

AN ANALYSIS OF THE PUBLIC / PRIVATE
INTERFACE IN
REAL ESTATE JOINT VENTURES

by
Terezia C. Nemeth

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University of California, Berkeley
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Master of Architecture
University of California, Berkeley
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
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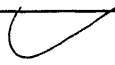
Signature of Author _____

 Terezia C. Nemeth
Department of Architecture
July 31, 1992

Certified by _____

 Thomas A. Steele
Lecturer
Department of Urban Studies and Planning
Thesis Supervisor

Accepted by _____

 Lawrence S. Bacow
Chairperson
Interdepartmental Degree Program
in Real Estate Development


MASSACHUSETTS INSTITUTE
OF TECHNOLOGY

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ABSTRACT:

In a growing climate of interest in privatization efforts at all levels of government, it is important to realize that the privatization paradigm is limited by its preoccupation with the differences between the public and private sectors. In real estate development joint ventures, the public/private relationship has multiple dimensions and cannot be reduced to traditional views about the differences between public agencies and private developers.

There is a complex and dynamic interface between the two sectors in real estate joint ventures, which dramatically alters the traditional roles of public-sector employees as merely planners and regulators and private-sector business people as developers. This reshuffling of roles is of particular interest in this thesis because it provides a framework by which to analyze the relationship between public and private entities involved in real estate development.

The focus of this thesis is to use the public/private efforts in the revitalization and development of Boston's South Station as a Case Study to reveal the relevant issues in the relationship between the public and private entities involved in real estate joint ventures. Subsequently the issues are arranged into a set of lessons which help to redefine the roles of the parties and describe the specific nature and dimensions of the relationship between them.

Thesis Supervisor: Thomas A. Steele
Title: Lecturer, Department of Urban Studies and Planning

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INTRODUCTION

The worldwide movement towards privatization has focused attention on private sector involvement in many tasks and services generally considered to be in the realm of the public sector. "Privatization" has been widely used and has many meanings depending on the context. In its broadest sense and for the purposes of this thesis: "Privatization is the act of reducing the role of government, or increasing the role of the private sector, in an activity or in the ownership of assets." ¹ The pressures for privatization range from the ideological (less government is better than more) to the practical (private industry is more efficient than government). Key motivating factors for privatization at the local level have emerged primarily as a result of an increasingly limited revenue stream from both traditional sources and state and federal assistance. ² The private sector on the other hand sees in privatization efforts, such as providing large capital projects for government, as potentially profitable business opportunities. Tapping these sources of new business is important to private enterprise, especially in difficult economic times.

Privatization in Real Estate

Real estate development is the type of task which is, in John Donahue's terms, well suited for provision by the private sector. "The more precisely a task can be specified in advance and its performance evaluated after the fact, the more certainly contractors can be made to compete, the more readily disappointing contractors can be replaced (or otherwise penalized); and the more narrowly government cares about ends to the exclusion of means, the stronger becomes the case for employing profit-seekers rather than civil servants." ³ There are many kinds of relationships possible between public and

¹ Savas, Emanuel S., Privatization. The Key to Better Government, Chatham House Publishers, Inc., New Jersey, 1987, p.3

² Dowall, David E., Public Real Estate Development: A New Role for Planners, Working Paper No. 496, Institute of Urban and Regional Development, University of California at Berkeley, March 1989, p.1

³ Donahue, John D., The Privatization Decision: Public Ends, Private Means, Basic Books, 1989, p.79

private entities in the real estate business. Private industry can provide the public sector with traditionally procured design, development and construction services ("contracting out"); with facility management services; with design-build services ("turnkey" facilities); and with joint-venture partnerships. Each of these structures results in a different kind of relationship between the entities.

Public/Private Joint Ventures

The limits of the privatization paradigm emerge with its preoccupation with the distinction between public and private efforts.⁴ In real estate development particularly, the importance of public/private relationships has multiple dimensions and cannot be reduced to traditional views about the differences between public agencies and private developers. Public-sector involvement in land and property development has become almost routine in the last fifteen years. The motivations are varied but clear. These include public policy goals aimed at promoting economic development, improving the physical appearance and social vitality of urban areas and finding new revenue sources. These initiatives are changing the traditional roles for public-sector employees such as planners and regulators and altering the relationship between the public and private sector. Joint-venture partnerships are the most effective at altering the traditional role of public entities in the development process as much as they bring private industry into the role of developing and managing public assets and into the decision-making process. It is this reshuffling of roles which is of particular interest in this thesis because it provides a framework by which to analyze the relationship between public and private entities involved in real estate development.

⁴ Salamon, Lester M., ed., Beyond Privatization, The Tools of Government Action, The Urban Institute Press, Washington, D.C., p. 258

Traditionally, the roles have been seemingly very clear. Private entities provided development services or presented development options while public entities reviewed and regulated them. To be able to provide a redefinition of these roles, it is important to understand the existing relationship between public and private entities in historical context and then to consider the differences and similarities in the nature of the interests of each party in a real estate development venture. In this thesis, the complex interface in the redevelopment of Boston's South Station will be used to elucidate the relevant issues in the relationship and to begin to understand how the traditional roles can be redefined.

II. Public/Private Enterprise in Historical Perspective

The use of private financing to achieve public ends is by no means a new phenomena. Many of the issues that arise today in discussions about privatization are very different from those of the past. However, an understanding of the forces that shaped the relationships in public/private joint enterprises in the past can be used to gain a richer understanding of those parallel contemporary relationships.

Government and Private Enterprise

In the early years of the nation all business corporations were chartered by government statute, because they were seen as serving the public purpose of regional development. In the later eighteenth century, special purpose private corporations, such as highway authorities, were created to develop public improvements. In Chicago, urban transit was a *privately*-created and *privately*-operated function until well into the twentieth century. "However, because streets were within the public realm, private transit companies have had to extract franchises and agreements with municipalities right from the start, so public-private interaction was almost immediate." ⁵ In spite of the fact that there are many historical precedents of public/private relationships in public works, almost no research has been done to date specifically on the subject although it has appeared in historical accounts of public works projects.

The Public Interest and The Private Sector

The current relationships between the public and private arenas are in part shaped by a legacy of legislative rules, which establish the legal limits of the relationship. These are, in part, based on the issues of historical record which present the maxims: "Politics is biased in favor of overborrowing, and elected officials are inclined to risk the public

⁵ Keating, Ann Durkin, "Public-Private Partnerships in Public Works: A Bibliographical Essay", Public-Private Partnerships: Privatization in Historical Perspective, *Essays in Public Works History*, Public Works Historical Society, Number 16, December 1989, p.90

interest of the future for political support today" and "The Private sector is biased in favor of overlending, and the municipal bond industry is inclined to risk the public interest of the future for profit today." ⁶ A partnership which ignores these tendencies will bear the fruit of the worst of both worlds.

There is also a symbolic legacy which defines the attitudes each sector has towards the other. The contemporary cynicism about politics in the United States is based in great part on the failure of American government to deliver the legislatively promised goods and services in spite of its constant expansion. The current debate on privatization often extols the benefits of the "businesslike" private sector, its efficiency, improved quality of service for a lower cost. These "conventional wisdoms" which emphasize the polarity between public and private entities are not necessarily evident in history.

