.²⁴⁵ No rentals after 30 years will be covered by the MOU.²⁴⁶

Even if built and offered, there are several ways the CBA limits the affordable housing requirement’s benefits or allows the developer to escape meeting obligations contained therein. Sagamore Development is merely required to use “commercially reasonable efforts” to apply for LIHTC credits.²⁴⁷ This is a vague standard not defined in the agreement, and leaves less certainty than standard requirements to apply for LIHTC credits.²⁴⁸ If Sagamore Development does not apply for or receive LIHTC credits, Sagamore Development is only required to provide housing affordable at 80 percent AMI instead of 60 percent AMI.²⁴⁹ Only 60 percent of the total affordable housing units are required to be on site²⁵⁰ and only 10 percent of affordable housing units (2 percent of total units in the development) must be affordable below 30 percent of AMI (and even this number is “contingent on the project’s receipt of

241. *The Marc Steiner Show: Port Covington Vote* (Sept. 13, 2016), 7:15–8:50, <http://www.steinershow.org/podcasts/port-covington-vote/>.

242. For the first 30 years, the units designated as affordable housing units may only be leased to tenants earning 80 percent AMI or less. For each individual unit, once it is occupied, the requirement expires after 15 years. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 16 (2016).

243. *Id.*

244. *Port Covington*, SAGAMORE DEV., buildportcovington.com (last visited Feb. 26, 2018).

245. *See id.*

246. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 16 (2016) (“The Developer Subsidized Affordable Housing Units shall be leased to tenants earning no more than 80 percent of AMI for a minimum thirty (30) year period of affordability. The Developer shall have the option to shorten the period of affordability no earlier than fifteen (15) years after the date of initial occupancy by a tenant earning no more than 80 percent of AMI or at the time of sale of any building in which an on-site Affordable Housing unit is located, whichever is later.”).

247. *Id.* at 13.

248. “Commercially reasonable” is most often defined in the context of UCC Article 9, but relies on the facts and circumstances of the individual case and is less strict than the use of “shall” in the agreement would have been. *See generally* MD. CODE COM. LAW §9-627 (West 2017); *see also* *Harris v. Bower*, 295 A.2d 870 (Md. Ct. Spec. App. 1972).

249. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 13 (2016).

250. *Id.* at 14.

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additional public subsidy”).²⁵¹ Finally, Sagamore Development did not commit to dispersing affordable housing throughout the development, leaving “a real possibility... that the developer could concentrate any affordable housing units created in only one or two buildings at the site.”²⁵² This would mean the affordable housing is not integrated into the greater development.²⁵³ Thus, even with the significant public subsidies, the development is still incompliant with Baltimore City’s Inclusionary Housing law.²⁵⁴

If Sagamore Development cannot build the affordable housing units on a “financially reasonable basis,” the developer can instead make payments into Baltimore City’s Inclusionary Housing Offset Fund.²⁵⁵ This, in essence, allows Sagamore Development to pay into the Inclusionary Housing Offset Fund instead of building the affordable housing units.²⁵⁶ Barbara Samuels of the ACLU of Maryland described this provision as Sagamore Development’s ability to “buy their way out cheaply without ever building the affordable housing.”²⁵⁷

Jack Young’s office disputes this. His staff rejoins that the language in the affordable housing provisions is adequate to ensure Port Covington makes a serious commitment to affordable housing.²⁵⁸ The agreement only allows Port Covington to avoid building the units if they cannot be constructed on a financially reasonable basis.²⁵⁹ According to Jack Young’s office, it would be unreasonable to require a stricter requirement than the language in the MOU because of the unpredictability

251. Letter from Monisha Cherayil, Attorney, Public Justice Center, to Carl Stokes, Baltimore City Council Chairman (Sept. 8, 2016) (on file with author); NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 15 (2016).

252. Letter from Monisha Cherayil, Attorney, Public Justice Center, to Carl Stokes, Baltimore City Council Chairman (Sept. 8, 2016) (on file with author).

