The Evolution of Public-Private Bargaining in Urban Development

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The urban development process today is typically characterized by intense study and discussion of a project's impact upon various aspects of society. In this article, the author chronicles the rise of the major actors involved in the urban development scene: developers, municipalities, and citizens. The actor's power bases and modes of interaction are sketched to illustrate their effect on the urban development process.

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Introduction

Once merely a matter of getting zone changes and abiding by a few basic rules, governmental approval of development has become a complicated game of bargaining in which cities and neighborhood groups have become "civic entrepreneurs," and developers, as Donald G. Hagman put it shortly before his death, have become "community financiers."[1]

This method of development is radically different from past methods—indeed, the opposite of traditional zoning practice—in that it is often project-specific and less bound by legal constraints than traditional land-use regulation.[2] As a result, the outcomes for both the developer and the community have become less predictable.

This bargaining process has come about as a result of a variety of pressures placed on the land-use regulation system over the past twenty or so years. But all these pressures are traceable to three related developments:

(1) A growing understanding that development has external effects and, largely through the environmental impact process, a growing ability to identify, measure and deal with those effects on a case-by-case basis.

(2) The rise of what might be called "citizen power"—environmental, consumer, and neighborhood groups which have forced the creation of such tools as the environmental impact statement and have subsequently used them to wield great power over development, even when the groups are small and have relatively little money. The undeniable success of citizen power has brought citizen groups to the bargaining table and made developers (and cities) more willing to deal with them.

(3) The growing reluctance of political jurisdictions to shoulder the external costs of private development, leading them to push the burden onto the developer. This practice has been far more common in developing suburban communities than in the older cities, and in California its growth has been greatly hastened along by the passage of Proposition 13.

But how have these three trends converged to create today's atmosphere of bargaining? Would certain basic ground rules or procedures help make the development process more predictable for the developer and still achieve the goals of the communities and citizens groups that engage in bargaining these days? To begin to find the answers to these questions, we must examine how bargaining over land use has evolved in the United States over the past sixty years.

The Inflexibility of Traditional American Zoning

Terms like "bargaining" and "flexibility" have been dirty words since the beginning of land use regulation in America. In fact, zoning was introduced to *reduce* flexibility and protect property owners in high-class commercial areas and affluent neighborhoods from the encroachment of undesirable land

uses.[3] Because the courts concluded that zoning was derived from the police power of the state, it could not be applied arbitrarily, and uniformity in its application—subjecting all property owners in a particular zone to the same standards—was needed to resist legal attacks on grounds that the municipality was arbitrarily contracting away its police power.[4] Good-government reformers also wanted to eliminate flexibility in zoning to discourage corruption—a fear that proved justified over the years.[5]

From the beginning, of course, flexibility did exist in zoning, and was used—often by affluent suburban enclaves to keep out undesirable additions to their communities, and often by corrupt urban politicians to reward their friends and supporters. The variance was suggested by the federal 1923 Standard State Zoning Enabling Act, which intended it to be used in hardship cases. But in practice, according to Richard Babcock, it was used "to grant and deny favors" to particular developers.[6] After World War II, the special permit was added to many zoning systems, and many communities took advantage of this additional discretion by using it to keep out such "undesirable" uses as motels and glue works. This widespread misuse of the special permit prompted one prominent planning lawyer, Walter Blucher, to ask in the '50s whether zoning was "increasingly becoming the rule of man rather than the rule of law."[7]

Despite the successful use of variances and special permits for exclusionary or corrupt purposes, the zoning system remained in principle an inflexible guide to development, designed to encourage good city planning through general land use decisions made in advance and discourage local officials from assessing development projects on a case-by-case basis. According to Professor Jan Z. Krasnowiecki, this method of zoning, which began with the federal enabling legislation of the '20s, left "a legacy of rigidity: a system designed to prevent change rather than to encourage it—a static, end-state concept of land use control."[8]

The Will to Bargain: Citizens

With the exception of the wealthy and powerful residents of exclusive suburban communities and the organized downtown business interests that dominated local politics in most communities, up until the 1960s citizen groups had little direct effect on a community's development decisions. In the '60s, however, the growth of the modern environmental movement helped lay the groundwork for two important developments that led to the bargaining process we see today: the willingness to deal with project-specific effects of development, and the rise of citizen groups powerful enough to take a seat at the bargaining table.

