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Confronting the Procedural Fix: How Community Coalitions for Economic Justice Utilize City Planning Expertise to Support Community Benefits Campaigns

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This paper investigates the use of planning expertise by two community benefits campaigns to advance their equity agendas. Due to criticism over the way in which redevelopment planning has been undertaken, a series of reforms aimed at controlling the development approval and permitting process has been enacted over the past thirty-five years. These reforms – which I refer to as the procedural fix – are aimed at controlling debate and making the process more predictable for developers. The Community Benefits Agreement is a tool community activists use to extract redistributive benefits directly from capital. City planning expertise is helpful, if not necessary, for negotiating the procedural fix. Because the procedural fix is composed of reforms with legal consequences, the type of strategy a particular campaign chooses to use has consequences for how the planning expertise is used to negotiate the fix. The story of these two campaigns demonstrates that the type of strategy a particular campaign employs has consequences for how the planning expertise is used to negotiate the procedural fix. In cases where a campaign chooses a political strategy, planning expertise is useful in helping the campaign to articulate an alternative development plan that builds political support externally (with decision-makers) and internally (with coalition partners and their bases). In cases where a campaign chooses a legal strategy, planning expertise is useful in helping the campaign to build a legal case against the developer, the city, or the redevelopment agency in order to pressure the opposition to concede community benefits rather than face expensive and time-consuming litigation.

EDITOR'S COMMENT: We wish to acknowledge that some people in the community have taken issue with some aspects of the case study analysis presented in this paper. We realize that in any community movement, different participants and outside observers may have different points of view. Although this paper does not incorporate all points of view, the potential limitations of the methodology and analysis are clearly stated by the author, who has made every effort to present the facts of the case study as accurately as possible.

The Institute for the Study of Social Change (ISSC) is an Organized Research Unit of the University of California at Berkeley. The views expressed in this working paper are those of the author and do not necessarily represent those of the ISSC or the Regents of the University of California.

Introduction¹

This paper examines two case studies of community activists in Bay City,² California who utilized city planning expertise in the face of what I call the “procedural fix” — a political and legal planning process that directs and restricts public input on development projects — to support their community benefits campaigns. It argues that the procedural fix limits the public’s ability to *comment* on projects designed by developers and city officials and prevents community groups from playing a meaningful role in the planning of projects in their communities. Specifically, it looks at two community benefits campaigns operating in the same city during the same period of time and describes how each campaign used the procedural fix to support their tactical and strategic objectives.

In 1981, Paul Peterson famously argued that cities should not engage in redistributive policies because they were ill-equipped to do so (Peterson 1981). He maintained that cities should be limited to pursuing developmental and allocational policies and that redistribution policies should be left to the federal government.³ Peterson’s argument, which favored federal government involvement over local government involvement, conflicted with the rise of “New

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² To ensure the confidentiality of the participants and the campaigns, and to underscore that I am not attempting an evaluation of these campaigns, but rather I am using them to demonstrate some points important to understanding planning practice outside the public agency setting, I am using a pseudonym to describe the city and the campaigns in my study.

³ Allocational policies refer to those in which a city expends resources for certain public services such as fire protection and trash pick-up. Developmental policies refer to those in which the city expends resources to support economic growth, such as through land use permitting or industrial attraction strategies. Redistributive policies refer to those in which resource transfers are made from wealthier residents to poorer ones (Peterson 1981).

Federalism” — a conservative political movement rooted in the notion that cities and states are best positioned to deal with redistributive policies. In the twenty-five years since Peterson articulated his argument, the political forces supporting New Federalism have gained ascendancy and have radically reshaped the responsibilities of the federal government through political devolution⁴ and privatization of public resources and services (DeFilippis 2004, Harvey 2006).

Today, as devolution and privatization continue to complicate Peterson’s “City Limits” thesis,⁵ land use development has become an important locus around which community activists organize and demand policy changes for economic, environmental, and social justice (Peterson 1981). The rise in land use-focused social movements reflects the classic conflict between “exchange” and “use” values in land development (Logan and Molotch 1987). Today, social movements organize not just to oppose urban development projects, but to become stakeholders in the formulation and implementation of development projects. This change has shifted the land use debate from one about “capital versus neighborhood” to one about how to create more democratic processes that will bring diverse stakeholders to the table to address the social problems created by development (Reynolds 2002).

This paper has four sections. The first presents the historical context of redevelopment planning in which the Bay City campaigns operated. The second discusses how the demand for

⁴ “Political devolution” refers to the withdrawal of federal and state responsibility from regulating the inequitable consequences of neoliberal capitalism. One illustration of this devolution is the welfare reform law of 1996. Under the new law, federal responsibility for providing aid to poor families “devolved” to the states, and federal restrictions on states from providing assistance to the poor increased. The consequences of the federal government’s five-year limit on aid to poor families play out where people live – in cities.

⁵ Peterson famously argued that cities are particularly poor political scales to carry out redistribution policies. His “City Limits” critique is based upon the division and diffusion of power in a federal system where national, state, and local governments have different responsibilities and capacities to act. In this critique there are three areas in which cities can make decisions: redistribution; developmental; and allocational. Peterson argues that the city is compelled by economic necessity to compete with other cities and regions for new business and industry in order to increase its tax base and generate new revenues. Redistributive policies are “pernicious” and “unproductive” in the local context because they undermine a city’s competitive position. Developmental policies are also outside the domain of routine local politics, according to Peterson, because they seek uncontested public interest objectives and require the technical expertise of professional planners and business elites. Constrained by these limits, allocational policies involving governmental services and jobs are all that remain at the local level for debate, bargaining, and discretion.

community benefits is rooted in planning equity discourse. The third considers the idea of the procedural fix in social theory and its relevance for city planning and social movements concerning land development. Finally, the fourth describes and evaluates the effectiveness of two community benefits campaigns that utilized city planning expertise to support their efforts. But first, a word on methodology.

A Note on Methodology

This working paper is intended to advance the discourse on city planning theory by (1) understanding planners as actors situated outside the public agency setting who support community struggles around urban development conflict,s and (2) moving away from traditional academic and practitioner complaints of NIMBYism and recognizing the legitimate role community organizing has in redevelopment planning. My intended audience for this paper is city planning academics and practitioners. It is not intended to speak to debates in social movement theory, community studies, or political science. The analysis of the two case studies described in this paper is intended to illuminate the different ways planners can support community activism based upon different strategies—and not to critique the organizing strategies or the internal dynamics of community coalitions.

This paper is a reflective analysis of my participation as a planner embedded in and providing support to community benefit campaigns. I was a participant in both of these campaigns, although my involvement was somewhat significant in the Waterfront Project Coalition and much less so in the Legacy Project Coalition. My involvement in both campaigns was limited to providing planning and research support related to specific strategies. Although I

was a participant, the facts discussed about the campaigns in this paper were mostly observable to the non-participant. The methods used herein were a mix of observation, reflective practice, and document review. The goal of my analysis is to further develop a theory of equitable planning that is relevant to real-world practice.

Both of the campaigns discussed herein utilized political and legal strategies. From my experience and perspective, the Waterfront Project campaign is useful for understanding how planning can be used to support a political strategy, and the Legacy Project campaign is useful for understanding how planning can support a legal strategy. I do not intend to suggest that either campaign *only* used one or the other strategy in the course of the campaign, and I do not intend to suggest that one strategy is inherently superior to the other. Finally, I want to underscore that nothing in this working paper should be read to reflect on the organizing or coalition-building efforts of either campaign in a negative way. Both campaigns were run by talented, capable, and extremely hard-working organizers and activists, with the tireless support of the residents of the neighborhoods in which the projects were proposed to be developed.