253. *Id.* The PJC was concerned about this because the cheapest way for the developer to construct the affordable housing is likely to be to concentrate the affordable housing units into a few buildings. *Id.*

254. See Press Release, People Organized for Responsible Transformation, Tax Subsidies and TIFs, PORT3 Coalition Decries Sagamore’s Affordable Housing Offer, Calls on Company to do More than the Bare Minimum (Sept. 2, 2016), http://www.marylandconsumers.org/penn_station/folders/press/statements_and_comments/PORT3Statement.pdf; see also BALTIMORE, MD. CITY CODE art. 13, § 2B (2014), <http://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf>.

255. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 14 (2016). The exact rates depend on how many units are built. *See id.*

256. *Id.*

257. The Marc Steiner Show: Port Covington Vote (Sept. 13, 2016), 8:15–8:22, <http://www.steinershow.org/podcasts/port-covington-vote/>.

258. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

259. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 14 (2016).

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of constructing such a large-scale project over 20 plus years, potential cost overruns, and changing economic conditions over that time.²⁶⁰

Jack Young's office also believes this MOU is unique in that the project footprint has no residential areas, so the standards for what is acceptable in terms of community benefits should be lower.²⁶¹ Whereas among the primary concerns of developments subject to CBAs is displacement of local residents or other direct externalities to those that live in the immediate area of the development, in this project Baltimore City is not concerned about displacing a community by raising property values and rents to unobtainable rates.²⁶² Despite this, other developments in nonresidential areas still included substantive community benefits to prevent the new development from excluding large portions of the population.²⁶³

The affordability calculation used in the final agreement also serves the classic corporate incentive to maximize profit and disserves the community participants' concern that the housing will not actually be affordable to low-income local residents.²⁶⁴ Sagamore Development's AMI calculation to determine levels of affordable housing uses the entire metro area in its calculation instead of limiting the AMI calculation to Baltimore City's AMI.²⁶⁵ The differential between the average median income for the metro area and the city itself leads to the affordable housing being unaffordable for more than half of Baltimore's households.²⁶⁶ The CBA requires affordable housing set aside at 60 and 80 percent of AMI, but 60 percent AMI for the Baltimore metro area is approximately \$52,000, while 60 percent AMI for Baltimore City is only \$41,819.²⁶⁷ By using the metro area instead of the city in its AMI calculation, the MOU allows Sagamore Development to make a higher profit on the units it designates as affordable while setting unit prices to the region rather than the City, thereby excluding a significant portion of the Baltimore resident population whose housing needs are not met by the market already, from its affordable housing units.²⁶⁸

260. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

261. *Id.*

262. *Id.*

263. See discussion of the Oakland Army Base CBA *supra* Section II.A.2.

264. See Letter from Monisha Cherayil, Attorney, Public Justice Center, to Carl Stokes, Baltimore City Council Chairman (Sept. 8, 2016) (on file with author).

265. *See id.*

266. *Id.*

267. *Id.*

268. *Id.*

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2. Hiring

The hiring provisions in the MOU raise similar concerns to the affordable housing provisions. On its face, the MOU contains very strong local hiring provisions, mandating 30 percent of all Sagamore Development hires to be from Baltimore City, along with the workforce advertising, transportation, and workforce training clauses.²⁶⁹ The agreement also mandates a minimum wage of \$23.41 including health and pension benefits for all employees within the TIF district.²⁷⁰ However, critics of the deal believe Sagamore Development has overestimated the number of jobs that the site will actually create.²⁷¹

In addition, like the affordable housing provisions, the hiring provisions only apply to Sagamore Development, and not to tenants, contractors, or other developers who may build within the TIF district.²⁷² Many of the jobs after construction has been completed will be retail workers employed by tenants expected to be paid approximately \$13.25 per hour, which is significantly below the \$23.41 promised in the CBA.²⁷³ Sagamore Development is required to use “good faith efforts to enforce the contractual provisions and exercise such remedies as may be available to it, including suspension and debarment” to enforce the hiring provisions on sub-contractors,²⁷⁴ but this is mitigated by Sagamore Development’s ability to sell or lease parcels of land to other developers for construction.²⁷⁵