zoning history

"There is a new mood in America," the Rockefeller Brothers Fund Task Force on Land Use and Urban Growth reported in 1973:

> Increasingly, citizens are asking what urban growth will add to the quality of their lives. They are questioning the way relatively unconstrained, piecemeal urbanization is changing their communities and are rebelling against the traditional processes of government and the marketplace which, they believe, have inadequately guided development in the past. They are measuring new development proposals by the extent to which environmental criteria are satisfied—by what new housing or business will generate in terms of additional traffic, pollution of air and water, erosion, and scenic disturbance.[9]

misuse of power

The environmentalists of the late '60s were remarkably successful in a short period of time, perhaps because development of all kinds was coming so quickly. In questioning the true cost of growth for the first time, the new environmental movement was able to force passage of the National Environmental Policy Act of 1969 and, subsequently, similar laws at the state and local levels. "Arming themselves with technical experts, citizens used public hearings, the media, and the courts to exert pressure on government to deny approvals for controversial projects," wrote planning consultant Malcolm Rivkin.[10] Almost overnight, groups of ordinary citizens acquired power to stop developments cold.

true growth costs

Just as important, however, was the fact that the new environmental laws acknowledged that each land-use case is different because each development project's "external effects"—its impact on neighbors and on the municipality in which it is located—are different. The environmental impact statement was the crucial tool in this regard. Unlike zoning, it was not a set of development limitations intended to ensure that all pieces of property dedicated to similar uses were treated the same. Quite the opposite—it was a *procedure*, designed to assure that each piece of land's *differences* were taken into account. The environmental impact process lends itself to discretion and performance standards. The EIS, Malcolm Rivkin wrote,

forces the developer to think through the impact of a project on natural conditions and community patterns, to pay explicit attention to alternative solutions, and to evaluate methods to mitigate adverse consequences. The public can comment—and does. The reviewer, lacking prescribed standards against which to measure much of the information submitted, can exercise considerable discretion reaching final judgments and setting performance standards (e.g., protecting water supply and sensitive land and water features, or preventing a drain on community services). Options and modifications are possible on matters ranging from density to storm-water management. Thus, the EIS can provide a legitimate framework for discussion, for establishing trade-offs and conditions—in short, for negotiation.[11]

acquiring influence

Environmentalists were not the only citizens gaining power in the '60s and early '70s. Poor urban residents, feeling threatened by larger forces in society, flexed their muscles too, gaining power and respect and, hence, a place at the bargaining table.

Perhaps the seminal figure in this drive to organize the urban poor was Saul Alinsky, a blunt-spoken organizer from Chicago who gained wide acclaim for spearheading The Woodlawn Organization's successful stand against the University of Chicago's expansion plans in 1960, and who subsequently trained a whole new generation of organizers through his Industrial Areas Foundation.[12] While Alinsky was showing slum neighborhoods the nuts-and-bolts of how to gain power through confrontation, the federal urban renewal program of the '50s and '60s tore their neighborhoods apart, giving them urgent reason to organize. Later, a wave of federal programs—most notably Community Action and Model Cities—were structured to require more citizen participation, thus encouraging the urban poor to acquire more power.[13]

controlling sprawl

The environmentalists and the urban organizers were part of a larger trend toward the successful use of citizen power against society's large institutions, public and private. Both the environmental movement and the rise of urban activists forced onto the land-use agenda the social and environmental costs of development that zoning has never addressed, and both used conflict and confrontation to acquire enough power to sit at the bargaining table.

The Will to Bargain: Municipalities

While the "country" and the "city" were awakening, the suburbs—where local jurisdictions have traditionally been the most effective controllers of land use—also were coming to see that development exacted a cost traditional zoning did not begin to address. Whereas the EIS addressed the environmental and social costs of new development, suburban communities began to feel the fiscal cost of sprawl.