The Historical Context:

Bay City's Second Era Redevelopment Planning

Ever since the urban renewal programs of the 1960s displaced thousands of low-income and working class persons from their homes, neighborhoods, and communities to make way for high-income residential, commercial, and retail uses, urban redevelopment planning has been an important locus of political contestation in the United States. The impact of urban renewal is well documented elsewhere (Gans 1962, Anderson 1964, Lupo and Fowler 1971, King 1981,

Mollenkopf 1983, Logan and Molotch 1988, Frieden and Sagalyn 1989, Hartmann 2002). As part of urban renewal, public decisions were made to “renew” urban areas without the input of the low-income residents directly affected by the decisions. Entire neighborhoods were razed, residents were dispersed with little or no compensation, and property was transferred to higher income uses. Finally, residents started to organize and demand a voice in redevelopment planning. In the decades since participation mechanisms were first adopted and implemented by cities and states, it has become clear that there is no one community voice – even in seemingly homogeneous neighborhoods.

Community activists have been organizing around redevelopment projects since the 1960s. One way in which community activists are adjusting to redevelopment planning today is by negotiating cross-class and multi-ethnic/racial coalitions in an effort to create alternative plans for development projects. Activists also negotiate with the developer to reach legally-enforceable outcomes that benefit the community. However, despite legal, policy, and political changes that have occurred since the 1960s, redevelopment planning today continues to produce the same winners and losers. As progressive opponents adjust their tactics, the growth machine adjusts to the new rules and finds ways to reach the same goals (Clavel 1986). As a result, the legal and political changes made in the wake of the abuses and failures of urban renewal have made little difference. A reason for this lack of change may be that the legal and political changes pursued by community groups in the 1960s were not always that *substantively* significant and often created unintended negative consequences. For instance, consider the following table:

Problem	Solution	New Problem
Direct displacement of low-income and working class residents	Procedural changes to eminent domain use	Market displacement of low-income and working class residents
Lack of input and participation from affected communities	Creation of formal stakeholder advisory committees	Input and participation of propertied interests strengthened and privileged
Environmental impacts on low-income and working class neighborhoods	Environmental review processes	Impacts considered (or not) and ignored

The excesses of urban renewal in the 1950s and 1960s led to reforms that were supposed to prevent them from recurring. Among these reforms were: maximum feasible participation in the Community Action Program; the use of Environmental Impact Reports; the use of formal stakeholder advisory groups; reforms to the use of eminent domain and the use of owner participation agreements; transparency acts to require city decision-making to be done in the public view; and comprehensive planning requirements. However, rather than changing outcomes these reforms directed community opposition into predictable channels.

In Bay City, there have been two fairly distinct eras of redevelopment.⁶ A discussion of these two eras will illuminate both the legal requirements for redevelopment planning aimed at increasing public accountability, which gave birth to the procedural fix, and the modern political economic contextual change of urban redevelopment planning.

The first era of redevelopment spanned from the 1950s through the 1970s and can be characterized by highly elitist development strategies that involved physically clearing entire blocks and people from cities for commercial projects. A backlash eventually developed and growth machine planning abuses often blew up into fierce community battles over use values (Mollenkopf 1983, Hartmann 2002). This era began in California with the creation of the

⁶ While some scholars argue that there was an additional era of development in between these two eras, in my opinion, that time was more of a transitional period, when cities began to lure suburban residents back into downtown areas of city with middle-class and tourist amenities, and not a distinct era (Altshuler and Luberoft 2003, Frug 1999).

Community Redevelopment Law in 1945. By 1970, the failures of urban renewal were evident and widespread community opposition to pro-growth policies began to increase amidst calls for systemic reform. These attempts at reform gave birth to the procedural fix.

A second era of redevelopment arose out of the failures of the first, but not before a transitional period in which no-growth activism borne out of the resistance to urban renewal excesses, coupled with an ascendant environmental movement, utilized reforms to stop projects altogether (Logan and Molotch 1987). This was helped in large part by the recessionary impacts of economic restructuring in the 1970s. The second era of redevelopment in California began around the time of the 1993 amendments to the Community Redevelopment Law. These amendments enacted a number of procedural reforms to the law in an effort to appease community opposition and allow the resurgence of redevelopment planning in cities injured as a result of economic restructuring and insufficient resources due to the 1970s tax revolt. The apparent problem (or opportunity) in California cities in the early 1990s was not the blight of urban renewal, but the vacant land attributed to obsolescence as a result of the economic restructuring entailed in moving an industrial economy to a service economy (Weber 2003). Where the political rationale for first era redevelopment was the elimination of blight, the rationale for second era redevelopment was productive use of obsolete sites.

The rationale for second era redevelopment is reflected in modern day calls for smart growth planning. Rather than razing existing buildings, blocks, or entire neighborhoods, the growth machines of today are looking toward vacant or obsolete parcels and using an infill strategy to convert the working-class industrial city into the middle-class residential and amenity city. Today, smart growth has become an operating principle – or at least a primary rationale –

for growth machine developers and allies intent on blunting community opposition to (or concern about) major development projects.

However, the modern-day combination of second era redevelopment realities, growth machine development opportunities, and smart growth rationales, often leave low-income communities little political leverage. For, while the new growth machine redevelopment strategy provides mixed-uses, more housing, transit-oriented development, environmental remediation, and urban beautification, it does so in a way that increasingly privileges middle-class newcomers at the expense of low-income residents (Gearin 2004). This raises renewed concerns for equitable outcomes in the city planning process. The next section will consider the traditions of equitable planning in the academy and one important new tool for implementation: the community benefits agreement.

Community Benefits:

Implementing Equity through Urban Planning and Development

The demand for “community benefits” in urban redevelopment planning is rooted in concerns about equitable distribution of local resources. Equity is the subject of much debate in planning generally, and in the debates about metropolitan planning particularly (Krumholz and Forester 1990; Pastor, Dreier, Grigsby, and Garzza 2000; Luria and Rogers 2001). The concern for equity can be seen as far back as the 1960s in the work of Lisa Peattie (1987 [1978]) who was involved in the planning and building of Ciudad, Guyana. Norman Krumholz, who led Cleveland’s City Planning Department under Mayor Dennis Kucinich, was the leading theorist-practitioner in the 1970s and 1980s movement toward “equity planning.” Equity planning has its

theoretical roots in “advocacy planning,” a short-lived but powerful school of thought spearheaded by Paul Davidoff (2003 [1965]) that argued for the conscious and explicit use of advocacy strategies and competing alternative plans developed by community interests. Equity planning can trace its practical roots in the opposition to urban renewal of the 1960s (Krumholz and Forester 1990, Hartmann 2002). While equity planning never became the dominant theoretical perspective of planning, it did influence the creation of ethical standards for planners who are obligated to consider the equitable consequences of their actions.