The roles of the public and private sectors in many fields have shifted over time for many reasons. In real estate, the public and private sector have historically cooperated in the production of public works projects. The decisions regarding the extent of public and/or private involvement in public works have historically occurred as a result of the political, economic, and social climate of the time more than over any perceived "intrinsic" superiority of one system over another. "Historically, private investment (in public endeavors) is most common in an economic/political climate in which public spending or borrowing is limited; or where there is no consensus regarding the general public's need for the service." ⁷ The changing social climate fueled discussions about the purpose of an endeavor or the superiority of an economic system it represented. These issues became most significant as deciding factors in the choice regarding public and private involvement as reactions to major scandals (such as bank reform movements at the turn

⁶ Walsh, Annmarie Hauck, The Public's Business: The Politics and Practices of Government Corporations, The MIT Press, Cambridge, Massachusetts, 1978, p.162

⁷ Keating, "Public-Private Partnerships in Public Works: A Bibliographical Essay", p. 107

of the century and today), to an economic collapse (such as the depression or the drying up of federal funds for municipal improvements in the 1980's) or to perceived inequities in the provision of services.

The ideological debates of today over the merits of the private versus the public sector seem historically irrelevant. The balance as to the degree of public involvement in private enterprises, or vice versa has depended mostly on the dynamics of the marketplace itself and therefore has tended to change over time. Although not much is known about the dynamics of the public/private relationships in the past, it is clear that the two have successfully worked together at various times in the provision of many kinds of goods and services, including the development of public lands and projects. The pragmatic concerns over how these relationships operate and can be made to work better are the framework of current discussion on the subject.

III. South Station: A Public/Private Joint Venture Case Study

The revitalization of South Station presents an ideal vehicle by which to analyze the relationship between public and private entities involved in a major development and public works improvement project. Using the concerns and interests of the public entities -- the Boston Redevelopment Authority; the Massachusetts Bay Transportation Authority; and the Federal Railroad Administration -- and the private sector -- Beacon South Station Associates; Amtrak; and Tufts University Development Corporation -- will elucidate the relevant issues inherent in the relationship between the public and private sectors in joint venture partnerships.

History

When Boston's South Station was dedicated on New Year's Eve 1898, the 260,000 square foot station was the largest in the world. During the early years of this century it was also the nation's busiest station, busier even than Grand Central in New York. The peak year was probably 1907, when an average of 876 trains moved in and out of its 28 tracks daily. The monumental pink granite and brick building, designed by Shepley, Rutan and Coolidge, also offered special amenities for travelers, including a nursery, a theater that screened newsreels and for 18 years the Our Lady of the Railways chapel.⁸

South Station represents an attitude toward public/civic buildings which is characteristic of a different era in our history. The majestic granite and brick structure was intended to serve as a sort of public living room, exemplifying a real concern for the spaces where we collectively come together. It is only in civic places such as this, where we, as a society, physically sense the strength of our union as a people, which is more than the sum of our individual parts.

⁸ Ackerman, Jerry, "Glory days: South Station ready to rise", *Boston Globe*, 11-4-89

In the ensuing decades, railroads lost many customers as more expressways were built and airplane travel became cheaper. Portions of the station were dismantled over the years, including its west wing. The portions that remained, the triangular five-story headhouse, the concourse and east wing, fell into a sad state of disrepair. Several schemes for the site, which assumed the demolition of the station, were proposed in the early 1960's including a 60,000-seat stadium, a world trade center and a retail mall. In 1965, the Boston Redevelopment Authority (BRA) paid \$6.9 million for the 26-acre site. Later, Mayor Collins turned much of the track space over to the Post Office for what is now the South Station Postal Annex. In 1975, through local efforts, the station was placed on the National Register of Historic Places.

South Station: Rebirth

In 1978, the Federal Railroad Administration's (FRA) launched the Northeast Corridor Project, a \$2 billion program to improve the speed and dependability of intercity rail service along the northeast corridor. Since the Massachusetts Bay Transit Authority (MBTA) could more easily access these funds, the BRA transferred ownership of the station to the MBTA while retaining more than 6 acres of development air rights over the tracks. In 1984 the MBTA obtained \$36 million from the FRA for the revitalization of service at South Station. The Urban Mass Transportation Administration (UMTA)⁹ also contributed \$30 million to the rehabilitation effort. The MBTA contracted for both the rail improvements and the structural refurbishment of the station to J.F. White Construction, a contractor with a great deal of heavy construction experience but not much experience at detail building work.¹⁰

⁹ UMTA is now known as the Federal Transit Administration (FTA)

¹⁰ Ackerman, Jerry, "Glory days: South Station ready to rise"

The procurement process for refurbishment of the station as initially envisioned was somewhat convoluted and confusing. The FRA made money available for the construction which the MBTA was to supervise. The renovation architects, Stubbins Associates/CPF Domenech and Hicks, were under contract with the FRA's designated project managers, Deleuw Cather and Parsons Group, a Washington, D.C. engineering firm. The architects were given as their starting point, a conceptual design prepared by SOM/Washington D.C. in the late 1970's as part of a conceptual design package for the 16 stations included in the Northeast Corridor Project. In addition to refurbishing the train station for long distance and commuter rail transit and an MBTA red line stop, the plans called for approximately 25,000 square feet of retail space and 100,000 square feet of office space.

The FRA was the actual client for the architects, but the MBTA was the client for the contractor. Disjoining the construction management process from the design as well as hiring a single contractor to perform the rail improvements and the building renovation soon proved troublesome. By early 1987, the construction was completely off schedule and off budget by 50%. The South Station renovation project had "all the makings of a disaster movie".¹¹ By most accounts, the decision to competitively select a private real estate management company to lease and develop the renovated station into office and retail space single handedly "saved" the project.¹² South Station was seen as the first step in the authority's "adopt-a-station" program, which called for private developers interested in leasing and operating MBTA rail, subway and bus stations. The master lease that the MBTA arranged with BSSA has become the most extensive and successful example of this program to date. It was a highly innovative response to federal Urban Mass Transit Administration (UMTA) directives which encouraged transit authorities to

¹¹ Quote, Peter Scholnick, MBTA Real Estate Development Department

¹² An example of "contracting out" of services.

find "creative" proposals that generate more operating funds for transit improvements in the face of severely limited federal funding for mass transit.

The public/private partnership between the MBTA and BSSA has resulted in a well managed, financially successful and highly acclaimed commercial venture which also provides a highly improved environment for rail passengers while providing added services to the surrounding community.

Phase I: The Headhouse

Beacon South Station Associates (BSSA) a venture headed by The Beacon Companies collaborating with Robert Weinberg, former head of the Massachusetts Port Authority and Cambridge-based Dennis Blackett's HII Corp. was awarded management of the office space and of the retail space in the grand concourse for 65 years, under an agreement which gives the MBTA a participation in the profits.¹³ BSSA hired local architects Stull & Lee Inc. and Prelwitz/Chilinski as designers for the interior finish work and Beacon Construction Co. as the finish contractor.

Several difficulties surfaced immediately. First, the MBTA had never obtained a permit for the building. Since the authority is normally not required to get a permit for its stations, it had not done so for the South Station facility. The private managers, however, could not lease the space without a permit, which necessitated meeting all applicable accessibility and building safety codes. The renovated building, as designed, did not meet accessibility codes and had a large space (above the Amtrak ticketing area) which had no sprinklers because of how difficult it was to envision sprinkling a historically significant coffered ceiling that had been revealed in the demolition work.

¹³ BSSA has a 35-year term in its master lease with two 15-year extension options. They pay the MBTA a base rent of \$550,000 and evenly split the profits. Yudis, Anthony J., "New South Station Already SRO, Artery Project Engineers Gobble Up All New Office Space", *Boston Globe*, 02-07-88, p. A29.