In the late '60s and early '70s, the suburbs were continuing to grow at an almost frightening pace. In fact, 1973 was the high-water mark in American history for housing starts.[14] Many planners of the time sought to eliminate sprawl through such methods as planned unit and clustered development.[15] In addition, a large number of suburban communities began trying to guide, control, or simply limit growth by setting up growth quotas, rating systems for potential developments, or restrictions on development according to the availability of such public services as water and sewer lines.[16]

Most communities, however, just wanted to make sure the cost of capital improvements made necessary by sprawl got passed on to somebody else—namely, the new residents. Through their subdivision regulations, suburban municipalities began requiring the developer or the new residents to pick up the cost of such necessary improvements as roads, water and sewer lines, drainage ways, and street lights. In some cases developers would be re-

quired to build and dedicate these facilities to the municipality; in other cases, special assessment districts were created to shield other residents from the taxes needed to provide them.[17]

In the '60s, as growth became more rapid, many communities began requiring that new developments set aside land or in lieu fees for parks and schools.[18]

By 1970, this system of capital financing had been refined further, and suburbs had begun requiring "impact" or "development fees." These fees, based on the number of bedrooms or homes in a development, were used not only to provide services directly to the new subdivision, but also to provide for services *outside* the development which needed expansion because of the new residents.[19] Many states passed enabling legislation to authorize local governments to assess such fees.[20]

Impact fees were treated roughly in the courts at first—developers attacked them as being disguised taxes, takings, and unauthorized uses of police power.[21] Although courts still are not entirely in agreement on the matter of impact fees, a growing number of judicial decisions are upholding their validity so long as there is a "rational nexus"—a reasonably close relationship—between the development in question and the use of the fees.[22]

Suburban impact fees and exactions have contributed to an atmosphere conducive to bargaining by suggesting that a developer has an obligation to "internalize the externalities" of his project, and that this sort of internalization can be translated into dollars paid to the city.

In the '70s, dollars became critically important to both suburbs and cities. When the dull and gray municipal bond market was suddenly thrown into convulsions, municipalities had to search for innovative ways to finance capital improvements.[23] In California, a single event—the passage of 1978's Proposition 13, which drastically cut property taxes—had a dramatic effect on cities' attitudes toward new development by simultaneously cutting their main sources of revenue and virtually eliminating the tax benefits of new growth.[24] Thus, many communities began to expand the definition of "rational nexus" in an effort to get as much as they could out of a new development—the only potential source of expanded revenue they could see.[25]

And, by the late '70s, they were willing to bargain to get what they wanted. The federal Urban Development Action Grant cast cities in the role of entrepreneurs by rewarding aggressive municipalities for their attempts to capture private development. As the housing market grew competitive, local governments actually went into the development business to make sure housing was built.[26] Others became brokers who went beyond merely trying to attract growth. They aggressively sought development of the right type and in the right place.[27]

new approaches

Thus, cities were becoming "civic entrepreneurs"—dealmakers accustomed to sitting down at the table with private businessmen and hammering things out.

The Will to Bargain: Developers

Once citizen groups and communities saw the economic, social, and fiscal costs of growth and began trying to deal with it, the cost of development skyrocketed—in terms of both time and money.

Impact fees had reached the point at which, at least according to Hagman, they almost constituted a buy-in fee.[28] The environmental impact process was costing developers time and money even when it went smoothly. It gave citizen groups the power to challenge a project in court, sometimes on technicalities—a process which was bound to cost the developer far more time and far more money even if the challenge had no merit at all.

cost to developers

Furthermore, the passage of environmental laws created a host of government agencies, such as the federal Environmental Protection Agency and its state counterparts, with single-issue agendas. To developers used to working out a mutually acceptable project with a local general-purpose government, dealing with these agencies was a rude shock.