Thoughts on Equitable Planning

Recently, with the resurgence of interest in regional planning, equity has become again a topic of debate in city planning. The debate centers around both implementing and defining equity. Many regional planning experiments have incorporated business and other middle-class interests as significant partners. The result is that economic concerns are highlighted, environmental concerns are less important, and equity – when it is seriously discussed – is the subject of definitional argument. The school of “community-based regionalism” has attempted to link community concerns with regional ones (Pastor, Dreier, Grigsby, and Garza 2000). These theorists largely use “community” as a proxy for equity and “regional” as a proxy for economy, and suggest that it is up to communities to engage the region. This call for innovative ways to interject equitable concerns into economic development has been heeded in some part. Community organizations have found many openings to participate in the politics of land use planning and development at the municipal and metropolitan levels. The one relatively constant authority cities have is regulating land use within their jurisdiction (Richmond 2000, Yaro 2000).

This section will review the various traditions of planning for equitable outcomes by first considering the academic city planning traditions and then those of the other disciplines.

Some important, yet marginalized, traditions of city planning scholarship have addressed equity concerns directly. Since each tradition has proven somewhat fleeting in the academy and has been closely identified with only one or two theorists, it may be more accurate to think of these traditions as components of a school of equitable city planning. These different components all speak to the role of the planner in supporting social movements that organize around urban development projects. These traditions include advocacy planning (Davidoff 2003 [1965]); radical planning (Piven and Cloward 1978); equity planning (Krumholz and Forester 1990, Krumholz 1999, Peattie 1987 [1978]); and transactive planning (Friedmann 1987).

Advocacy planning rests on a vision of pluralism in which the public interest can be determined through competing visions and development plans. It incorporates an attorney conception of the planner, who operates outside of public agencies as an agent for community or other interests and puts forward that interest group's plan for development in the city (Davidoff 2003 [1965]). While not explicitly rooting itself in a political agenda supporting social movements, advocacy planning provides an important framework to conceptualize the planner's role as a partner in community benefits campaigns.

Due, perhaps, to the lack of an explicit political critique of planning by advocacy planning, the 1970s saw a Marxist turn toward radical planning. The Marxist critique of planning goes directly to the heart of the discipline's traditional conceit of embracing the scientific method. This critique argued that city planning ignores class conflict, trivializes the state, avoids structural problems, and is adverse – if not hostile – to politics. Assumptions are not stated, goals are only vaguely articulated, and theory is a tautological exercise that

rationalizes practice. As a result, the critique goes, “even if planning theory were to propose structural changes it would be unable to do so because it is fundamentally a tautological process” (Cenzatti 1987, p. 446).

The Marxist school focused on two levels of theory: action-based and analysis-based. Both levels are articulated through a dialectical process that acknowledges assumptions and confronts contradictions. Piven and Cloward (1978) articulated an action-oriented strategy for effectuating social change by showing the successes and failures of mass movements to improve the conditions of the poor and working class. Harvey (1987) articulated an analysis-oriented strategy for understanding social change that describes the contradictions inherent in planning for equity within the constraints of the capitalist state. Both of these strategies offered valuable insights for planners. However, it is the action-oriented strategy that constituted the tradition of radical planning because it was practice-based.

Frances Fox Piven and Richard Cloward (1978) might be the most important theorists of this tradition of radical planning. These scholars embraced the poor people’s movements of the 1930s and 1960s. According to Friedmann,

Radical planning, always based on people’s self-organized actions, stands in necessary opposition to established powers and, more particularly, the state. For the state to engage in radical planning poses a contradiction in terms. Still, it would be wrong to ignore the state’s existence or treat it as an adversary only. Its presence is pervasive, and social advances achieved through a radical planning that bypasses the state will quickly reach material limits (Friedmann 1987, p. 407).

This tradition of radical planning is a definite forerunner of the movement planning that can be seen at work in community benefits campaigns. Piven and Cloward (1978) privileged political action and protest to further redistributivist policies through, among other things, planning processes. Since the protest of low-income persons was privileged in their work, Piven and

Cloward do give us some insight into the nature of activists as planners. Friedmann (1987) later flushes out the radical (professional) planner in his theory of transactive planning.

Equity planning resides squarely inside the public agency setting. It was an attempt to incorporate the concerns of supporters of advocacy and radical planning into the governing apparatus of the day. Predicated on an idea that planning was specifically a public function in which the outcomes of decisions were the responsibility of government, equity planning was an experiment in transforming public agencies into instruments used to redistribute the benefits and impacts of urban development in the wake of urban renewal disasters and community backlash (Krumholz and Forester 1990, Krumholz 1999).

Friedmann (1987) articulates a normative theory of radical planning called transformative theory (and transactive planning). Friedmann insists that “radical planners must not become absorbed into the everyday struggles of radical practice.” They should be “mediators, who stand neither apart from nor above nor within such a practice” (1987, p. 392). Friedmann’s theory calls for the linkage of practice and theory and for the use of empirical observations and normative theory. However, his work is not grounded in empirical research. He is positing a normative theory that would assist in transforming the state (or society) through planning.

Outside of the planning academy, there is an emerging field of literature on community and labor interventions in equitable planning and development on a metropolitan scale. (See, for example, Luria and Rogers 2001; Swinney 1998; Pastor, Dreier, Grigsby, and Garza 2000; Reynolds 2002). Community/labor coalitions have been generally undertheorized, but some scholars have researched the sources that fuel coalitional organizing (Luce and Pollen 2000; Reynolds and Kern 2001; Bernhardt, Dresser, and Rogers 2001), as well as the nature of labor and community collaboration itself (Rose 2000, Fine 2006). There is an additional field of

literature focusing on the metropolitan region as the locus for rational planning and political coalition (Katz, et al. 2000; Orfield 2002; Dreier, Mollenkopf, and Swanstrom 2002). This literature is finding some synthesis in current scholarship coming out of geography (Byrd and Rhee 2004, Frank and Wong 2004), sociology (Clawson 2003, Luce and Nelson 2004), political science (Gottlieb, Vallianatos, Freer, Dreier 2006) and law (Cummings 2001, Blackwell 2001). City planner scholars have been slow to see the connections, even though city planner practitioners have been engaged in significant ways.

Regional planners, echoing Peterson, tend to look at higher scales than the city to incorporate equity. Due to the absence of governmental authority at the regional scale, cities remain the practical locale for the incorporation of equity concerns. These concerns are manifested in the demand for “community benefits.” Such demands come from community-based campaigns and focus on specific projects that have identifiable impacts on organized groups of residents, activists, and local businesses. Out of a history of broken promises from the urban renewal era (and beyond), community activists created the “community benefits agreement” as a tool to legally guarantee the provision of community benefits, and thus to implement equitable outcomes.

The Community Benefits Agreement

A community benefits agreement (“CBA”) is a contract between a developer and one or more community groups that requires the developer to provide certain things in exchange for community support for the project in the development approvals process. The term “community benefits agreement” is sometimes used to refer to any kind of agreement where a developer agrees to provide certain benefits. For instance, the Connecticut Center for a New Economy

(CCNE) refers to the development agreement between the Yale Medical Center and the City of New Haven as a “CBA.” However, neither CCNE nor any other community group is a party to that agreement and neither entity cannot enforce the agreement in court. CCNE refers to this agreement as a CBA because it was the result of pressure from a community campaign and includes elements commonly thought of as “community benefits.” Despite the fact that this agreement represents a genuine victory for CCNE and the community, it is a development agreement, not a CBA.