BSSA set about resolving these problems as well as reopening design decisions, which they saw as problematic for successful leasing and management of the station. One of the issues concerned the location and design of escalators meant to move future bus passengers through the train waiting room and out of it quickly. Second, BSSA thought it was important to use moveable furniture for the passengers in the waiting area. MBTA approval for these changes was very difficult to obtain and did not occur in a timely manner. In fact, the escalators to the future bus level had already been purchased and installed by the time the revision was approved, so they had to be physically torn out, at considerable expense to the Authority. The MBTA granted approval for the use of moveable furniture only on an experimental basis due to fears that furniture would be stolen, mutilated, thrown on the train tracks or that people would trip on it; even though BSSA provided the authority with studies which found that these concerns were experimentally unfounded. Not only did the fears never materialize, but the moveable furniture is considered to be one of the important features of the redesign and helps to make the retail space successful.

All told, the refurbishing cost \$80 million, \$56 million in public money and the rest in private money. It is seen as an overwhelming success story. Some 36,000 people move to and from the trains each weekday¹⁴ and have access to food stalls, a bank, a shoe repair parlor and a newsstand. The retail space is fully leased, and the retailers are very profitable.¹⁵ The office component, 107,384 square feet, was all leased early on to Bechtel/Parsons Brinkerhoff, an engineering joint venture.¹⁶

¹⁴ There are 207 commuter trains and 25 Amtrak runs daily. Ackerman, "Glory days..."

¹⁵ The *Au Bon Pain* at South Station, for instance, is the most productive per square feet than any in Boston. It pays \$150,000 per year rent for the space at South Station. From a conversation with Peter Scholnick, MBTA

¹⁶ Bechtel/Parsons Brinckerhoff is a joint-venture partnership of a San Francisco-based company and a Boston engineering firm that is managing downtown road rebuilding projects -- including the depression of the Southern Artery -- for the state Department of Public Works.

In addition to operating the intercity rail service, Amtrak was awarded the commuter rail contract by the MBTA. The final agreement was reached after a two-year negotiation period. Amtrak inherited a "right to use" the station for intercity passenger train service from the old Penn Central railroad. The FRA negotiated with MBTA and BSSA to protect those rights for Amtrak. FRA negotiated a lease with the MBTA which gives Amtrak full jurisdiction and maintenance responsibilities over the track and platform areas. They lease the ticket area and office space from BSSA. Amtrak pays a portion of the operating expenses, market rent on some areas and no rent on others. Also, their passenger services division retains the right to approve changes to the retail kiosks and passenger waiting areas.

Phase II: The Intermodal Transportation Facility

The South Station project is intended to be an intermodal transportation facility allowing access to commuter trains, long-distance trains, local transit, short and long distance buses with direct access to the Central Artery and to Logan Airport. Additional to the existing commuter service, Amtrak's long distance service and the MBTA Red Line, the second phase of the project will provide a two-level bus station facility and a parking garage built on the air rights over the tracks. The new facility will relocate the existing temporary structure which houses the Peter Pan bus station, built years ago across the street from the Federal Reserve Bank. State Transportation authorities are contractually bound to the Federal Reserve Bank to relocate this temporary facility. The MBTA is currently entertaining bids for the design and construction of the new bus facility and a related parking structure.

The \$120 million bus and parking project will be financed through a combination of sources including funds from the Federal Transit Administration, Amtrak, Massport and

the Federal Highways Central Artery Project. The bulk of the cost, \$75 million, was originally envisioned to come from state bonds. However, the bonds will likely be replaced with federal funds made available by the Intramodal Surface Transportation and Efficiency Act (ISTEA) of 1991.¹⁷

Future Phases: Air Rights

Development of the BRA controlled air-rights over the tracks in the future, provides yet more opportunities for public/private joint ventures at this site. In December 1989, the BRA issued a Request for Proposals (RFP) for joint venture teams composed of developers and local research institutions to develop a mixed-use office / hotel / conference / research center with up to 2 million square feet of space on air rights over South Station. The Technopolis¹⁸ development proposed by the BRA is intended to "diversify the city's economic base and to bring to the city new high-growth sources of jobs and business activity".¹⁹ It was also seen as a way to provide economic incentives for the fast growing Chinatown community and the historic Leather District. The BRA's stated goal for Technopolis and the redevelopment of South Station is to serve as a model of public policy objectives for Boston.

Three development teams submitted formal proposals to the BRA. Tufts University Development Corporation Inc. with development consultants Meredith & Grew proposed a \$700 million complex to include a 750,000 square foot office tower, a 675-room hotel and conference center managed by Hilton Hotels, 478,000 square feet of low-rise

¹⁷ The local Metropolitan Planning Organization (MPO) which oversees and grants the federal funds to municipalities has approved the grant. The paperwork is currently being processed. From a July 8th, 1992 conversation with Joe Aiello at the MBTA.

¹⁸ "Technopolis" is the term coined by ex-BRA Director Stephen Coyle for the concentration of biotechnology and medical development envisioned for the South Station air rights property. Boston Redevelopment Authority, Technopolis South Station Air Rights, Request for Proposals, December 1989

¹⁹ Ibid

research space and 26,000 square feet of retail space for a total of 2.5 million square feet. Forest City Development of Cleveland, with Boston University proposed a \$752 million project that included three high-rise towers containing 490,000 square feet of research and development space and 1.76 million square feet of offices, a separate 450-room hotel and 13,500 square feet of retail space for a total of 3.4 million square feet. The Olympia & York, US. proposal did not identify an institutional participant and provided 480,000 square feet of research and development space, 948,000 square feet of offices, 250,000 square feet of institutional space and 14,000 square feet of retail space for a total of 1.7 million square feet.

In May of 1990, the BRA board voted to grant TUDC the preliminary designation as developers of the project. The final rights are to be granted when the group receives financing commitments. TUDC agreed to a series of conditions which included a promise of \$8.1 million to BRA administered housing linkage funds, \$1.6 million for a jobs training linkage program, a \$500,000 cash grant to a South Boston affordable housing program, \$50,000 to the Chinatown Neighborhood Center, technical assistance to Chinatown groups in formulating development plans for a state-owned parcel on Kneeland Street, and a pledge that Tufts will increase its purchases of supplies from Chinatown vendors.²⁰

Additional foundations have been designed and were to be built with phase two, to support development of the BRA's air rights as presented in a feasibility study prepared by WZMH Group, Inc., the BRA's consultant.²¹ The third phase air rights development

²⁰ Sources for this information include: Ackerman, Jerry, "Research Center Gets BRA Boost", *The Boston Globe*, 5/18/90; and conversations with Eric Schmidt, Boston Redevelopment Authority.

²¹ The scheme envisioned in the WZMH study provided for a 400,000 square foot office building behind the station headhouse, a 600-room hotel along Atlantic Avenue, a 2-story 250-500,000 square foot research and development facility and an 800-1,600 car parking garage totaling 1.5 million square feet of development.

would have had to either conform to this scheme or incur substantial costs for altering the foundation system included in phase two. However, there have been revisions to Phase II which simplify the planning for future phases. The bus and parking structure has been shortened, set back away from the original historic station to allow for easier ventilation of the train tracks, a major issue since Amtrak runs diesel run locomotives into the station.