Nowhere did developers find a more frustrating series of events than in California, where growth had traditionally been encouraged. One environmental agency, the California Coastal Commission, had remarkable discretionary authority, and used it to force developers to deal with the external effects of development by mitigating or paying for them. The coastal commission, brought into being through a ballot initiative, sometimes required residential builders to include low-income housing in their beachfront developments; forced almost all landowners to provide public access to the coast in exchange for the smallest permit approvals; and in one case even required a shopping center developer to implement a series of transit improvements.[29]

environmental awareness

Furthermore, some prominent California developers who tried to assert a vested rights claim over

the coastal legislation "suffered a series of crushing rejections" from the courts.[30]

And after a time in California, as the cost of housing became the dominant local issue in the late '70s, even "general purpose" local governments began adopting the Coastal Commission's "inclusionary housing" demands, with varying degrees of success.[31]

use of the courts

Facing a high-cost environmental impact process, citizen groups that could tie their projects up in court indefinitely, hostile single-purpose agencies, and once-friendly local governments trying to extract as much from them as possible, developers were more than willing to bargain for development approvals just to keep their projects going forward.

Bargaining Begins: Environmental Disputes

Bargaining came first to environmental disputes. These disputes usually involved large projects such as power plants or oil refineries, and federal and state laws had given environmental groups tremendous power to impede or stop them. In addition, because of the project-specific nature of the legal process, environmental disputes lent themselves more easily to bargaining than land-use disputes did, and some industrial and utility executives seemed more willing to sit at the table, at least at first, than real estate developers.

In some cases, governmental bodies—mostly beyond the local level—tried to head off confrontation by creating a process that would bring developers in and talk about the chances of their project in advance. As early as 1973, New Jersey environmental officials set up the "preapplication conference" procedure, encouraging coastal developers to discuss their project's chances with regulators even before they apply for a permit.[32]

In many instances, however, the parties to an environmental dispute tried to set up a mediation process, often modeled after mediation in labor disputes. These environmental mediations met with varying degrees of success.

modeled on labor disputes

In New York, for example, the longstanding conflicts over a number of projects on the Hudson River were brought together and successfully mediated by former EPA Administrator Russell Train—but Train bowed out immediately after mediation, and the agreement was difficult to implement without him. In Maine, a dispute over a small-scale hydroelectric plant was resolved when the parties agreed to minimum and maximum lake levels, conditions that were incorporated into the plant's federal license. An argument over how to extend Interstate 90 across a lake into Seattle was extensively mediated, but environmentalists were dissatisfied with the outcome and subsequently sued.[33]

Mediation in this context turned out to be far more difficult than mediation in labor disputes, which involve only two parties and limited issues.[34] And environmental mediation is not necessarily a way to circumvent legal action. Because any party may still file a lawsuit after the mediation, chances for success are usually highest when then parties' legal options have already been played out.[35]

Nonetheless, mediation in environmental disputes did prove that multi-party negotiation over land use and development was possible and sometimes successful, and several groups sprang up that specialized in mediating environmental issues.

Bargaining Goes Urban

In the cities, however, bargaining to resolve development disputes met with more resistance. Though negotiation and bargaining over urban land uses is common in some other countries such as Japan (where a developer might show up at a neighbor's door with a gift),[36] in the U.S. there were considerable legal impediments to it, springing from the rigid land use laws developed earlier in this century. Nonetheless, beginning in the '70s, bargaining came to urban areas—often in deals directly between citizens and developers (with the municipality only peripherally involved) and often with an environmental basis.

An early example of successful development bargaining in a built-up area came in the case of the White Flint Mall near Washington, D.C. Previous attempts to build a shopping center in the area had been fruitless, and a zone change was required. The developer hired planning consultant Malcolm Rivkin to negotiate with the neighborhood group and try to work out "a development scheme acceptable to the residents yet economically feasible for the proponents."[37] Working together, the two sides drew up a special agreement, enforceable in court, that specified a number of details including a guarantee by the developer of an appraised market value on each home in the neighborhood.[38]

Soon enough, however, the Alinsky-style neighborhood activists—who did not necessarily think in environmental terms—saw that they too could bargain with developers and get something out of it.

In San Francisco, where housing is in short supply

but the office market has been booming, housing activists persuaded the city to adopt an informal city policy requiring office developers to provide or pay for housing.[39]

In that same city, as federal housing subsidy funds dried up in 1981, poverty workers in the low-income Tenderloin district managed to strike a deal with high-rise hotel developers to subsidize low-cost single resident occupancy hotels; in this case, however, the city's UDAG was used as the carrot.[40] Generally, developers grumbled but were willing to do it to take advantage of hot markets.