Sometimes, the portion of a development agreement that concerns community issues is formally referred to as a “Community Benefits Agreement.” An example of this is the Hunters Point Shipyard Community Benefits Agreement included in the development agreement for the redevelopment of the closed naval shipyard near San Francisco’s Candlestick Point. In Bay City, the Waterfront Project Coalition won an agreement from the Bay City Redevelopment Agency (BCRA) to enforce or provide certain benefits to a large residential project on the waterfront. The developer agreed to provide certain community benefits in a development agreement with the BCRA (which is called a Disposition and Development Agreement in California Redevelopment Law), but would not sign a CBA with the Coalition or any of its members. The agreement the community groups signed with the city is a cooperation agreement.

Neither case described in this paper resulted in a CBA as defined above, but the campaigns that were formed to organize for community benefits around the redevelopment projects did articulate the negotiation of a CBA as a goal. I refer to these campaigns as “community benefits campaigns” because: (1) a CBA was an organizing objective, and (2) the type of outcomes they were fighting for were project-based ones (rather than a simple cash pay-

out, a partnership with a community-based organization to implement some aspect of the project, or the uncompromising no-project goal).

The Struggle over Rhetoric

The struggle for community benefits is undergoing the typical cooptation trajectory so common in urban development conflicts (Logan and Molotch 1987). An example of this cooptation can be found in the rhetorical adjustments that take place between developers and community campaigns. The term “smart growth” provides a current and useful illustration. At one time “smart growth” was a politically progressive term used to counter the sprawling exchange value-fueled machinations of (sub)urban growth machines. Today, growth machines have embraced the notion of “smart growth” in language only. While they rarely provide benefits to the communities, the growth machines have nonetheless rhetorically co-opted the rhetoric of community activists, when describing new development projects (Gearin 2004). Likewise, the term “community benefit” has undergone a similar rhetorical adjustment. Activists popularized the term to put political pressure on public decision-makers and developers to adopt measures to benefit the community. However, today, developers co-opt the term and use it to refer to anything from infrastructural improvements to tree planting — improvements which often benefit only the high end users of market rate luxury housing projects.⁷

Changes in the rhetorical debate have concrete consequences. While community activists are originally adept at creating the terms used the rhetorical debate, developers have been successful at defining what those terms mean for implementation. Because the activists are often quite persuasive and are skillful at using media to embarrass public decision-makers, developers

⁷ For instance, consider the Community Benefits Districts in San Francisco, CA. They are merely renamed Business Improvement Districts. www.sfgov.org.

must constantly adjust to the arguments made by activists. However, despite the newfound change in rhetoric, land development still ends up being based on exchange rather than use values (Logan and Moloch 1987). In effect, by co-opting the rhetoric of the activists, developers are able to neutralize the impact of activists.

While the rhetorical debate rages on, adjustment also occurs in the arena of policy reform. Here, substantive issues such as environmental impacts and community involvement in land use decision making are reduced to procedural fixes which appear to address the issue on the surface, but which actually do little more than funnel discussion into predictable channels.

The procedural fix, therefore, presents both opportunities and challenges for communities seeking to intervene in economic justice struggles concerning urban development projects. The nature of the procedural fix has convinced activists to employ the expertise of experienced city planners to take advantage of these opportunities. This expertise is important because without planning expertise to inform and support the strategies of activists organizing around redevelopment projects, the procedural fix will be utilized by developers to accomplish the same undesirable outcomes as before. However, engaging and negotiating the procedural fix is a risky proposition for activists. Engaging and losing may actually produce worse results for some community groups. This is because by engaging in the planning process the groups may inaccurately be deemed to be “involved” in the decision-making process and, therefore, to have been meaningful participants in the final solution.

Despite the many problems with the procedural fix, it holds some opportunities for community groups. The procedural fix has provided a political opportunity structure for community benefits campaigns to mobilize around effectively employ. By incorporating a framework of equitable or accountable development, community groups have begun to formulate

their own visions for development that can be used to negotiate with developers. The use of community benefits agreements allows community organizations to extract concessions directly from capital, ensuring a degree of influence over the outcomes and allowing for stronger political power building.

The Procedural Fix

The procedural fix is the basket of procedural reforms that have taken place in the development arena since the end of the first era of redevelopment and—in California—particularly with the advent of the second era. These reforms are designed to address criticism of the elitism of urban pro-growth regimes and have given rise to a new and complex set of procedural rules for redevelopment. For example, notice requirements, comment procedures, and environmental review reports can all be considered procedural fixes.⁸ While the reforms were originally designed to make projects “better” by providing information and giving residents an opportunity to “have their day in court,” they are predicated on a pro-growth philosophy. This section argues that, in effect, procedural fixes facilitate urban development projects and redirect community opposition into a false legitimization of projects. Specifically, it argues that because procedural fixes create a dichotomy of pro-growth versus no-growth, they prevent compromise by forcing community groups to try to stop development projects through legal stalling techniques at the expense of collaboration.

⁸ Throughout the paper, I tend to use the term “procedural fix” to represent a number of what might be considered different, more narrow, fixes. For these “smaller” fixes, I tend to use the term “intervention point,” because they often represent an opportunity for individuals to intervene in the process.

Given the large number of procedural fixes in place today, community activists must learn how to meaningfully intervene in the planning process and develop their own plans to pressure developers. However, community groups are often less knowledgeable about the planning process than developers. As a result, the procedural regime is employed by the urban growth machine to: (1) reduce community challenges to process, (2) control the debate, and (3) legitimize the outcomes of the planning process (e.g., by arguing that a particular outcome is legitimate because it was the result of democratic procedures). Because the mere presence of community groups in the planning process may be used to legitimate an unwanted project, community groups are sometimes hesitant about participation. However, community groups that refuse to play on growth machine's turf during the planning process abstain at their peril, as a group's refusal to participate is often dismissed and conflated with opting-out of the process.

The Notion of The Procedural Fix in Social Theory

Scholars have identified fixes in areas such as metropolitan spatial organization (Harvey 1982, Soja 2000, Hackworth 2007), the construction of prisons (Gilmore 2007), gentrification (Smith 1996) and the employee-employer relation (Harvey 1982, Silver 2003). This section discusses three types of fixes in the context of the employment relation — the technological fix, the organizational fix, and the spatial fix— and explains how these fixes are relevant to the field of land use. The employment relation is used here because it is a clearer analogue to the land relation.

The technological fix refers to the creation of new technologies that reduce labor hours and allow for reduced workforces, and thus lower labor costs (Silver 2003). The organizational fix refers to the internal reorganization of the workforce to reduce labor costs. It is sometimes

used interchangeably with the technological fix, because both are predicated on increasing productivity. However, it is probably better to think (at least in today's economy) of the organizational fix not reducing labor hours, but reducing workforces and increasing labor hours for those remaining. Anyone who survived a mass round of layoffs in Silicon Valley in the past six years will recognize the organizational fix. The spatial fix – not surprisingly, a favorite of geographers – refers to the threat (or actualization of the threat) to move production facilities to places where labor costs will be lower (Harvey 1982, Soja 2000, Hackworth 2007).

In order to understand how these three theories relate to the field of land use, it is important to understand the work of David Harvey. Harvey (1982) defines a fix elegantly as a course of action by capitalists that “reschedules crisis.” This is an important observation since fixes do not address the root causes of the problems, which lie with certain contradictions in capitalism as well as between capitalism and democracy. In fact, fixes are designed specifically to avoid addressing the root causes of the problems.