The project no longer includes the completion of the air rights deck structure. The BRA's designated developer of the air rights, Tufts University Development Corporation (TUDC) was unable to secure financing or leasing commitments for their proposed project quickly enough to coordinate the project with the MBTA's second phase project. The cost of building new foundations and rehabilitating the bus and parking facility at a later time will have to be borne by the developer of the later phases. This change will severely limit the potential economic feasibility of the proposed air rights development.

The Issues

South Station is not a simple project for any of the people, organizations or agencies involved. To be able to assess each participants' role in the project, it is important to understand the range of agenda, motivations and pressures that each was acting under. It is also useful to understand what was the consequence or next best alternative to reaching agreement for each player.

Massachusetts Bay Transit Authority (MBTA)

As a public agency the MBTA is representing a number of concerns in the South Station project which are potentially incompatible. Sifting through the problems presented by the agency's several roles in the project to derive the logic of the tradeoffs involved requires a sophisticated understanding of the issues and their consequences.

The MBTA's primary motivation in this situation was to create and operate a viable intermodal transportation facility at South Station and to stimulate growth which capitalizes on the transportation infrastructure within the downtown. Those are the concerns of the MBTA as a maker of "public policy". Their long term concerns relate to the issue of preferred growth patterns as they affect the future transportation demands of the region. The successful renovation and reactivation of South Station has created increased value for real estate development ventures in the immediate area and on the air rights over the tracks. The project promotes a concentration of development within the downtown core, making effective use of existing and planned transportation infrastructure.

Another of the roles of the MBTA in the South Station project is as a "user" of space. One of the MBTA's major concerns as a user of South Station regarding its renovation was that it could be difficult to ensure its continued maintenance and viability after the

initial renovation investment. This concern was based on the knowledge that funding for continued public investment is often controlled by political pressures external to the Authority. Furthermore they recognized that there are too many examples of public facilities that have been allowed to deteriorate over time. Political pressure to reduce deficit spending often results in reduced funding for facilities' maintenance . Private sector involvement in the leasing and management of the retail and office space at South Station as well as in the future air rights development was seen as providing a binding contractual obligation for the MBTA to maintain the facility which would supersede external political pressures. It also serves as a mechanism to keep maintenance costs "off-budget" and therefore beyond the reach of politically driven budgetary decisions. ²² Using the BSSA as the leasing and management agents for South Station further "protected" the MBTA from outside political pressures to, for example, bring in "preferred" tenants for the space ²³ who would not be necessarily the most effective or profitable for the project. Political pressure of that nature is ineffective in the private sector where business decisions are made exclusively on the merits of the deal.

In Phase I, the structure of the deal with BSSA, provides the MBTA with an equity participation in the retail and office components making the agency an equity partner. The MBTA is effectively owner, tenant and financial investor in the property. There is an opportunity for this situation to cause conflicts of interest particularly depending on the specific makeup and changing agenda of the MBTA board.

²² Conversation with Joe Aiello, MBTA

²³ In three different interviews, including both the public and private sector, the exact same example of this type of problem was cited. The understanding is that had the MBTA tried to lease the retail and office space themselves they would have been subjected to external political pressure to "bring in my brother-in-law Guido who has a hamburger and popcorn stand. He hasn't been doing so well, but I know that if he set up a stand here his life's problems would be solved."

As a matter of public policy, the MBTA is committed to turn South Station into an intermodal transportation facility, including providing bus service. The Federal Railway Administration, however, felt that the presence of typically lower-income bus customers in the rail station was problematic. Their architects responded by designing escalators from the Grand Concourse in the headhouse up to the level where the bus facility will be in Phase II as a way of removing the bus customers from the train station as quickly as possible. Beacon felt that the escalators would disrupt the commercial activity which had been envisioned for the Grand Concourse and made little design sense. Although the MBTA's real estate department agreed in principle, their construction department remained committed to executing the FRA approved plans. Removing the escalators after they had been installed cost the MBTA a great deal of money and delayed the project.

In Phase II, the MBTA will build a garage and bus facility over one half of the parcel ²⁴ which assumes certain load bearing requirements for the proposed mid-rise biotechnology development currently planned for the air rights. However, there is no master plan for the Phase III TUDC development which is agreed to by all the parties involved -- TUDC, the BRA and the MBTA. ²⁵ Once the bus facility and garage are built, changes to the foundations for the air rights which may be needed if the master plan is revised, would cause train and bus service disruptions. The MBTA decision not to allow TUDC to alter the foundations after the completion of Phase II are based on their public policy concern to provide continuous dependable transportation service for Boston. However, this decision causes a potentially heavy burden on the developer of the air rights. To the extent that the burden renders the project unfeasible, the MBTA's policy to promote growth at this site could be jeopardized.

²⁴ The half of the site which is south of column line 20-21 and farthest away from the headhouse.

²⁵ As of July 9th 1992, per conversation with Brian Fallon, Meredith & Grew.

Boston Redevelopment Authority (BRA)

The BRA's role as a public agency is effectively to serve as a catalyst for real estate development within a framework of planning priorities envisioned to best serve and use the resources of the city of Boston. The BRA is a highly visionary public agency. As such, however, they do not have perfect foresight. When the BRA purchased South Station, in 1965, the proposed plans assumed that the existing building could be demolished with little loss. Changes in public opinion regarding the common value of historic structures led to the station being named for protection by federal preservation laws in 1975. In effect, the 1960's delays in determining a preferred future use for the site saved a noted Boston landmark and enabled the creation of a better project in the 1980's. A private entity would not have been as able to hold on to the property until its best use had been uncovered. Preservation of the headhouse has been one of the catalytic events in the successful Phase I redevelopment of South Station.

One of the BRA's major concerns for the South Station project is to expand the city's economic base, stimulate economic growth and create jobs. Political pressure to stimulate the sluggish economy has focused attention on the development of the South Station air rights. To that end, the BRA has promoted the creation of a biomedical research and development industry concentrated around South Station and which capitalizes on the medical institutions in Boston. There is an inherent problem with this strategy in that the development of an industry such as biomedical, which has undergone dramatic shifts in short time periods, is unpredictable. Furthermore, it will take, as it has already proven to be, a long time for any private developer to finalize agreements with biomedical companies as well as to find financing in this economic climate. On the other hand, the need to jump start the economic situation in Boston and the rest of Massachusetts is immediate. The immediacy of the problem suggests that if biomedical

research is to be the economic savior of Boston, there has to be a concentrated public policy effort at attracting these companies. However, financial or other incentives which could be used to promote this strategy will have to be politically and economically justifiable. Furthermore, there are major policy questions to be considered regarding potential competition for the same type of tenants from other projects in the Boston Metropolitan Area.²⁶ Any planning strategy for development potential at South Station should be carefully coordinated with other planning efforts.

Through zoning restrictions, the BRA has identified the areas of future development in Boston. These are primarily the air rights over North and South Station. These are premium sites to develop both for the expense of building on the air rights as well as the difficulty of creating and marketing a physical environment which effectively begins five floors above ground level. The public policy issues are clear. Boston has been overdeveloped therefore any new development should take place only in those locations which will cause the least negative impacts on the local environment and traffic congestion. The private sector's views however, are equally obvious. The premium and risks presented for development opportunities on the South Station air rights may not be feasible. There would have to be compelling reasons to want to develop on the South Station air rights.

Federal Railroad Administration (FRA)

The FRA's primary concern at South Station revolves around the rehabilitation of the Northeast Corridor rail service. Their role included master planning all the stations along the corridor and administering the federal funds which were made available for this purpose. One of their main concerns was to maintain design integrity along the corridor.