More formal bargaining procedures in urban situations were hampered somewhat by the inflexibility of land-use laws. A deal struck between a developer and neighborhood residents was more or less private, of course, but any sort of official deal with the city always opened up the question of contract zoning and even the still-unsettled legal question of impact fees.

such devices as inclusionary housing, redevelopment areas, and density bonuses.[42] One such authorization was California's development agreement legislation. This law, authorizing local governments and developers to enter into binding agreements on the conditions of development, grew, ironically, out of the California Coastal Commission's refusal to grant vested rights to a large developer which had expended some $3 million on site grading but had not obtained a building permit when the coastal initiative passed in 1972. Development agreements, strongly supported in the state Legislature by the development lobby, were intended to protect the vested rights of developers against future changes in land-use laws.[43]

effect of land use laws

Development agreements, which are enacted into ordinance by local governments, have not been widely used in California. But in Santa Monica a liberal city government used the development agreement process to require developers with fairly good,

In time, however, states began to allow more bargaining. Early in the '70s, Virginia, though traditionally hostile to land-use reform, passed a law allowing contract zoning and fast-growing Fairfax County, near Washington, D.C., used the law to make considerable demands on developers in exchange for permission to develop. By 1978, the General Assembly had amended Virginia's zoning law to allow for conditional zoning statewide. The "proffer" system, as it is now called, has become a routinized form of the zoning approval process in the state.[41]

In California, a number of state laws authorized local governments to bargain with developers, using

but by no means airtight, vested rights claims to make concessions to the city in exchange for permission to build in the face of a moratorium.

Beyond Bargaining

Bargaining, while providing flexibility that a rigid set of land-use rules cannot, is still a process rife with problems. Legal problems still exist. Negotiations among many parties – some unrepresented or even unborn – are complicated. And bargaining takes time. In Santa Monica, for example, the development agreement process became so time consuming that city officials discouraged developers from applying for them.[44]

time-consuming process

Because, in many instances, city, developer, and citizen group have come to be recognized as equals in the development process, there have been attempts to move beyond bargaining and back to rigid programs—only with vastly different ground rules.

ad hoc bargaining

Some cities have used the ad hoc bargaining process as a springboard to programmatic change. In San Francisco, the office-housing connection was passed into ordinance by the San Francisco Board of Supervisors. Under the program, downtown office developers pay $13.34 per square foot in fees for housing, transit, day care, and the arts.[45] In 1983, Boston adopted a "linkage" program, similar to San Francisco's office-housing program, that required downtown office developers to pay $5 per square foot over a 12-year period into a housing trust fund.[46]

Even Santa Monica adopted firm rules. After three years of negotiating with developers, the city council adopted a General Plan in 1984 requiring office developers to build housing and parks or pay an in-lieu fee of $2.25 per square foot for the first 15,000 square feet and $5 per square foot thereafter.[47]

performance zoning

And other cities have tried innovative land-use programs that try to get away from zoning. Ft. Collins, Colo., for example, uses a kind of "performance zoning" that does away with site-specific zoning, and, in addition, the city agreed with the local builders association on a set of mutually agreeable development fees.[48]

Such programmatic attempts, however, once again raise the question of rigidity. Will they be flexible enough to accommodate the differences in each piece of land, each development deal? Will they return us to an era of zoning-type inflexibility? Or, if they are general guidelines rather than specific "end state" plans, will they merely lead to more negotiation?

But there is a deeper question about negotiated development—one involving fairness. Take, for example, our attempts to "internalize the externalities," which lie at the heart of many of these negotiations. Are our methods good enough so that we can identify what all the externalities are and who they affect? Or will the only externalities identified be those affecting organized interests participating in the discussion?

a government of deals

Perhaps that is the most troubling question. Does negotiated development connote the very problem Walter Blucher warned us against thirty years ago—a government of deals, not laws? The outcome of negotiated development depends almost entirely on who the negotiators are. If one neighborhood is organized and another, also affected by the development, is not, it is likely that the second neighborhood will be left out of the final deal.