To understand fixes we have to understand the problems, both articulated and actual, that need to be fixed. The primary problem is two-fold: capitalists have a “rational crisis,” which is typically the articulated problem, and a “political/power crisis,” which is typically the actual problem. The rational crisis occurs when costs must be lowered in order to benefit shareholders with increased profits and consumers with lower prices. The political/power crisis occurs when owners and their managers perceive challenges to their power and, in response to this, need to reassert control over the means of production. Harvey focuses on the political/power crisis – that of containing labor militancy – but the problem is often articulated and rationalized by capitalists through the rational crisis. This is important because it is in the articulation of the rational crisis that capitalists obtain external political support. This, in turn, helps build political support for

capitalists with their political/power crisis by linking labor militancy with higher prices, lower profits, and an inability to conduct business. As workers are also consumers and sometimes even investors, the linking of the two problems helps create cleavages within labor and complicates organizing efforts. While it is clear how fixes work in the context of employment relation, we must also apply the concept to the “development” or “land use” context.

To understand fixes in the development context, we must first explore the “City Limits” thesis (Peterson 1981). The City Limits thesis – which claims that the city is not the proper scale for economic redistribution – has been an operating political principle for pro-growth coalitions for decades. However, in the twenty-five or so years since the Paul Peterson first articulated this thesis there has been a consistent and largely successful effort at political devolution and public resource privatization. Today, localities have nowhere to turn to alleviate the social and economic inequities created by national policy. As a result, cities today are often forced to deal with issues of economic redistribution despite the fact that they have fewer resources and limited ability to raise their own taxes and revenue. This has created a sort of spatial fix that might be described as a “Scalar Fix.” This means that the crisis⁹ is simply rescheduled to reappear somewhere else in the system at a different political scale – in this case, the city.

Because cities have limited resources but are often land rich, they have been forced to resort to the sale of land to raise badly needed funds. At the local level, capital is often invested in land and property in the form of office buildings, factories, or parking lots (Harvey 1982). Cities are able to raise revenues by extracting resources through land use regulation. This has given rise to a need for what I call “movement planners” – planners embedded in social movements, who provide expertise and research in support of organizing campaigns – as

⁹ This “crisis” could be any number of things that threaten the functioning of the capitalist system, such as labor unrest in an industry, community opposition to development, or social and economic stress caused by poverty.

planning becomes a necessary site for policymaking in an age of devolution and privatization. At the municipal level, capital flows through land; and, as cities become more responsible for providing the funds necessary to address antipoverty and other issues cities often seek funds from land development proposals.

The Fix in the Land Relation

This section examines the problems and deficiencies of the procedural fix in the land use and planning context. It argues that, in the context of city planning and land relation, the procedural fix has become nothing more than a process by which the substantive demands made by community groups during land development conflicts are channeled and managed for the purposes of: (1) providing predictability of costs and outcomes for developers, and (2) muting or undermining dissent.

The process of fixes is important for planners to understand, especially when they are engaged in strategic thinking and planning that may be opposed by developers. Also, it is important for planners, including (maybe especially) public agency planners, to understand the interaction of forces in the political economy that may present challenges or opportunities to development over time. Specifically, the political dynamics of the fix must be acknowledged and understood by planners lest they conflate neutrality and expertise with the interests of capital. For, while a fix may purport to offer a rational method for dealing with conflict, it may, in fact, be an intentional effort to delay or “reschedule” crisis. Planners that do not critically challenge or assess the fix will inevitably take one side (capital) against the other(s) while deluding themselves into thinking that they are simply remaining neutral or objective.

The fix is not just an analytical tool for scholars; it has real consequences for the practical world. While the procedural fix often appears to operate as a rational and neutral process – particularly when justified by the articulation of the “rational problem” – the terms of the debate tend to be stacked in favor of the interests of capital. In order to work in the public interest, planners must understand that many fixes are ideological rather than neutral tools. Before they take sides and partner with capital in the name of “the public interest,” planners should also understand that they may be working against the interests of labor and the community.

Public agency planners are often heard dismissing social movements as simple or selfish obstructions. Opposition to projects often occurs not because those who oppose the project like to complain, or are selfishly concerned with their own property values, but because there are actual, organized, and legitimate conflicts existing over the nature and operation of the political economy. Land use regulation is *the* arena in which these issues play out at the local and regional scales. As a consequence of devolution and privatization, this is true now more than ever.

This is not to say that any law or regulation is a fix, but that the planning processes that exist today largely serve the interests of capital over the interests of community and labor. These processes exist to deflate and control opposition to the interests of development capital. Their goal is to “reschedule crisis.” For these reasons, they represent a fix. The problems of inequality, environmental degradation, and the like are intended to be dealt with at other scales of governance or other points in municipal policymaking—but *not* on a particular project in which capital invests. One important complication today is that devolution and privatization

have worked to “reschedule crisis” back down to the project level, and the procedural fix is being “hijacked”¹⁰ to force policy changes by economic and environmental justice movements.

What Does the Procedural Fix Look Like in Practice?

The procedural fix has created a series of intervention points in the planning process. These points provide the public with an opportunity to try to impact the development entitlement schedule for a particular project.¹¹ However, in order to use the process effectively community groups must understand: (1) when intervention points will happen, (2) how important each intervention point is and how intervention points relate to one another, and (3) what opportunities each intervention point provides. However, understanding and employing the intervention points to one’s advantage is no easy task. Many large development proposals are complex and involve a myriad of development approvals and permits. Sometimes, approvals and permits can be done simultaneously, or as a “package.”¹²

The next section looks at two large redevelopment projects that were proposed in Bay City the early 2000s. It examines two community coalitions that were formed to extract community benefits directly from developers. It highlights how the two groups sought to negotiate an enforceable community benefits agreement from the project’s developer and examines the substantial research and data that each campaign used to frame the discourse and meet the needs of its strategic approach.

¹⁰ The term “hijacking the process” is often heard as a complaint by public agency planners frustrated with community activists who are perceived as using the process as leverage to force particular outcomes, rather than for simple input.

¹¹ A development entitlement or approval is a governmental permission to proceed with an aspect of development that is in some part discretionary on the part of the governmental authority, such as a rezoning application.

¹² In California, the types of approvals developers need in their proposals may include the following: General Plan Amendment, Redevelopment Plan Amendment, Development Agreement, Rezoning, and Planned Unit Development Permit. One thing important to remember is that these planning processes are specific to localities. Although in California there are standardized planning and permitting processes across the state, there are still important local differences between cities. In other states, planning and permitting processes may vary significantly between cities. It is essential to understand the local context.

Two Case Studies: Bay City Community Benefits Campaigns

Introduction to Bay City and the Two Campaigns

Bay City is a mid-sized city located in Northern California. It is a historically racially and ethnically diverse community that was once home to tens of thousands of industrial factory jobs. Despite attempts by the powerful residential development industry to buy up the remaining industrial land to build market-rate housing, the city remains home to thousands of light industrial, working class jobs.

Over the past thirty years, Bay City has seen the development of spatial and racial inequality. Today, wealthy white residents live in the hills while poor and working class residents (largely non-white) live in the “flatlands” abutting the waterfront. Due to its strategic regional location and the scarcity of housing, Bay City has seen significant market pressure to convert industrial land to market-rate residential uses. Unlike its neighbors, Bay City has no inclusionary housing requirement for residential developments. As a result, developers have been approaching the owners of industrially-zoned land and offering more than twice as much per square foot than the land is worth at its current zoning. The mayor campaigned for building market-rate housing units to accommodate several thousand new middle and upper class residents, and several large and desirable land parcels were sold to residential developers to build thousands of units of luxury housing in poor neighborhoods. No developer proposed building affordable housing units or offered jobs at living wages to local residents.