²⁶ The "University Park" Forest City Development project in Cambridge is likely to attempt to attain the same kind of tenants.

However, the centralized management of the design process caused undue problems during Phase I. The FRA is too large an agency and too removed from the site to have been an effective design manager. The MBTA could have been entrusted to serve the public purpose in the design and rehabilitation of the station. Furthermore, the MBTA's concerns regarding the quality of design could more than likely have been made to guard the FRA's interests while providing a more all-encompassing and broad understanding of the issues involved at South Station.

Another concern involved the commercial activity within the headhouse. The FRA feared that BSSA would neglect the needs and convenience of passengers "as passengers" as opposed to as consumers. This is definitely a valid concern. The integrity of many public spaces has been compromised as a result of the emphasis placed on their commercial value exclusively. Retaining the right for a public agency to approve the amount, design and layout of kiosks and vendors within the headhouse guarantees that the concerns are not ignored. The project has been very successful in achieving maximum comfort and satisfaction for train passengers and the community at large as well.

Beacon South Station Associates (BSSA)

BSSA's contract as leasing agents and managers of the commercial space in Phase I is directly with the MBTA. Their primary concern was to provide a high class, well maintained space for well capitalized, highly profitable retail and office tenants. This strategy combined with the amount of foot traffic which flows through the station on a daily basis translated into a highly profitable venture. Furthermore, the image and uniqueness of the rehabilitated South Station helped to attract non-travelers from the surrounding areas to the retail section of the project.

The project required the BSSA to coordinate their tenant improvement work with the renovation contractor under contract directly to the MBTA. The changes to the design of the interior, which BSSA felt were critical to the success of the project, had to be coordinated with the FRA as well as the MBTA. The difficulties of the process far exceed the difficulties with a standard private development. However, the economic rewards in leasing and managing such a unique site are also far above normal. The South Station Phase I renovation is a unique product, is a world-renowned facility, is fully leased and the retailers are generating substantial profits.²⁷

Amtrak²⁸

The presence of Amtrak at South Station provides an example of two different sides of the company. On one hand, Amtrak is the designated unchallenged intercity rail service provider, face no competition and own many of the stations that they operate in the Northeast Corridor. Although as a business enterprise they aim to turn profit, they are at no risk of being replaced on the basis of performance. However, as the selected Commuter-Rail Service provider²⁹ for the Boston metropolitan area on the basis of a competitive contract, they face the same kind of market pressures that other business entities face.

Tufts University Development Company, Inc. (TUDC)

The role of TUDC as the designated developer for development of the Phase III air rights over South Station is to design, finance and construct the vision for Technopolis. As

²⁷ Conversation with Robert Weinberg, BSSA

²⁸ **Amtrak** was established by Congress in 1970 as a government-sponsored private, profit-seeking corporation to operate a basic national rail passenger system. In 1978, Congress revised its mandate by replacing "profit-seeking corporation" with "operated and managed as a for profit corporation".

²⁹ Amtrak was competitively awarded a 6-year contract with the MBTA to provide commuter-rail service to the Boston Metropolitan area. This contract expired in 1990. Since then, the contract has been renewed on a 1-year basis. The MBTA is currently conducting an audit of Amtrak's service and reserves the right to rebid the contract at any time.

conceived by the BRA, Technopolis will jump-start the real estate sector of the economy in Boston, put many construction people back to work and bring a new industry to Boston to be a source of future economic growth. This strategy necessitates a substantial amount of public investment into a project which private industry would never undertake in the current market. The cost of building on air rights is a premium and there are possible complications with financial implications if the foundations under the MBTA built bus facility must be revised. The public sector will have to act as a catalyst if this project is seen as necessary for the future economic viability of the city. However, in the long term, TUDC stands to benefit greatly from their involvement in this highly unique project, especially given the restrictions imposed by the BRA on development in most of the downtown.

TUDC, as the selected developer, has the most compelling reasons for wanting this site than either of the other developers who submitted proposals to the BRA. It has been no secret for some time that Tufts University needs to expand its campus. It has also been clear that Tufts would face a political challenge if it tries to expand further into the Chinatown community which surrounds the campus. There is added value for Tufts to be able to expand at South Station. It is both close to the existing campus and not considered a part of Chinatown. For the BRA the selection of TUDC as developers of the South Station air rights served both to encourage increased local investment in the downtown and as a way to resolve larger community issues in Chinatown.

IV. Lessons from South Station

Before we can define the nature of the relationships which results in successful public/private joint ventures, there are some generalizable lessons from the three phases of development and proposed development at South Station.

The Effect of the Market Conditions

The economic situation within the marketplace can affect the public/private relationship. There appears to be a distinct correlation between the declining condition of the economy in the country and the growing interest in public/private development of public land and development related to infrastructure improvements and other public works. From the public sector perspective, the interest in increasing private sector participation in projects is directly related to shrinking financial resources and increasing expenditures. The private sector sees a distinct opportunity in public/private joint ventures to become involved with a unique project, one which will ensure the project with a competitive edge, especially in difficult economic times.³⁰ For example, although Technopolis is a "long shot" in terms of risk and feasibility, the project would give the developers a "signature" site which could command, assuming a future more improved Boston real estate market, higher rents than other locations in the downtown. Furthermore, because of zoning limits already in place, the South Station air rights are one of a handful of developable sites within the downtown. In times of financing shortages, public sector involvement in a project can also open new avenues of funding sources otherwise not open to the private sector. South Station's Phase I would not have existed were it not for the MBTA's bonding capacity and the agency's access to federal funds. Beacon has profited from their involvement with a fully-leased, successful project which was initially possible only through the use of public funds targeted for transportation improvements.

³⁰ Conversation with Jack Rizzo, Perini Corp.

The Public Agency(ies)

Another factor which affects the relationship between the public and private sector's in a joint venture is, obviously, the nature of the parties themselves. Public agencies are notoriously bureaucratic, hierarchical and inefficient. However, there are differences among them, which render one more effective at the business of joint venture development than others. Public entities with more diffused power structures are particularly effective, because they enable individuals to participate in the decision-making process directly. This gives the agency the ability to deliver commitments on time with a minimum of bureaucratic delays. The mandate of the agency can also affect how it participates in a project. An agency which has broad based goals and a variety of inter-related interests has the foresight and flexibility to adapt to changing market and financial conditions. It can also facilitate interagency coordination by weaving together the issues of concern of agencies with narrower mandates.

In Boston, the Redevelopment Authority serves many interests and has a very broad mandate. It acts in several capacities to represent its interests in the South Station development project. It is planning agency, economic policy-maker, community negotiator, project promoter, financial partner and landlord all at once. There are potential conflicts of interests when a public agency acts in so many different capacities in a project. These must be weighed independently for each specific project or situation. It is possible to see how the BRA may inadvertently make poor planning decisions as a result of its activities as an active promoter of Technopolis on the air rights over South Station. Conversely, a project which is burdened with community benefits to the point of making it economically unfeasible could place a financial burden on the BRA as the promoter and financial partner of the project.

For a project to be successful, the agency involved must understand the consequences of its abilities and limitations. In the first phase of South Station for instance, the BRA relinquished its rights to the station because it acknowledged that an entity like the MBTA would have direct access to federal transportation improvement funds which it (the BRA) did not have. Many public agencies have a distinct proclivity for self-perpetuation which can come into direct conflict with the purpose and intentions of its public mandate. The BRA was able to distinguish that its continued direct involvement in the rehabilitation of the station was not as critical as ensuring the future feasibility of the project and thus turned it over to the MBTA.

