

Public/Private Partnerships 101: Managing Public/Private Development Projects

by David Prowler

I'd like to share some of the lessons about the management and negotiation of public/private partnerships that I've learned over the past two decades. These are lessons I've learned by experience, directing the development of the City of San Francisco's project to retrofit unreinforced masonry (brick) buildings, and representing the Mayor in the Mission Bay and Pacific Bell Ballpark projects. I won't be writing about public policy or politics or very much about the entitlement process. Rather, I'll use these efforts—my experience representing the public at Mission Bay in particular—to illustrate points about project management and negotiation.

Each of these projects began in great controversy and ended with unanimous public approvals. I'd like to take credit for the successful conclusions, but more than anything, it was a confluence of economic factors and political leadership that led to the successful results.

MISSION BAY

Mission Bay is a 303-acre site a long walk south of the Financial District, bounded by the bay, Highway 280, Townsend Street and the Caltrain commuter train tracks on the north and Mariposa Street on the south. The site is fill, and at one time Mission Creek ran through the site all the way to Mission Dolores. Catellus Development Corporation, the offspring of Southern Pacific and Santa Fe Railroads, owned about two-thirds of the acreage, with the remainder held by the city as streets and by Esprit de Corps clothing company and the Cambay Group. Four previous development schemes had come and gone prior to the Brown administration, distinguished by such features as

highrise office towers and canals. The most recent plan had been approved by the city in 1991 and was quite likely dead on arrival. Catellus had paid an enormous price in exactions for what they thought they needed in certainty. In retrospect, what they needed more than certainty was flexibility. They committed to housing and childcare payments, affordable housing site donations and off-site low income housing fees, a job training program, and the posting of a \$30 million "financial assurance"—"equivalent in liquidity and value to cash" prior to any exploration for toxics in the soil.

- developer and tax increments
 - Almost 50 acres of new parks
 - A new 43-acre research campus for University of California's medical school
 - 900,000 square feet of retail space
 - 6,000,000 square feet of new commercial space—a mix of office, research and development, and multimedia uses
 - A 500 room hotel, new police and fire station, and public school
 - Virtually all new infrastructure—streets, sewers, lighting, trees, etc.
- The approval process was arduous, with hearings and actions by seven

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At that time, it proved impossible to obtain such a commitment. In addition, they were to be permitted only to develop market rate housing as non-profits built affordable housing, but no subsidy source for the affordable housing was identified.

Catellus notified the Mayor's Office of their wish to terminate the development agreement because it was infeasible to build. A combination of new players (in the Mayor's Office and at Catellus), a revived local real estate market, a wave of residential developments headed toward Mission Bay, and a new public attitude toward development led Catellus back with a new proposal.

- The proposal contained:
- 6,000 housing units—28% affordable, with subsidies from the

city commissions as well as four state agencies and the legislature. Both the scale of the project and the complexity of the approval process were without precedent in San Francisco. Not surprisingly, the goals of these bodies often conflicted. To the extent that we had control over the process, it was key to establish early on the hierarchy of jurisdiction over specific topics. Often, these were the toughest negotiations.

STAGES OF PROJECT NEGOTIATION

Establish the overarching goals for public/private partnerships:

The first step in the Mission Bay negotiation was the definition of goals, which shifted, conflicted, and overlapped.

In essence, regardless of project complexity, public/private partnerships share two overarching goals: political and economic feasibility. If one goal is met but not both, either an otherwise economically feasible project doesn't win needed approvals or a deal is

A proposal must gain approvals from commissions and the Board of Supervisors and avoid court challenge. It's not necessary that all testimony or votes be unanimous—I'm a firm skeptic about consensus, because a consensus requirement gives any

shelf life of that support.

This process of arriving at and clarifying goals is important not just at the beginning of a negotiation and not just for lofty "principles." It's important throughout the project to be clear about goals—and clear in communication of the goals—for:

- each meeting (and invite accordingly)
- deadlines
- the decision-making process—who has jurisdiction?
- opportunities for public input
- who is expected to do what, and by when
- what's on the table and what isn't.

By focusing on goals instead of positions, there are often ways to satisfy the other party while minimizing your own costs. Working together, both sides can often find alternative solutions—if they both know what the goal really is.