It was in this context that two community benefits campaigns were conducted in Bay City, California between 2003 and 2006. One campaign, the Legacy Project Coalition, targeted a

1,500 unit project slated to destroy an important historic and cultural building in a low-income African-American neighborhood. The other campaign, the Waterfront Project Coalition, was organized around a 3,000 unit project that was slated to be built on one of the few remaining waterfront sites in Bay City. The design of the development would have cut off access to parks and open space for several multi-racial and multi-ethnic low-income neighborhoods.

Community activists from both campaigns, who were shut out of the early stages of the planning process, attempted to intervene to ensure that the development plans would serve at least some of the low-income and working-class residents living around the development sites. While community groups wanted a seat at the table, it is important to note that neither of the development projects examined in this paper was a “locally unwanted land use” (or LULU),¹³ and the campaigns that developed were not driven by NIMBYism.¹⁴ While there were some dissenters in the environmental community who preferred different uses at the sites, nearly all of the campaign’s supporters and opponents supported the development projects in principle.

The main source of disagreement between the City and the community groups was over whether, and what kind of, community benefits Bay City leaders should extract from developers before approving the projects. At the beginning of the process, the only benefits to residents in the plans were subsidized by the City. And, even then, the mayor and city council were reluctant to place conditions on the subsidies. The Bay City campaigns are interesting because they provide two separate examples of how, in a development and governance context, social

¹³ A LULU is typically a type of land use that abutting residents and community members believe will be harmful to their health, endanger their safety, or lower their property values. In the case of both projects, the opposite was true in each instance.

¹⁴ This is an important problem in planning theory. Many scholars conflate activism with NIMBYism, at least implicitly. Since NIMBYism is considered a bad thing, planning scholars have theories of activism that essentially define it derogatively. Activists are also characterized as no-growth; in the case of community benefits activism this is not true at all. Although labeling community benefits activists as no-growth could be viewed as deliberate misrepresentation, it is probably more accurate to view it as a disconnect between the experiences of many planning scholars and what is happening on the ground in current disputes over urban development projects. This disconnect has problematized much recent theorizing in planning, particularly the dominant school of communicative planning theory. That said, there has been a tradition in planning theory to incorporate activism, in different degrees, from the schools of advocacy planning, equity planning, radical planning, and transactive planning. Each of these schools of thought has proved fleeting in the academy.

movements can force developers to concede to activists a seat at the table, which allows them to work in collaboration with the project sponsors and decision-makers. Of course, the Bay City campaigns also demonstrate that, in a contentious campaign, there may be little chance for actual collaboration.

While municipal planning processes are often little more than procedural tools used to create some predictability for developers and to co-opt and silence dissent, most planning processes offer intervention points through which outcome-oriented movements may intervene in the process. The next section examines how the two Bay City campaigns introduced above employed different strategies for intervention.

How Movements Utilize Planners and Planning Data and Analysis to Intervene in the Procedure Fix

The two Bay City campaigns examined here both made conscious efforts to utilize city planners and their expertise. I was part of a team of planners and researchers who supported the Legacy Project Coalition's legal strategy and the Waterfront Project Coalition's political strategy. The Legacy Project's legal strategy sought to rebut the arguments of the developers by asking allies with planning expertise to make their case in a form suitable for litigation purposes. In the Waterfront Project, planners were utilized to help craft and support the coalition's alternative development plan and anticipate, as well as rebut, the arguments of the developers and their supporters in the urban growth machine. The campaigns, which utilized both legal and political strategies, offer two different examples of how community movements can strategically use planning processes to further their equity agendas at the urban scale.

Procedural interventions were important for each campaign in different ways. While there were some differences in the goals of the two campaigns — toxics issues were more important in the Legacy Project campaign while job training programs for non-English speaking immigrants were more important in the Waterfront Project campaign — both coalitions were interested in securing affordable housing and jobs. Nonetheless, the two coalitions had divergent objectives and, thus, different strategies. The objective of the Waterfront Project Coalition was the negotiation of a CBA with the developer. The objective of the Legacy Project Coalition was less firmly articulated and focused more on broad progressive principles about equitable development, but did call for a CBA.

Both campaigns had a legal strategy, since litigation is a proven intervention to force compromise. Litigation is costly for developers (as well as for community groups¹⁵). It represents unpredictable costs in terms of attorneys' fees as well as lost time in construction and consequently in delivering the product to market on time. The longer litigation takes, the more likely it is that investors will pull out of a project. This provides an incentive for developers to settle litigation as soon as possible. Therefore, while litigation can provide an important leverage point for community activists to utilize to force a developer to make concessions, it is a risky tactic for community activists.

Litigation is by definition an adversarial process. It does not build relationships and trust as much as it creates animosity. It also requires a significant investment in legal resources on behalf of the community. To prepare for litigation, community activists must make sure they “save” their rights by doing such things as making sure they properly appeal decisions at every step of the way, filing comments that articulate future causes of action, and filing suit properly

¹⁵ While developers often publicly lament the cost of litigation, they are almost always in a better position to afford those costs than community groups.

and timely. Few lawyers will take on such expensive cases for free. The estimate given to the Waterfront Project Coalition by its attorneys for litigating the Environmental Impact Report was about \$40,000. The Coalition had already invested about \$10,000 in legal advice prior to this estimate. A final problem for community activists is that litigation is typically unsuccessful and — depending on the cause of action¹⁶ — construction can continue while litigation proceeds.¹⁷

In order to understand how each campaign employed the particular strategies examined in this paper, it is necessary to understand how the Bay City planning process works. While there is not always a single process for all proposals, Bay City usually follows a predictable timeline of events. By the time that the Waterfront Project was seeking development approvals, the City had adopted a “package” approach. As part of this approach, developers must go through the planning process *twice*: the first time for information and feedback, the second time for approval. This process helps to ensure that planning staff are not “surprised” by direction from City Council at the last minute (this happened during the Legacy Project entitlement process), and it furthers the goals of the procedural fix by providing so many opportunities for public input that the argument that the City considered public comment would be “unimpeachable.” It appears that the Bay City Planning Department adopted the package approach in order to control public input and make the process predictable for themselves and developers.

¹⁶ In California, the best option for litigation is often through the California Environmental Quality Act (“CEQA”) process, and it involves a challenge to the adequacy of either an Environmental Impact Report (“EIR”) or a Negative Declaration of Significant Impact (“Neg. Dec.”).

¹⁷ Typically in California, construction can proceed during litigation over an EIR, but this represents another level of risk for the developer should a court hand down an adverse ruling.

Using Data to Support the Legacy Project Coalition’s Community Benefits Campaign: Describing the “Winners” and “Losers” of Urban Development Planning

A brief introduction to the nature of each development project will enable us to better understand how each campaign employed data from planning expertise in their campaigns. The Legacy Project design included separate mixed-use developments within the Project site by individual Project Sponsors. The development consisted of residential, live-work and retail uses, along with non-retail commercial space. The project was intended to be five separate developments that were coordinated.