There is also a lesson regarding the number of public agencies involved in a public/private joint venture. Coordinating responsibilities between public agencies can prove to be not only difficult but self-defeating. The common saying "everybody's responsibility is nobody's responsibility" applies but so does "there's too many cooks in the kitchen." Ideally there would be a designated agency responsible for coordinating with all the other public and the private entities. At South Station, the BRA may have rightly played that role since they owned the station. However as already discussed, at least in phase I they delegated it to the MBTA while reserving air rights over the tracks for themselves. This bisecting of responsibilities has added a layer of complexity to an already complex project. It is difficult to assess, however, if it would have been better to maintain control for all the phases in the hands of the BRA since the funding for phases I and II has come directly through the MBTA. The nature of the task of developing an intermodal transportation facility falls squarely in the realm and mandate of the MBTA, while the task of developing a foundation for a new source of economic growth in Boston is better suited to the BRA. It is clear, however, that the management of the redesign and reconstruction of phase I at South Station would have benefited greatly

from a single coordinating agency in charge of development instead of the separation of responsibilities which took place between the FRA and the MBTA.

One of the more interesting lessons from South Station is the relationship between public agencies. There seemed to be more mistrust and animosity toward other public agencies than toward the private entities involved in the project. The relationship between public and private entities was firmly grounded on preset notions about each other. Whether these accurately represented reality or not, since they expected the worst from each other, any positive experience was seen as a benefit. There was a great deal of frustration expressed by public employees towards other public servants. There are many suspicions that other public agencies have "hidden" agendas about the project.

As previously mentioned, public bureaucracies tend toward actions which ensure the agency's perpetuation. This phenomena is very likely to express itself when a public agency perceives that it's "control" over a project is being compromised by the presence and involvement of another public agency. These tendencies can lead to actions which result in delays or increased project costs when one agency demands control over a particular part of the process. Segmentation of interests in a projects invariably leads to territorial positioning which can slow down the decision-making process and short-circuit effective communication, thus seeming like one or more of the parties has a "hidden agenda".

Reaching an effective working relationship between public agencies is particularly significant in difficult economic times because much of the federal aid is targeted to specific types of projects or tasks (such as ISTEA ³¹ funds for transportation related

³¹ The Intramodal Surface Efficiency and Transportation Act of 1991 allocates over \$100 billion to state transportation improvements and gives financial incentives to state's which participate in public/private joint ventures. Conversation with William Reinhardt, editor, *Public Works Financing*

projects) or some of the money is channeled to states and localities through specific agencies involved in continuing monitoring of the project. Many significant urban projects, which are likely to need public investment will need to access funds from many sources, thus necessitating a collaboration between several public agencies.

Finding Joint Interests

One of the true benefits of joint development is the opportunity to capitalize on those interests or issues which truly are joint. It is important that these be identified as joint interests to avoid misunderstanding, missed opportunities, a duplication of efforts and double benefits. Dense development over the air rights at South Station will help the BRA and the MBTA to achieve some of their most significant goals. There are times when, for a variety of different reasons, these joint interests are difficult to uncover until after a project is completed or until after external forces have resulted in a particular situation. For example, when the BRA first bought South Station, the intention was to demolish the building and make better economic use of the land. However, through historic preservation forces, they were forced to keep the building, which is already and stands to become more of a tremendous asset for the city. Finally, it wasn't until phase I was completed, that Amtrak and the FRA could see that the commercial activity in the Grand Concourse and the moveable furniture which BSSA fought so hard to keep serve the purpose of making train passengers more comfortable than they would have otherwise been. This in turn, generates more interest in train travel.

Political Will

Finally, it is clear that joint development is unlikely to be successful without the political will and commitment at all levels of government which enables and funds the public sector's involvement a public/private project. This concept applies both to giving public agencies the power to enter into long term contracts with the private sector and to make

decisions during the process as well as to be empowered to use public guarantees to leverage credit. A more intangible benefit is an increased level of enthusiasm within a public agency for a project which has political backing from all levels. The success of South Station's phase I is directly connected to the fact that everyone involved eventually "bought into the vision" ³² of the station as an active, lively environment which could accommodate the needs of travelers as well as its commercial tenants and customers.

³² Conversation with Simone Auster, first General Manager of Operations for Beacon at South Station.

V. The Public/Private Joint Venture Relationship

A joint-venture relationship is effectively a single-project or purpose "partnership". A partnership has a distinct nature, in that it assumes that the parties involved have not only individual interest but joint interests as well. It also implies a continuing relationship which can be mutually beneficial depending on the willingness of the parties involved.

The Purpose of Public/Private Real Estate Joint Ventures

While the private sector responds to the demands of the marketplace in proposing development ventures, the public sector is meant to be the guardian of the community at large. It sets community priorities established through a democratic political process and raises the resources necessary to accomplish them. In real estate development ventures, the public sector should be able to provide the development team with a vision for the community, which encompasses how the community sees itself in the present and the future and what are its most significant assets. The public should provide a balance to the pressures for development in the marketplace by understanding and being most concerned with the long term costs/benefits of a real estate project beyond the immediate economic return. It should also be a catalytic force in development to ensure that it be focused and well planned. Allowing the marketplace alone to generate the demand necessary to develop may not result in the best use of all of the community's resources.

In selecting TUDC as the designated developer of the proposed Technopolis air rights development at South Station, the BRA considered its broader goals for the area around South Station as well as the specifics of the project itself. The selection was based on both the net benefits of the project as well as the secondary benefits for the Chinatown community and Tufts University. However, the project has been severely stalled for some time. If the benefits to the community and the city from this project are to be effective and useful in regenerating economic activity, the project should not be allowed

to be stalled for much longer. At the same time, unless the project is economically feasible in the current marketplace, increased public investment meant to act as a catalyst for development would be wasted.

Net Benefits of a Partnership Relationship

Through public/private joint ventures, the best characteristics of private enterprise and of public values can be harnessed and put to work for the benefit of the community. The private sector has a great deal of sophisticated development expertise to offer in a joint venture. Once on the team, the private developer can bring to the table its knowledge and creativity in design, financing and construction. It has the management skills necessary to conceive, construct and operate a development successfully. While the public sector can contribute its understanding of the community and the permitting process required and provide non-traditional financing guarantees.

The financial success and improved community perception which the phase I joint-venture development at South Station has achieved is a perfect example of how to use the best assets of the public and the private sectors. The public sector was able to secure the future existence of significant cultural asset for the city of Boston, provide efficient and pleasant access to several modes of transportation while creating economic value for its private partner and the neighboring businesses and landowners.

Shifting the responsibility for real estate development from a public bureaucracy to the private sector reduces what Donahue calls "the burden of process" inherent in any task which a public bureaucracy controls directly and exclusively. The burden of process in a bureaucracy is meant to ensure that the public has control over the methods of provision and that they retain the right to alter the mandate as circumstances require. This is not so critical with a task such as real estate development, in which the public sector concern is

concentrated more on the product than on the process. Although, the public does lose the means of control over the process when the private sector develops public land, it is feasible to establish and contract for performance standards and guidelines for both the methods and the products of development to ensure attention to public values. This is especially true in a public/private joint venture relationship. The right to alter the mandate and renegotiate the terms can also be provided for in a contractual relationship within pre-established bounds. Typically, the public agency must define certain stages of the project at which changes can be made or establish a time limit for action. For instance in the South Station designation of the Phase III developer, the BRA retained the right to de-designate the developer after a specified and agreed upon time.