The net effect of these hiring provisions means the vast majority of the work done in Port Covington will not be subject to the local hire or wage provisions in the agreement.²⁷⁶ The TIF infrastructure money will go to Sagamore Development to build the infrastructure instead of the City directly building the infrastructure.²⁷⁷ Sagamore Development has no track record in infrastructure and they will likely

269. See *supra* Section III.B.1.

270. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 8 (2016).

271. The Marc Steiner Show: Port Covington Vote (Sept. 13, 2016), 16:55–17:30, <http://www.steinershow.org/podcasts/port-covington-vote/>.

272. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017). This is in contrast to other CBAs such as the Staples Center SBA which has entire sections devoted to tenant obligations. See, e.g. Los Angeles Sports and Entertainment District CBA at § 5(B), <http://www.forworkingfamilies.org/sites/pwf/files/resources/CBA-LosAngelesSportsAndEntertainmentDistrictProject.pdf>.

273. The Marc Steiner Show: Port Covington Vote (Sept. 13, 2016), 16:30–18:00, <http://www.steinershow.org/podcasts/port-covington-vote/>.

274. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 5 (2016).

275. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017). Jim Williams indicated this assessment is based on how most large scale development projects with a company like Sagamore Development go especially given the company’s lack of experience in this type of project. *Id.*

276. *Id.*

277. *Id.*

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contract out the work to be done by outside companies.²⁷⁸ The work will therefore not be subject to the same standards to which the city itself would be if it built the infrastructure.²⁷⁹ This potentially means lower wages and benefits will be paid to the workers completing the infrastructure work.²⁸⁰ Baltimore City Council President Jack Young's office indicated that Baltimore City could not bind third party contractors who were not part of the negotiations to the provisions of the MOU, so any clauses attempting to do so would not be enforceable.²⁸¹ This makes it impossible to bind other developers to whom Sagamore Development sells parcels of land or contractors Sagamore Development hires for construction work.²⁸²

Build Up Baltimore also noted that the agreement stipulated 51 percent of new hires must be from Baltimore City,²⁸³ but most construction jobs at Port Covington are likely to be given to already existing companies who would bring their existing workforce from other sites, meaning the mandate would likely have very little impact.²⁸⁴ Build Up Baltimore believes the only proper way to ensure the new employees actually come from Baltimore is to require a percentage of all hours worked be local rather than applying the provision to new job hires.²⁸⁵ According to Jack Young's office, Build Up Baltimore was looking for high percentages of multiple different categories of jobs that would be difficult or impossible to obtain concurrently.²⁸⁶ For example, requiring a high percentage of all worker hours to be

278. *Id.*

279. *Id.*

280. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017). Maryland Law requires certain contractors and subcontractors who contract with the State for services contractors to pay a living wage and other benefits to their employees. 21 MD. CODE. REGS. §11.10–11.11 (2017). But this law does not apply to money given to Sagamore Development to handle their own infrastructure. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017). It is unclear how the City can bind subcontractors who are hired by companies they directly pay for infrastructure work but cannot bind contractors hired by Sagamore Development who is effectively the contractor in this case.

281. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017). The MOU does bind designees of the developer to pay a minimum wage of \$17.98 per hour plus 5.93 per hour in benefits or additional wages to all employees within the TIF infrastructure project other than apprentice wages, which appears to contradict the position of Jack Young's office. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 8 (2016).

282. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

283. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 3 (2016).

284. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

285. *Id.*

286. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

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performed by Baltimore City residents while also requiring a high percentage of total work hours to be performed by union workers would be difficult because not all unions are local.²⁸⁷ Many contractors also bring their preexisting workforce with them to the job making it difficult for them to meet the local hiring requirement because they would have to lay off employees who live outside of Baltimore City in order to hire local residents.²⁸⁸

3. Accountability through Enforcement

The agreement does have some enforcement mechanisms. Sagamore Development must pay \$80,000 per year for the Mayor’s Office of Employment Development to hire a full time local hiring coordinator to oversee Sagamore Development’s progress towards the agreements in the CBA.²⁸⁹ The CBA also establishes a “Port Covington Local Hiring Advisory Committee” including representatives from the mayor’s office, other governmental offices, workforce providers, community representatives, religious leaders, local colleges and local schools to oversee Sagamore Development’s compliance with local hiring requirements and goals.²⁹⁰ That said, because the agreement was not a private contract, the community organizations could not bring a standard breach of contract claim.²⁹¹ It is therefore up to Baltimore City to enforce the MOU.²⁹²

C. Other concerns about the process of negotiating and approving the MOU made it both a less transparent process and gave the developer significant negotiating power over the community groups attempting to negotiate the deal

Every group interviewed acknowledged that there were shortcomings in the negotiating process.²⁹³ PORT3 and BUILD believed the process was too rushed to

287. *Id.* Build Up Baltimore’s Community Benefits Agenda does not include a requirement for a certain percentage of union workers, but it does have many other percentage demands including: 50 percent of all worker hours performed by Baltimore City residents in low-income neighborhoods and who are un- or under-employed or have a history of having difficulty accessing job opportunities, 20 percent of total work hours performed by participants in registered apprenticeship programs, 25 percent of apprentice worker hours performed by workers with barriers to employment, 50 percent of all jobs filled through the first source jobs system. Build Up Baltimore Community Benefits Agenda for Port Covington Redevelopment (on file with author).

288. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

289. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 4 (2016).

290. *Id.* at 8.

291. See Gross, *supra* note 30, at 11–14.

292. See *id.*

293. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in

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allow for them to properly organize, analyze, and negotiate a deal.²⁹⁴ The original MOU was announced in April 2016 and the community had to organize and negotiate the deal almost immediately with Sagamore Development with the final deal being approved by Baltimore City Council in September.²⁹⁵ BUILD indicated the city was not involved enough in the negotiations.²⁹⁶ Conversely, Build Up Baltimore believes the city played too large a role and should have given the groups more time and space to come to an agreement similar to the SB6 agreement, and further argues that Baltimore City should have made it clear they would not approve the TIF without an agreement with the community groups.²⁹⁷ The community groups also raised doubts about the feasibility study produced by MuniCap, Inc.²⁹⁸

In addition, PORT3 and the ACLU of Maryland felt as though their negotiating power was severely hampered by a rushed negotiating process and that Sagamore Development made a show of negotiating, but did not move in any meaningful way toward a deal PORT3 could accept.²⁹⁹ The condensed timeframe made it difficult to organize, involve the community and find funding to properly negotiate the deal.³⁰⁰ The city council rushed the process by not slowing down or stopping the approval process in the face of opposition to the deal by PORT3 or Build Up Baltimore, and then did not allow any amendments to the three bills necessary to pass the TIF.³⁰¹ PORT3 and the ACLU of Maryland believes The city council was intent on making sure the process moved quickly to a conclusion that appeared to be decided before the parties even came to the table.³⁰²

Balt., Md. (Apr. 7, 2017); Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

294. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

295. See *supra* Section III.

296. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

297. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

298. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

299. Interview with Monisha Cherayil, Attorney, Public Justice Center, in Balt., Md. (Feb. 29, 2017); Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

300. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

301. *Id.*

302. *Id.*

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BUILD argues there should be a waiting period to slow down the process and give communities and groups time to analyze, discuss and negotiate with the developer.³⁰³ The organization’s negotiating position was weakened by the rushed process and its resulting inability to fully analyze all the effects of the TIF along with its inability to inform both its member institutions and the public of its position.³⁰⁴ BUILD believes the city played too passive a role in the negotiating process and should have had an elected official in the room throughout the negotiations.³⁰⁵