Deconstruct the Problem

It is a useful exercise to break down large scale projects into parts and cluster them. The list of Mission Bay issues is a good example. Each of the Mission Bay topics warranted its own team—a city team and then a joint effort (with attendant constituencies, consultants, and documentation) to reach resolutions. A partial list of how the Mission Bay project was deconstructed would include the following:

- The real estate transaction:
Ownership of the site was a patchwork of real and "paper" streets impeding creation and development of parcels
- Tax increment/Mello Roos financing: A financing scheme was devised which required that Catellus impose an additional tax on its land and development, with the proceeds used to pay for infrastructure development until sufficient new taxes are generated on site to pay bonds for this purpose
- Development Program: The mix and amount of different development types: housing, office, park, etc.



The public/private partnership to develop Mission Bay had to resolve complex infrastructure issues to allow development of the 303-acre site.

approved which can't be financed and built. The first Mission Bay deal is a good example: it was approvable but not feasible and as a result neither the city nor the developer was able to reap the benefits of the bargain. For Catellus, it was an enormously costly exercise.

Because both of these tests must be met, the developer and the city have a common interest in each other's goals. The political reception of the proposal must be of grave concern to the developer while the economic feasibility of the project should be important to the city. Both sides must gauge the political and economic breaking point of the project and avoid it in order to ensure that the negotiations result in more than reams of documents.

stakeholder de facto veto power. And in San Francisco, you can be sure that that power will be used.

I can't overemphasize the importance of setting, clarifying, communicating and listening for goals in a negotiation. We did from time to time change our goals. For example, I felt that it was an important principle that Catellus not be required to mitigate problems not of their causing. However, when pre-existing odors at the South East Sewer Treatment Plant became a hot issue, Catellus agreed to our request that they pony up \$5 million to address this issue. This commitment to the Bayview community bought support for the project from the environmental justice constituencies in that neighborhood—though it was surprising just how short was the

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- **Housing Program:** Market rate and affordable, location of sites, timing of delivery and sources of subsidy
- **Remediation:** Toxic cleanup and water quality
- **Infrastructure:** Standards for streets, sewers, etc.
- **Design:** Heights, bulks, the “look” of the project
- **Diversity and Job Training:** Ensuring that San Franciscans benefit from project-related employment
- **Processing:** How to process permit applications over time and ensure that Catellus’ commitments are met prior to permit issuances.

Obviously a project as massive as Mission Bay had to be broken up. But by way of illustration why this is important for any project, I used to work at a community group in Chinatown and we developed a Chinatown Master Plan for consideration and eventual adoption by the city. Even Chinatown, at all of maybe 15 blocks, is composed of a set of sub-areas serving different functions and with different challenges. Stockton Street is the main street for Chinatown residents, while Grant Avenue is more like Disneyland’s Main Street. The challenges of the Financial District edge of Chinatown differ from those of the Nob Hill side. And the issues of housing, commerce, transportation, open space, and historic preservation were all dealt with individually.

Reach Agreements

Once the project is broken down into manageable parts and issues are identified (actually a never-ending process), the tough work of reaching agreements on solutions begins. The negotiations leading to solutions are sequential.

1. Often the toughest negotiations, particularly on the public sector side, are those in-house. Agencies and departments have their own agendas, and I found that city government is no less balkanized and divided than the San Francisco public at large. In my years on the Planning Commission, I

was struck by how rare it was that any citizen would come before us to speak as a San Franciscan. Rather, we would hear from Bernal Heights residents (or, typically, representatives of a particular slope of Bernal Heights) or tenants, or a park advocate (or a dog run advocate battling a soccer advocate). To a large degree, the administrators of the city mirror that: for example, the Recreation and Park Department

pals, a couple of city principals, and lawyers for each. Often the Catellus project manager and I would reach what agreements we could prior to the meeting and present them jointly. In the handful of instances where agreement couldn’t be reached, we’d present the issues to the Mayor and Nelson Rising, CEO of Catellus. In retrospect, recourse to the Mayor was more often necessary to reach in-house agree-

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couldn’t care less about the issues of the Landmarks Board or the Port. Only the Mayor’s Office can keep this fragile coalition of bureaucrats marching in the same direction.

2. Once agreement is reached on the public side of the table, it is time to meet the project sponsor (who presumably has been going through a similar internal process). Initially the parties will be working out a list of issues and ideally they’ll all be put on the table at the onset of negotiations. That’s a lot easier said than done. Issues keep surfacing, triggering each other. And solutions themselves can raise issues. Throughout the Mission Bay and ballpark negotiations, it was common to tackle a list of, say, 25 issues, reach agreement on all but six, and be confronted at the next session with a new list of 30. In the Mission Bay negotiations, issues teams (for example, the team dealing with infrastructure or housing or financing) would be given a deadline to reach agreement. Agreements reached would be examined by the Mayor’s Office and Catellus senior staff but would enjoy the benefit of the doubt. Issues open past the deadline would come to a small table: a couple of Catellus princi-

ments than intramural ones.