The development was complex as it planned to provide over a thousand units of market-rate housing on a culturally important site in a poor African-American neighborhood known as West Bay City. The Legacy Project Coalition¹⁸ mobilized to demand that the development be responsive to the needs of the surrounding community, including the need for affordable housing. The stated strategy of the Coalition was to force the developer to negotiate a community benefits agreement (CBA). This strategy required finding leverage points in the process, such as making comments and credible threats to sue over the EIR, organizing community members to lobby public officials both privately and in public hearings, and crafting and presenting an alternative plan. These components required data and planning support. To this end, a “Data Book” was created by planner allies of the Coalition to serve as a basis to dispute the assertions of the development and to support the alternative vision set out by the Coalition, which would then be used to support the legal arguments made by the lawyers.

¹⁸ Each coalition named itself after the project to signal its strategy of targeting that specific project. This might be confusing to the reader, but it is how they referred to themselves. So, the Waterfront Project Coalition organized around the Waterfront Project and the Legacy Project Coalition organized around the Legacy Project.

The Legacy Project Coalition consisted of labor, community, environmental, and housing advocates. The campaign's legal strategy consisted of three elements:

1. Research to support legal arguments: Research was developed to support the legal arguments made in official comments to the environmental impact report. Little research was devoted to crafting an alternative plan or to engage a debate over project specifics.
2. Efforts to organize community support around broad principles: Using arguments about housing and jobs at higher levels of abstraction, efforts were made to organize the community around principles rather than a plan. The organized community members provided public support to the litigation preparation.
3. Preparation for Litigation: Resources and time were expended to secure the litigation rights of the Coalition over different aspects of the project, but especially to ensure the sufficiency of environmental impact report.

It is important to note here that planning expertise was essential for the legal prong, but not so much for the organizing prong. The organizing prong was predicated on an effort to organize around progressive principles at a high level of abstraction and did not attempt to engage the community in creating an alternative development plan that could be implemented. As a result, planning expertise was not very helpful to those focused on organizing the community, although it was certainly not unimportant. Two different areas of planning and research support were necessary for the legal strategy. One was to craft formal comments on the Environmental Impact Report. The other, which is discussed below, was to rebut the arguments of the City about the socio-economic impacts of the project. Data played a key role in the campaign, as the City Planning Director and the developer tried to blunt the Coalition's argument that the social and economic impacts of the Project should be studied and made public before proceeding with approving the development entitlements. The Coalition released a report

(the “Data Book”) that was intended to demonstrate that there was cause to conduct a social and economic impact study of the Project. The City responded by releasing a report arguing that there were no potential gentrification impacts of the Project (the “Corley Report”). The Corley Report was so poorly received that the City released a second report issued by a different consultant (the “Moody Report”) which conceded that there would be “losers” as a result of the Projects, which in turn forced the developer to include some affordable housing in the Project.

Early on, the City Planning Director made vague commitments to commission a social and economic impact statement — as long as the report was not part of the EIR, and thus not subject to litigation. However, the Director never followed through on her promise. The Coalition responded by commissioning planners to draft the Data Book to support its efforts to lobby for a social and economic impact study of the Project, particularly as it related to gentrification. This, in turn, was part of the legal strategy designed to force the developer and City into negotiations by arguing that the environmental impact report was insufficient.¹⁹ The Data Book itself was inspired by: (1) two studies on gentrification published by planners at the local university; (2) the work of community GIS collaboration, which was coordinated by one of the planner authors of the gentrification studies; and (3) repeated calls for social and economic impact assessments of development projects by community activists and professionals.

The City and the developer decided to address these concerns when it released the Draft Environmental Impact Report on the project. The Report included a study (the “Corley Report”) that explained that West Bay City residents were in no danger of gentrification through market forces because the housing low-income families lived in was protected by a number of regulatory devices. The report was not only methodologically facile, its conclusions were not credible even

¹⁹ At this time, the EIR had not been released, but it was widely understood by the parties involved that the City would not include social and economic impacts in it.

to a lay audience. The Corley Report was the City Planning Department's and developer's effort to undercut the affordable housing demands of the Coalition.

The Corley report created community uproar. In addition, it highlighted inconsistencies in the rhetoric of the City Planning Director. Specifically, the report highlighted the fact that the Director had previously made statements supporting the social and economic impact reports, even though she opposed them as part of the environmental impact report. Coalition members applied pressure to the City Planning Director by reminding her that she had on several occasions agreed to support a social and economic impact report. While the City Planning Director was clear that she did not believe such a report or analysis was required under the California Environmental Quality Act ("CEQA"), she was on record supporting a report outside of that process. The Coalition's rebuttal to the Corley Report, which was supported by the Data Book, also demonstrated that the Corley Report was flawed and was perhaps backfiring on the City and the developers. As a result, the City decided to produce the Moody report, which conceded the need for affordable housing in West Bay City.

At the Planning Commission meeting, the developers finally presented a plan to incorporate affordable housing into the development. Coalition organizers thought the offer inadequate and still pushed for the developer to do more. Nonetheless, by utilizing planners to support their arguments, the Coalition had made the case for affordable housing.

Using Data to Support Community Benefits Organizing at the Waterfront Project Site: Engaging and Adjusting the Subsidy Debate

The Waterfront Project provides an excellent example of the significant role that subsidies can play in urban redevelopment planning. The Waterfront Project developer continually refused to accept subsidies and then argued that because he was not relying on

subsidies, the project did not have to include any community benefits. While the developer approached a foundation-sponsored smart growth investment fund about financing, he backed away once the fund's managers initiated a discussion about incorporating equitable development principles into the project. The developer then suggested that the Bay City Redevelopment Agency provide the project with \$50 million of financing either directly or through tax increment financing rebates. However, when the City began to talk about inclusionary affordable housing, the developer decided against this path. Finally, the developer announced that the project would receive no public subsidies. He argued, and many City officials publicly agreed, that the lack of subsidies meant that the public had no right to expect any direct benefits from the project. Community activists and local residents, however, were not persuaded.

The discussions about subsidies were centered around direct money payments from public sources to private developers. This way of looking at subsidies privileges developers who can afford to reject direct money payments during the development entitlement process and ignores the other myriad ways in which public resources are used to facilitate private development.

The Waterfront Project is a prototypical example of city agencies selling off public land to private interests for uses not envisioned by public plans. In the case of the Waterfront Project, the land was first sold by the Port to the developer with little public notice and no public input. The land was then sold to the developer at a discount that the Waterfront Project Coalition calculated at between \$30 and \$60 million. The appraisal of the site was based on a development proposal half as dense as the one the developer subsequently announced he would build. In addition, the land itself was not zoned for the high density residential uses envisioned by the developer. A public planning process that was recently completed had earmarked the waterfront

land for open space and recreational uses accessible by the public. The new project required discarding this plan in favor of the developer's project.

The goal of the Waterfront Project Coalition was to force the developer to negotiate a binding and enforceable community benefits agreement. In contrast to the Legacy Project Coalition, the Waterfront Project Coalition wanted to create a negotiating relationship with the developer. The Coalition considered the goal of cooperation and negotiation to be almost as important as what was negotiated. To accomplish this goal the Waterfront Project Coalition developed a strategy, which is outlined below.

1. Proposal development and research: Develop a feasible proposal with which to begin negotiations and develop plausible arguments about public assistance to the project;
2. Resident engagement and broad community support: Build a base of support in the neighborhoods, the broader Flatlands neighborhoods, and City-wide through public action, media campaigns, relationship building with different institutional interests.
3. Winning support from decision-makers: Consolidate as much support as possible for the Coalition from City Council, Port and public officials.