The protection of the public's rights in real estate development of public facilities or public lands is a task which can be contracted for with the private sector. The South Station case illustrates that the major development, transportation and public access concerns, for example, voiced by the public agencies involved could be provided for in the project while the private sector could generate large profits for itself. The development product can be easily specified and contracted for in advance by the public sector.

The Nature of the Relationship

There are several dimensions in a partnership relationship. They are worth exploring in an attempt to redefine the roles of the parties involved in public/private joint development. These are: *procedural*, *contractual* and *operational*. In the context of wholly private entities, these practical mechanisms by which a partnership is made effective are well defined and established.

Partnerships between private and public entities, although sporadically documented, have not been clearly understood or empirically analyzed along all of these dimensions. Most of the documentation of public/private real estate development partnerships has been either project-specific³³ or has concentrated primarily on the definition of a cost/benefit analysis as regards the private development of publicly held land.³⁴ Some interesting research and analysis has been done on the procedural and contractual dimensions of various privatization efforts of federal, state and local agencies; although much of it has not focused directly on real estate development issues.³⁵ There is no empirical literature on the direct interface of the entities other than the very general or the anecdotal. There is room for research and analytical thought to be developed on the subject.

The Dimensions of the Relationship

In joint public/private development, a public agency would *procedurally*, in coordination with the community and private development representatives, establish goals and tasks for the project. A private development entity is selected to perform the tasks and the *contractual* phase begins. The *contractual* relationship seeks to codify the tasks and assign responsibilities, define the rewards to each party or a payment schedule, establish a criteria for performance and define the conditions under which each party reserves the right to terminate the contract.

³³ Bernard J. Frieden and Lynne B. Sagalyn's book Downtown, Inc.: How America Rebuilds Cities, The MIT Press, Cambridge, MA., 1989, presents thorough case studies of public/private partnership efforts between large commercial developers and municipalities to redevelop the decayed downtowns of several large American cities in the 1970's and 1980's.

³⁴ Sagalyn, Lynne B., "Measuring Financial Returns When the City Acts As an Investor: Boston and Faneuil Hall Marketplace", *Real Estate Issues*, Volume 14, Number 2, Fall/Winter 1989, pp. 7-15.

³⁵ John Donahue's book The Privatization Decision: Public Ends, Private Means, explores the criteria by which to evaluate the extent to which a particular task can be privatized depending on the nature of the task and the degree of contractual specificity it affords.

and

David E. Dowall's article "Public Land Development in the United States", (*The Journal of Real Estate Development*, Vol. 2, No. 3, Winter 1987) defines a procedural and organizational structure for government and private developers who wish to undertake public/private development.

The final dimension, which we will call *operational*, is meant to encompass the inter-agency, inter-personal dynamics of that relationship. It effectively describes how the other two dimensions function practically; how and why the players interact with each other as they do. This is the most difficult dimension of the relationship to analyze because it is "messy" and intangible. Furthermore it is very difficult to separate it conceptually from the specifics of a particular project or the particular players involved. In the framework of a joint venture partnership this dimension is of particular importance because of the ongoing nature of the relationship. It depends on four basic ideas which, although intuitively obvious, are difficult to achieve:

1. Knowing, understanding & validating each other's motivations, interests & concerns
2. Trust between the parties
3. Cooperation and coordination of efforts
4. Providing evaluative and constructive criticism

The South Station phase I project achieved this level of operational success after some initial conflicts and in spite of less than ideal organizational structures between the public agencies involved in the project. Looking at the relationship between the BSSA, the MBTA and the FRA it is clear that cooperation and collaboration of efforts is most effective only after trust has been established and after the parties discover that they do, in fact, have joint interest. The net value of providing constructive criticism to each of the players can only be measured in retrospect after the project. It's usefulness to the parties directly is likely only if the entities ever enter into another similar agreement. In the case of the MBTA and Beacon, it is possible that they will work together again.³⁶

³⁶ The MBTA will be issuing an RFP for a leasing and managing developer of the bus station facility on South Station's air rights in phase II of the project. Beacon has been very pleased with the

A Realignment of Traditional Roles

The success of the public/private joint venture in real estate depends largely on the realignment of the traditional roles in the private and public sectors. Government has generally drawn distinct borders between the public and private sectors, as well as between levels of government. The result has been the creation of very hierarchical patterns of authority typically enveloped within an "agency".³⁷ The demands set on public sector managers involved in real estate development in partnership with the private sector spill far beyond the usual borders of the public agency. They must negotiate with a complex network of players and institutions over which they have some leverage but little control. The complications are compounded by the traditional focus of public administration -- personnel management and agency budgeting. On the other hand, the public manager involved in real estate needs to emphasize skills in bargaining, persuasion and the manipulation of incentives.³⁸

The FRA was by far the most hierarchical and boundary-prone agency involved in the South Station project. These tendencies were further exacerbated by the fact that they were physically removed from the site and that the project encompassed a range of interests and concerns which were somewhat unfamiliar to them.

Establishing a partnership relationship between the public and private sector can be successful in responding to all of the interests that the public agency must represent. To achieve the kind of relationship described, however, there must be an operational blurring of boundaries between the public and private sectors which are engaged in a

performance of the South Station project and has expressed an interest in pursuing more of that kind of project.

³⁷ Salamon, Lester M., ed., Beyond Privatization, The Tools of Government Action, The Urban Institute Press, Washington, D.C., p.12

³⁸ Ibid, p.13

partnership. Through a realignment of roles, it is possible to revise the assumptions about the other players which each party, public and private, brings to the relationship. There must be an ad-hoc realignment which can cross the boundaries established by the traditional framework of public administration and private organizations. This realignment can help to resolve two significant obstacles to joint development:

1. the compartmentalization inherent in the public sector
2. the segmentation of interests between the parties

The issue of compartmentalization inherent in the public sector relates both to decision-making paths and to access to creativity and talent which cause not only a stalling of the development process but may also not result in the best decisions. In Phase I at South Station, for example, the escalators in the Grand Concourse were installed and had to be removed afterwards as a direct result of the compartmentalization of tasks and decision-making path within the MBTA. "...their concerns made sense if you put boundaries around the tasks...the construction manager (from the MBTA) wasn't concerned about the appropriateness of the escalators ... his marching orders were: build what's on the drawings on budget and on schedule." ³⁹ The best and outstanding assets of each agency and each player should be used in a joint venture. This is true within a public agency, between public agencies and between the public and private sectors. A single purpose entity established to perform the tasks necessary to complete a project can serve this purpose but brings with it other problems as well.

In a partnership, it is important that the parties involved share common interests. Although each party can have its own individual interests, finding the truly joint interests can establish a cooperative spirit between the parties. At many points in the South

³⁹ From a conversation with Bob Weinberg, Beacon South Station Associates

Station projects, it seemed that there was a "segmentation" of interests which were actually inter-related. For example, Amtrak's view of the commercial activities that BSSA was planning for the Grand Concourse at South Station was that it would detract from the station as a train station. In fact, the commercial activity has the effect of bringing more train passengers to the station and creating a vitality of comings and goings to and within the Concourse that screams "**train station**" in all directions. There were several interests which were truly joint objectives between the public/private entities involved in South Station, regardless of the individual motivations. Those were:

1. Rehabilitating South Station to its historic condition.
2. Encouraging development in downtown locations.
3. A high maintenance standard of the station.
4. Capitalizing on, improving & increasing the use of transportation infrastructure.