Build Up Baltimore wanted a similar negotiating process as SB6 secured with their CBA.³⁰⁶ The SB6 CBA was negotiated privately between the parties without interference or pressure from the city to come to an agreement.³⁰⁷ Build Up Baltimore believes Baltimore played too big a role in the Port Covington MOU negotiating process and should have instead demanded Sagamore Development come to a private agreement with all the negotiating parties before approving the TIF.³⁰⁸

Baltimore City Council President Jack Young’s office acknowledged that Baltimore City Council as a whole was ready to approve the original MOU as written in April 2016 and had the votes to approve the TIF before any community negotiation took place.³⁰⁹ Only City Council President Jack Young and City Councilman Carl Stokes objected to that MOU and pushed to delay the vote, but recognized that because a majority of the council was already prepared to approve the MOU, they could not delay the bill indefinitely.³¹⁰ But Jack Young’s staff was surprised to learn that community groups believed Young to be fast tracking the deal.³¹¹ They believed Young was clear from the start that he wanted a more robust deal and that the original MOU was never intended to be the final document.³¹² Young’s staff acknowledges that the fact that the City Council signed off on a deal that they planned to change caused confusion and the process could have been better communicated.³¹³ That said, it had become a priority of Baltimore City to redevelop this space because of its potential as an economic engine in the region with what

303. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

304. *Id.*

305. *Id.*

306. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); *see* Section III.A.

307. *See* Section III.A.

308. Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017).

309. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

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should be prime waterfront property, access to rail transportation and Interstate 95, and the potential to bring thousands of jobs to Baltimore City.³¹⁴ Young only allowed the bill to move forward after SB6, BUILD, and Sagamore Development agreed to the final deals and they were satisfactory to him.³¹⁵ Jack Young's office believes the MOU has created an unofficial norm to involve community associations in future negotiations while giving the city flexibility on who should be negotiating these deals in the future.³¹⁶

The ACLU of Maryland and BUILD both raised doubts about the feasibility study performed by MuniCap, Inc., a public finance consulting firm based in Columbia, MD.³¹⁷ The feasibility study estimated the project would generate \$1.5 billion in new property taxes along with \$1.6 billion in personal income taxes from people working or living on site.³¹⁸ The community groups believe the study was tainted because MuniCap, Inc. had a built in incentive to ensure the deal was found to be feasible.³¹⁹ Baltimore Board of Finance hired MuniCap, Inc. for both the feasibility study and administering the bonds after TIF approval.³²⁰ This lowered the chances of MuniCap, Inc. producing a feasibility study concluding the deal was unfeasible because it would mean less business for the company.³²¹ In addition, neither MuniCap, Inc. nor Baltimore City performed a sensitivity analysis showing what would happen in the worst-case scenario.³²² Baltimore City also did not run a market study to ensure there would be enough demand for the residential and

314. *Id.*

315. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

316. *Id.*

317. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017); *About Us*, MUNICAP, INC., <http://www.municap.com/about-company-overview.htm> (last visited Mar. 2, 2018).

318. Adam Morton, Natalie Sherman & Caroline Pate, *Port Covington Redevelopment Examined*, BALT. SUN, <http://data.baltimoresun.com/news/port-covington/> (last visited Mar. 2, 2018).

319. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

320. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017); see PORT COVINGTON TAX INCREMENT FINANCING APPLICATION (2016), <http://board-of-finance.baltimorecity.gov/sites/default/files/Port%20Covington%20TIF%20Application%205.23.16.pdf>.

321. Interview with Barbara Samuels, Managing Attorney for the ACLU of Maryland's Fair Housing Project, ACLU of Maryland, in Balt., Md. (Mar. 7, 2017).