How, then, can we maintain the useful flexibility of bargaining in land use and development without degenerating into a free-for-all without rules? As experiments with bargaining—and with more flexible land-use programs—continue, that is the question we must seek to answer.□

NOTES

1. Donald G. Hagman, "The Developer or Landowner as Community Financier," unpublished paper dated April 15, 1982.
2. John J. Kirlin and Anne M. Kirlin, *Public Choices—Private Resources: Financing Capital Infrastructure for California's Growth Through Public-Private Bargaining* (Sacramento, Calif.: California Tax Foundation, 1982), p. ii.
3. Seymour I. Toll, *Zoned American* (New York: Grossman Publishers, 1969), Chapters 5-6; Richard Babcock, *The Zoning Game* (Madison, Wis.: The University of Wisconsin Press, 1966), p. 4.
4. Douglas W. Kmiec, "Deregulating Land Use: An Alternative Free Enterprise Development System," 130 *University of Pennsylvania Law Review* 28 (1981), p. 100; Bruce M. Kramer, "Development Agreements: To What Extent Are They Enforceable?", *Real Estate Law Journal* 10:3 (1981), pp. 31-37.
5. Kmiec, "Deregulating Land Use," *op. cit.*, p. 99-100.
6. Babcock, *The Zoning Game, op. cit.*, p. 7.
7. *Ibid.*, pp. 7-8.
8. Jan S. Krasnowiecki, "Abolish Zoning," 31 *Syracuse Law Review* 719 (1980), p. 727.
9. William K. Reilly, ed., *The Use of Land: A Citizens' Policy Guide to Urban Growth* (New York: Thomas Y. Crowell Co., 1973), p. 33.
10. Malcolm D. Rivkin, *Negotiated Development: A Breakthrough in Environmental Controversies* (Washington, D.C.: The Conservation Foundation, 1977), p. 2.
11. *Ibid.*, p. 7.
12. See, for example, Charles E. Silberman, *Crisis in Black and White* (New York: Random House, 1964), pp. 318-350.
13. See, for example, Peter Marris and Martin Rein, *Dilemmas of Social Reform: Poverty and Community Action in the United States* (New York: Atherton Press, 1967).
14. "Grassroots Hearings on the Economy," Part 3, House Committee on Banking, Housing, and Urban Affairs, December 4, 1981 (Atlanta, Ga.), and December 7, 1981 (Providence, R.I.), pp. 143-44.
15. Rivkin, *Negotiated Development, op. cit.*, pp. 4-5.