Realigning the roles to take advantage of all potential mutual gains and benefits in a project is critical to the success of public/private real estate development. At South Station, it was possible to achieve a kind of ad-hoc realignment mostly because so many of the individuals directly involved in the project had prior experience in both the public and private sectors. This coincidence simplified the relationship, enabling a quicker more thorough understanding of each other's motivations and weaknesses. Their experience enabled them to understand the real benefits of finding the joint interests in the project and the benefits in reaching beyond the limits of the traditional public and private roles.

V. Conclusions

It is important to understand that the interface between public and private entities in real estate development is tempered by the historical legacy of symbolic mistrust and assumptions of each the public and private sector's for each other; by the legacy of legal limitations and regulations imposed to diminish the possibility of collusion and unfair advantage; and the traditional structure of government and the development marketplace. For public/private joint venture development to be most effective, it is important that the goals and intentions be clearly and realistically defined and agreed upon by all the parties. Without an understanding of the true purpose of the project, conflicting agendas, intricate organizational structures and complicated cost/benefit analyses will not render the most desirable result for all of the interests represented. Furthermore, the traditional roles and organizational structures must be transcended. Neither the public nor the private sector can expect to do "business as usual." It is a similar game, but its the difference between playing tennis against someone and playing doubles "with" them. Both the public and the private partner will need to adjust and compensate for the existence of the new partner. The agendas will be unfamiliar and possibly conflicting, learning to operate under a continually changing set of circumstances is critical.

The private sector has much experience in joint development structures with other private companies. However, a public agency partner has other concerns beyond the financial success of the venture. Understanding the nature of those concerns and the forces that generate them is a political exercise unfamiliar to most private firms. Furthermore, the private sector has little experience with the kind of long-term projects and commitments which the public sector operates in. Working together has proved to be a highly successful and enjoyable venture for most of the entities involved in the South Station project. The last phase of the project can be potentially profitable and successful depending on a number of factors, including the external factor of the economic market

conditions. The public agencies involved will need to coordinate efforts among themselves as much as with the private sector in an effort to reach their individual and the venture's joint interests.

An Organizational Structure

There is no simple way to resolve the potential for conflicts of interest involved in a public/private venture. The simplest way envisioned is a single purpose entity formed as a public/private agency with authority to carry out the tasks necessary for the project. There are inherent problems with this strategy ranging from high front end costs in establishing and staffing such an entity as well as the potential for aggravated inter-agency relationships with other public bodies. Following the South Station model, however, what is needed to facilitate future public/private projects is more subtle. It involves finding a way by which the public and the private sectors see each other as allies and as mutually complementary.

The existence of one public agency, which has broad goals and is well versed in a range of projects, which is willing and able to define the scope of the project and oversee it as well as help to coordinate with other public agencies, goes a long way to facilitate the interface. It is important, however, that any single agency in charge of a project has a realistic vision for a project and is willing to revisit decisions as economic, social and political conditions change. Flexibility in decision-making and financing is as desirable a trait for a public agency involved in a joint-venture, as steadfastness.

In a case, such as South Station, where it was more feasible to give the MBTA responsibility for rehabilitation of the headhouse, it is important that the separation of interests and tasks be well defined along logical boundaries. The MBTA's role as owner and agency responsible for the station is well coordinated with the authority's role as a

transportation agency. The allocation of air rights to both the MBTA and the BRA, although seemingly reasonable, has caused coordination problems.

The private partner most suited to this type of venture is one which is well versed in the public sector and who understands its interests and structure. The role of the private partner is to make the project happen in a way which addresses all the interests and concerns. A private firm such as Beacon, which has had experience working with the public sector and who is comfortable with the agenda that the public sector is concerned with is ideal for the role. Part of the reason for the success of phase I, is that BSSA understood the need for the grand concourse to be essentially a public space, a sort of living room for the community, as well as a comfortable train station for passengers. They were able to create a project which responded to that agenda and is a financial success.

Facilitating the Public/Private Interface

Traditional public-sector and private-sector "roles" stand as the major challenge in the relationship between public and private partners in joint ventures. These traditional roles tend to create an isolation and compartmentalization of interests and responsibilities. Breaking down those barriers cannot be accomplished simply or quickly. The first step is to understand and acknowledge the interests and concerns that each party represents. Understanding leads to trust and cooperation. Secondly, finding the joint interest among the parties. Working together toward a mutual goal is far more effective at engendering the cooperative spirit than achieving individual goals. Third, finding people with experience in both the public and private sectors. Individual's knowledge and experience in dealing with a range of issues and organizational structures is very effective at facilitating the interface.

APPENDICES

Appendix A: BRA's Goals for South Station Air Rights Development

The BRA's objectives for development of the air rights over South Station, as follow, were presented in the original "Technopolis" Request For Proposals ⁴⁰:

- 1. To expand and diversify the city's economy through the creation of new research-based economic activity.*
- 2. To promote economic opportunity for Chinatown and South Boston residents.*
- 3. To develop new initiatives which will create manufacturing and product development and further expand Boston's economic base.*
- 4. To reduce the impacts of institutional expansion within Chinatown.*
- 5. Control the Impacts of Development (i.e. Traffic, Gentrification) on Chinatown and South Boston.*
- 6. To take full advantage of the city's intellectual infrastructure.*
- 7. To encourage the growth of new research related businesses which will complement the strengths of the institutional economy and take advantage of the intellectual resources of Boston's institutions.*
- 8. To encourage new financial investment in Boston. Boston is a leading center of venture capital.*
- 9. The unique, mixed-use development program for the South Station Air Rights will serve as the prototype for Boston's economic diversification, as well as the highly visible symbol for a major rail and vehicular gateway to the city.*

⁴⁰ BRA, *Technopolis, South Station Air Rights, Request for Proposals*

Appendix B: South Station Organizational Chart

The Players and their Roles

| ROLES / PHASE | I - The Headhouse | II - Intermodal Facility | III - Technopolis |
|------------------------------|---|---|---|
| OWNER | MBTA BSSA - Master Lease BRA- Air Rights Amtrak - "right to use" | MBTA Master Lease with unselected developer | BRA TUDC - Master Lease |
| DEVELOPER | MBTA/BSSA | MBTA/unselected private developer | TUDC/unselected private developer |
| MANAGEMENT AND LEASING | BSSA | unselected private developer | TUDC/unselected private developer |
| TENANTS | MBTA Amtrak Various Retailers & Office Tenants | MBTA Bus Company Various Retailers | Tufts University Biomedical Companies Hotel Operator Various Retailers & Office Tenants |
| FUNDING SOURCES | MBTA bonds FRA grants UMTA grants BSSA | MBTA bonds ISTEA matching grants | unknown |

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List of Interviews

Joe Aiello, South Station Phase I and Phase II Project Manager, MBTA

Simone Auster, Ex-General Operations Manager at South Station, Beacon Associates

Brian Fallon, South Station Phase III Development Consultant, Meredith & Grew

Arigo Mongini, Federal Railroad Administration

Marilyn Newman, Attorney

William Reinhardt, Editor, *Public Works Financing*

Clayton Ridman, South Station Phase I Project Manager, Amtrak

Jack Rizzo, Perini Land and Development

Fred Salvucci, ex-State Secretary of Transportation

Eric Schmidt, Boston Redevelopment Authority

Peter Scholnick, Leasing Agent, MBTA

Robert Weinberg, partner, Beacon South Station Associates