322. *Id.*

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commercial space built in Port Covington, which could have significantly affected the ability of the project to be a net positive for Baltimore City.³²³

Jack Young’s office disagrees with the groups’ objection to MuniCap, Inc.’s responsibility for both the feasibility study and administration of the TIF bonds.³²⁴ According to Young’s office, MuniCap, Inc. stakes its professional reputation on the validity of its conclusions and if they gain a reputation for providing incorrect numbers they would lose future business.³²⁵ In addition, MuniCap, Inc.’s findings, numbers and assumptions are all public which should allay concerns about any lack of transparency in the process and allow outside groups to assess the validity of the report for themselves.³²⁶ Young’s office believes the risk to MuniCap, Inc.’s reputation offsets any potential conflict that could color the results of the analysis.³²⁷

Finally, there are concerns that under the state education funding formula, the creation of a TIF district in Port Covington could lower the amount of state education funding to the city.³²⁸ The state of Maryland gives education funding to local jurisdictions based on property value because it correlates with the amount of property tax revenue the local jurisdiction is likely to collect.³²⁹ As a result of the TIF, the TIF district’s property value increases, but Baltimore does not see the property tax revenue the district would otherwise produce.³³⁰ Under the current education funding formula, the state of Maryland would decrease its aid to the city based on the city’s property tax revenue technically increased, but the city could not offset the loss in state aid with increased property tax revenue because that money is set aside for the TIF district.³³¹ Sagamore Development agreed in the CBA to advocate for the passage of new legislation during the 2017 General Assembly Session to ensure this funding is not cut.³³² Sagamore Development also pledged not to request any new bond issuances “if there is a projected negative impact on State education funding for Baltimore City Schools, unless there is a plan or method to mitigate the projected negative impact.”³³³ Jack Young’s office also stated that Baltimore City will not issue

323. *Id.*

324. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

325. *Id.*

326. *Id.*

327. *Id.*

328. Editorial, *TIFs and Schools*, BALT. SUN (Aug. 18, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-school-aid-20160818-story.html>.

329. *Id.*

330. *Id.*

331. *Id.*

332. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 19 (2016).

333. *Id.*

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bonds if education funding is affected.³³⁴ The General Assembly temporarily addressed this concern in the 2017 General Assembly Session, but a permanent solution has yet to be passed.³³⁵

If this problem is left unaddressed, it could cost Baltimore City schools hundreds of millions of dollars in state education funding over the course of the TIF due to the immense scale of the TIF.³³⁶ The language of the MOU does not fully require Sagamore Development to make up the difference if school funding is impacted by bond issuances going forward.³³⁷ Because of the complexity of the state education funding formula and the interplay between Baltimore City and other jurisdictions in the state of Maryland that have TIF projects of their own, it is very difficult to fully assess what the impact of the TIF may be on future funding.³³⁸

V. CONCLUSION

Jack Young's office believes the combination of the SB6 agreement and the MOU signed by the city are historic agreements that gave the community a say in the decision whether to approve the TIF.³³⁹ Jack Young's office also argues the MOU signed between Sagamore Development and Baltimore City sets a new baseline that future developers will have to start from in future negotiations to involve community associations whenever there is a significant public subsidy at stake.³⁴⁰

334. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

335. Michael Dresser & Erin Cox, *Lawmakers Agree to Hogan's \$28 Million School Funding Offer*, BALT. SUN (Mar. 27, 2017), <http://www.baltimoresun.com/news/maryland/politics/bs-md-school-agreement-20170327-story.html>.

336. Editorial, *TIFs and Schools*, BALT. SUN (Aug. 18, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-school-aid-20160818-story.html>.

337. NEW PORT COVINGTON AMENDED AND RESTATED CONSOLIDATED MEMORANDUM OF UNDERSTANDING 19 (2016) ("Developer will work with the City's Department of Finance to structure the bond issuance to mitigate the negative impact.").

338. The Marc Steiner Show: Port Covington Vote (Sept. 13, 2016), 20:21–22:10, <http://www.steinershow.org/podcasts/port-covington-vote/>.

339. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017).

340. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard "Jack" Young, in Balt., Md. (Apr. 7, 2017). Jack Young's staff also mentioned the University of Maryland BioPark Community Benefits Agreement as an example of a standard being set for involving the community in future TIF discussions. *Id.*; see Luke Broadwater, Baltimore Officials Declare New "Standard" for Passing Development Subsidies, BALT. SUN (Feb. 1, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-md-ci-council-tif-20160201-story.html>. The University of Maryland BioPark CBA included approximately \$4 million in financial support directly to the adjacent neighborhoods. *Id.* Jack Young's staff also mentioned the baseline ratio of 25 percent for public subsidy v. private investment meaning that the City should subsidize only 25 percent of the private development

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But it is hard to call the CBAs negotiated between the SB6, BUILD, and Sagamore Development resounding successes due to the very real questions of whether the benefits will actually be realized by the greater Baltimore community, whether Sagamore will perform, and whether Sagamore Development will be kept accountable to the promises it made should it waiver.³⁴¹ The inability to hold accountable other developers who may join Sagamore within the TIF district, or to whom Sagamore may sell property, also takes the teeth out of significant portions of the agreement.³⁴²

It is also hard to overlook the checkered past of negotiations between community groups and large developers.³⁴³ This was certainly on BUILD’s mind during negotiations and contributed to them accepting the final deal Sagamore Development offered assuming that the development would happen either way.³⁴⁴ Further, the many previous failed attempts to develop the Port Covington area before Sagamore Development’s proposal made the area a priority for the city to develop,³⁴⁵ and may have contributed to it accepting a deal that may not have offered significant affordable housing benefits or hiring requirements in return.³⁴⁶

It remains to be seen whether the promised jobs will materialize and if Sagamore Development will live up to the spirit of the CBA it signed, rather than just the letter of the deal which leaves several details vague and allows Sagamore Development to get out of many of the provisions under certain circumstances.³⁴⁷ Jack Young’s office, for its part, believes this language is necessary in a complex project with a years-long construction term, and believes the language as written has enough teeth to keep the developer accountable.³⁴⁸ These questions may only be answered as development proceeds over the next several decades and whether Sagamore Development lives up to the spirit of the agreement as much as it does the

which his staff believes when all is said and done with the Port Covington TIF will be met. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

341. See *supra* Section IV.

342. See *supra* Section IV.B.3.

343. See *supra* Section II.C.

344. Interview with Libby Cohen, Organizer, Baltimoreans United in Leadership Development, in Balt., Md. (Mar. 30, 2017).

345. Kevin Lynch, *Port Covington: A Troubled Past, A Banner Year, and a Big Future*, SOUTHBMORE.COM (Oct. 6, 2016), <http://southbmore.com/2016/10/06/port-covington-a-troubled-past-a-banner-year-and-a-big-future/>.

346. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

347. See *supra* Section IV.

348. Interview with Lester Davis, Deputy Chief of Staff Kara Kunst, Director of Legislative Affairs, Michael Huber, Business & Economic Development Specialist, Office of City Council President Bernard “Jack” Young, in Balt., Md. (Apr. 7, 2017).

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letter.³⁴⁹ For their part, BUILD, PORT3, and Build Up Baltimore all intend to stay involved in the process and hold Sagamore Development up to the standard they have set not just with their signatures on the MOU, but with their public statements as well.³⁵⁰

349. The Port Covington development is expected to take 25 years to complete. PORT COVINGTON, <http://buildportcovington.com/> (last visited Jan. 12, 2018). Sagamore Development describes the project as the project as having a “fundamental and far-reaching positive impact on Baltimore, its economy and its future.” *Id.*

350. See, e.g., Interview with Jim Williams, Labor Official, Build Up Baltimore, in Balt., Md. (Apr. 6, 2017); see also Luke Broadwater, *City Council Approves \$660 Million Bond Deal for Port Covington Project*, BALT. SUN (Sept. 19, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-port-covington-council-20160919-story.html> (quoting Sagamore Development President Mark Weller) (“We are excited to get started creating tens of thousands of jobs, generating long-term positive economic impact for Baltimore City and building this transformational, inclusive redevelopment, together.”).