16. See, for example, David R. Godschalk, David J. Brower, Larry D. McBennett, and Barbara A. Vestal. *Constitutional Issues of Growth Management* (Chicago: The ASPO Press, 1977).
17. Hagman, "The Developer or Landowner as Community Financier," *op. cit.*, pp. 1-4.
18. Julian Conrad Juergensmeyer and Robert Mason Blake, "Impact Fees: An Answer to Local Governments' Capital Funding Dilemma," 9 *Florida State University Law Review* 415 (Summer 1981), p. 418.
19. *Ibid.*, pp. 418-420.
20. Jay Sheen, "Development Fees: Standards to Determine Their Reasonableness," *Utah Law Review* 549 (1982), pp. 556-559.
21. *Ibid.*; Juergensmeyer and Blake, "Impact Fees," *op. cit.*, pp. 418-420.
22. Hagman, "The Developer or Landowner as Community Financier," *op. cit.*; Susan R. Diamond, "The San Francisco Office/Housing Program: Social Policy Underwritten by Private Enterprise," 7 *Harvard Environmental Law Review* 449-486 (1983).
23. See, for example, John Matzer Jr., ed., *Capital Financing Strategies for Local Governments* (Washington, D.C.: International City Management Association, 1983).
24. According to one survey, in the first fiscal year after Proposition 13 passed, between 26 and 48 percent of California jurisdictions increased various land-use related fees. Jeffrey I. Chapman, *Proposition 13 and Land Use* (Lexington, Mass.: Lexington Books, 1981), pp. 108-109.
25. Diamond, "The San Francisco Office/Housing Program," *op. cit.*, pp. 470-474.
26. For example, Montgomery County, Md., in suburban Washington, D.C., where home prices are high, county officials have, in addition to inclusionary housing and other techniques, issued tax-exempt bonds to finance low-interest mortgages, particularly for the county's own employees. See William A. Witte, Mary K. Nenno, and Paul C. Brophy, "Profiles of Innovative Housing Administration," in Mary K. Nenno and Paul C. Brophy, eds., *Housing and Local Governments* (Washington, D.C.: International City Management Association, 1983).
27. See, for example, "Negotiating Business Development: The Manager as a Broker in Land Development," 34 *Municipal Innovations* (Summer 1981), a description of the aggressive efforts of Mercer County, Wash., to bring an office building to its downtown area.
28. Hagman, "The Developer or Landowner as Community Financier," *op. cit.*, p. 1.
29. Robert G. Healy, "An Economic Interpretation of the California Coastal Commissions," in Robert G. Healy, ed., *Protecting the Golden Shore: Lessons from the California Coastal Commissions* (Washington, D.C.: The Conservation Foundation, 1978), pp. 145-150.
30. Hagman, "Development Agreements," *op. cit.*, p. 66.
31. Seymour I. Schwartz and Robert A. Johnston with Dallas Burtraw, *Local Government Initiatives for Affordable Housing: An Evaluation of Inclusionary Housing Programs in California.* Environmental Quality Series No. 35, Institute of Government Affairs and Institute of Ecology, Kellogg Public Service Research Program, University of California, Davis (December 1981).
32. David N. Kinsey, "The Coastal Development Review Process in New Jersey: Avoiding Disputes and Resolving Conflicts," *Environmental Comment* (May 1977), pp. 19-20; also Rivkin, *Negotiated Development*, *op. cit.*, pp. 14-19.
33. Allan K. Talbot, *Settling Things: Six Case Studies in Environmental Mediation* (Washington, D.C.: The Conservation Foundation and The Ford Foundation, 1983).
34. Lawrence Susskind and Connie Ozawa, "Mediated Negotiation in the Public Sector: Mediator Accountability and the Public Interest Problem," unpublished, undated paper.
35. Talbot, *Settling Things*, *op. cit.*, pp. 97-98.
36. Fred P. Bosselman, "Buying off the Neighbors: Negotiated Private Settlements in Japan," *Environmental Comment* (May 1977), pp. 12-13.
37. Rivkin, *Negotiated Development*, *op. cit.*, p. 9.
38. *Ibid.*, pp. 10-12.
39. Diamond, "The San Francisco Office/Housing Program," *op. cit.* Other cities, including Boston and New York, have begun to follow San Francisco's lead. See Joel Werth, "Tapping Developers," *Planning* (January 1984), p. 21-23.
40. Bill Fulton, " 'Frisco Hotel Builders Settle With Tenderloin," *The Washington Star*, July 19, 1981, p. E-1.
41. Nancy H. Lieberman, "Contract Zoning and Conditional Rezoning: A Judicial and Legislative Review," *Urban Land* (November 1981), p. 10. Developer opposition mounted as time went on and Fairfax County tried to exact more conditions. Nadine Huff, "Negotiating Rezoning Conditions in Fairfax County, Virginia," *Urban Land* (November 1981), p. 13.
42. Kirlin and Kirlin, *Public Choices—Private Resources*, *op. cit.*, p. 15.
43. For a complete description of the history of the development agreement legislation, see William G. Holliman Jr., "Development Agreements and Vested Rights in California," 13 *Urban Lawyer* 44-64 (1981).
44. Mark Fabian, "SM Thaws Staff 'Freeze' on Development Pacts," *Evening Outlook* (Santa Monica, Calif.), Sept. 21, 1983, p. 1.
45. Remarks by George Williams, Assistant Director, San Francisco City Planning Department, Seventh International Conference on Urban Design, Chicago, October 24, 1985.
46. Remarks by Susan Allen, Deputy Director, Boston Redevelopment Authority, Seventh International Conference on Urban Design, Chicago, October 24, 1985.
47. City of Santa Monica, "Final Adopted Land Use and Circulation Elements," October 23, 1984, p. 151.
48. "Reforming Local Development Regulations: Approaches in Five Cities," 35 *Municipal Innovations* (Spring 1982).