The first prong of the strategy, concerning proposal development and research, clearly incorporated planning expertise. The Waterfront Project Coalition recognized that planning expertise would be essential for supporting the other two political prongs of the strategy – persuading decision-makers and organizing a power base. In this context, the sole focus of the legal strategy was to support the political strategy, rather than complement it. One important reason for this is the time, attention, and money that are required to prioritize a legal strategy. Another is the potential conflicts between a political strategy and a legal strategy. For instance, lawyers in the Waterfront Project Coalition advised the filing of a formal Comment Letter on the

EIR in order to save the litigation rights of the Coalition should such a course of action become necessary. At this time, the Coalition was negotiating with the developer and the sense of the negotiating team was that filing a Comment Letter — which would be viewed as a public declaration of an intention to sue — would alienate the developer, who would then terminate negotiations. If the campaign chose to employ a legal strategy it would be essential to file a Comment Letter. If the campaign chose to adopt a political strategy — as was the case here — legal tactics would have to serve, not disrupt, negotiations. The Waterfront Project Coalition did not submit a Comment Letter.²⁰

The Waterfront Project Coalition first used planning expertise and data to address the first major obstacle to the campaign, the disclosure around subsidies. With the developer refusing to accept any direct money payments to subsidize the project, Coalition organizers were faced with repeated dismissals from city officials and statements that the developer had no obligation to the community. However, the Coalition engaged planning expertise to challenge the assertion that there was no subsidy in this project. This argument hinged on a definition of “subsidy,” but required data and analysis to support it.

The first argument that the Coalition made was that the price of the land was reduced below market rate, thus creating a discount which is a subsidy. For the developer and City Planning officials, there was no dispute over the value of the land. An independent appraiser had appraised the value of the land and the sale price was what he recommended. However, upon

²⁰ Although no Letter was submitted, one was drafted. The decision to not file a Comment Letter was a difficult one as no one could be sure that the developer was being sincere in negotiations. Some coalition members feared that once the time to file a Comment Letter had elapsed, the developer would break off negotiations. The Coalition made no commitments not to file the Comment Letter in hopes it would pressure the developer to make some commitments. The developer made verbal commitments to continue negotiations, but refused to put them in writing, making the withholding of the Comment Letter a test of trust. The Letter was not, in the end, filed and the developer continued negotiations (but only after a period of hesitation). Two other factors may have contributed to the withholding of the Letter. First, the Coalition did not have the money to litigate (although a number of leaders thought they could find it if necessary). Second, some planning and legal advisors thought that the Coalition’s litigation rights were indeed saved because of oral testimony at a public hearing. In the end, concern over disrupting negotiations trumped legal advice.

reading the appraisal, Coalition planners discovered that the appraisal was for a development half as dense as the one being proposed to be built. When Coalition planners used the appraiser's method on a project of the size the developer was (now) proposing before the City, a discount in the sale price of about \$30 million appeared. Other items were discovered concerning permitting and environmental remediation by a review of the purchasing documents, leading members of the Coalition to estimate that the discount the developer received from the City had the potential of being closer to \$60 million.

While Coalition planners made other arguments — such as that the rezoning of the property from industrial to residential was also a subsidy — it was the analysis of the appraisal and purchasing documents that convinced a number of City officials that the developer should, at the very least, sit down and negotiate with the Coalition. This pressure resulted in negotiations and agreements between developers and Coalition members on the Coalition's two main issues. While this was an important victory, the group was unable to secure a CBA. In the end, the developer was challenged on a number of fronts about whether his project, which was taking no direct subsidy, had community obligations.

Analysis: How Differing Strategies Utilize Planning Expertise

Although the stated goal of both campaigns was to negotiate a community benefits agreement with the developers, neither campaign was, in the end, successful in negotiating a community benefits agreement. Each campaign used data differently. In the Legacy Project Coalition, data was used to address the discourse of gentrification and make an argument for the legal strategy. Specifically, lawyers argued that the Draft Environmental Impact Report was

inadequate because it failed to consider certain impacts related to market-force displacement of residents. In the Waterfront Project Coalition, data was used to support the political strategy and to persuade decision-makers that hidden subsidies existed in this project and thus created the obligation by the developer to negotiate and “give something back” to the community.

The different strategies examined here resulted in different relationships with the developers. The Legacy Project Coalition based their strategy on interventions in the political process designed to save their litigation rights and strengthen their legal case, should such a need arise. However, this seemed to create or aggravate an adversarial situation in which the Coalition finally had little political capital to convince the developer to negotiate. The City and the developer publicly declared on several occasions that they expected a lawsuit from the Coalition unless its demands were met, and thus – regardless of whether it was a fair conclusion for them to reach – allowed them to somewhat boldly refuse to compromise. The Waterfront Project Coalition’s political strategy was explicitly designed to bring the developer to the table and negotiate a community benefits agreement. A legal strategy, which utilized interventions in the planning process, was consciously developed to support the political strategy. Waterfront Project Coalition members understood that they might need a stick to force the developer to the table should their political organizing fail to bring about agreement, but they always sought to frame the discussions as a win/win for the community and the developer. The campaign’s legal strategy consisted of hiring a lawyer to review documents and to prepare comments on the DEIR. As a result, the campaign used data not to support a legal claim, but to put political pressure on the developer to negotiate over subsidies and community benefits.

The story of these two campaigns sheds some light on how different strategies can have different consequences for how the planning expertise is used to negotiate the procedural fix.

Where a campaign employs a political strategy, planning expertise is useful in helping the campaign to articulate an alternative development plan that builds political support externally (with decision-makers) and internally (with coalition partners and their bases). Where a campaign employs a legal strategy, planning expertise is useful in helping the campaign to build a legal case against the developer, the city, or the redevelopment agency in order to pressure the opposition to concede community benefits rather than face expensive and time-consuming litigation.

These campaigns also highlight the fact that a legal strategy can undermine the broad community support needed to supply a sufficient amount of political capital needed to sustain an extended and expensive litigation campaign. Likewise, the focus on a political strategy can prevent a campaign from raising and committing the funds required to support carrying out the threat of litigation should it prove necessary. Also, the diplomatic choices of the political strategy may require the campaign to ignore a crucial legal step. Either strategy entails some risk, which is why both strategies were employed by both campaigns.

While there are many other complicating factors in both coalitions, such as the ideological hostility of the city to implementing equitable development principles, the role of labor, the internal organization and dynamics of the coalition, the absence of clear organizing precedents, the situatedness of the resident organizers, and the class of organizing models, which all deserve attention, the above discussion highlights that the type of strategy employed by a community benefits campaign will require certain tactics in engaging the procedural fix, and thus will require specific types of planning support.

Conclusion

Political devolution has forced debates over redistribution from the national to the urban scale. This paper has demonstrated that because capital operates through land development, this devolution has created a political opportunity structure for social movements to demand redistributive outcomes on the urban scale in the context of land development projects. It has argued that a series of reforms aimed at controlling the development approval and permitting process – which I refer to as the procedural fix – are really aimed at controlling debate and making the process more predictable for developers. It has also shown that convincing developers to compromise with social movements over particular development projects requires a negotiation of the procedural fix to win political support at certain intervention points, and that city planning expertise is helpful, if not necessary, for negotiating the procedural fix. Indeed, as the two case studies presented in this paper illustrate, despite the many problems and barriers imposed by the procedural fix, community campaigns that engage in thoughtful preparation and acquire city planning expertise or assistance have an opportunity to extract benefits from developers for their communities.

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