3. I hadn’t expected the next round of negotiations: the reconciliation of agreements with drafted language. Often, the negotiators would leave at the end of the day satisfied that we’d reached a meeting of the minds only to find that the language drafted was far from what we had envisioned. Once agreements were reached, the lawyers would dig into the drafting of recourses and appeals, defaults, cures and punishments. This part is no fun for most normal people but the lawyers seem to relish it. The good news is that it indicates that the principals are committed to the deal and want to protect it. But it’s amazing how much time can be spent arguing over “best efforts” or “sole discretion” or “reasonable.”

This might be a good time to say a word about the roles of lawyers in these deals. Good attorneys can serve as problem solvers and as navigators as well as trusted counselors. The roadmap of the entitlement process is laid out by the attorneys; the drafting of not only the legal documentation but also the deal summaries and other corollary documents, and the responses to really tough questions, all come from the lawyers. But when there’s a

business or political or strategic decision to be made, that's the job of the principal, not the lawyer. The City and County of San Francisco is blessed with the best lawyers in town—I never sat across the table from lawyers representing a developer who were any better than the team City Attorney Louise Renne has assembled in-house.

4. In both Mission Bay and the ballpark, agreements were brought jointly by the city and sponsor to the community for review and support. Mission Bay was reviewed by a mayor-appointed Citizens Advisory Committee (CAC) of about 20 members representing neighbors of the project, San Francisco Tomorrow, the Council of Community Housing Organizations (representing non-profit housing developers), the Building Trades Council, and the houseboat community in Mission Creek, among others. The CAC began quite skeptical of the process but unanimously approved the agreements and advocated for the deal with the fervor of converts. In addition, presentations were made in virtually every neighborhood of the city and meetings were held with such constituencies as job training programs, the Bicycle Coalition, advocates for clean water and the bay, and church groups. In the end, although the community was presented with draft agreements, there is no aspect of the development which was not refined on the basis of community input: parks were enlarged, traffic patterns changed, water treatment beefed up, bicycle lanes widened, heights adjusted for view corridors, and even parking for recreational boaters safeguarded.

It is often difficult to predict which issues will or could be potential dealkillers. For example, the Chinatown plan is very restrictive, severely limiting the development potential in that neighborhood in favor of housing and historic preservation. Our coalition of the Chinatown Resource Center, Asian Neighborhood Design, and the Chinese Chamber of Commerce almost unraveled over the issue of hours of deliveries for the



PacBell Park and the developing Mission Bay beyond are transforming the China Basin waterfront. Both would be impossible without complex public private partnerships.

shops. In Mission Bay, the Planning Department became obsessed with views from the freeway, and at the last minute affordable home ownership soared on the political radar. UCSF's practices regarding animal experiments was the key issue left unresolved at the end, and one over which there is no local jurisdiction.

The toughest issues are always the last and these tended to be (at least in my view) the most purely symbolic ones. Difficult to cost out and quantify, they're hard to weigh. They can represent an unwillingness to compromise or cold feet about dealmaking per se. They could be the residue of loss of

face on an earlier point, or may just represent deep-seated issues tangential or unrelated to those at hand. They might be issues caught in the crossfire of personalities. They might be seen as precedents. At such times, deadlines can be very useful, and a little leadership goes a long way.

It was only when sponsor, bureaucrats, the Mayor and community constituencies were satisfied that proposals would be brought to the real decision-makers—commissions and the Board of Supervisors. At this point, the bureaucrats who have been negotiating have to deliver by putting on the line

whatever credibility they have earned with commissions and the Board of Supervisors, by demonstrating their familiarity with the details of the deal and offering their assurances that it is the best possible deal for the city.

Particularly when confronted with complex actions, appointed and elected officials can take great deal of comfort from confidence in the process itself.

A handful of citizens testifying that nobody consulted them can serve as a

vs. water quality or jobs vs. traffic.

Advocates can be polarized and city departments no less so—even, sometimes, with conflicts within departments or between staffs and commissions. In Mission Bay and other projects I've worked on, it was necessary to hear out the arguments, then do the weighing within the Mayor's Office and let the Mayor and Board decide whether costs were justified by benefits overall.

Inspiration

I know it may sound corny, but the

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handy excuse for a recalcitrant official. It is important to present documentation of the process leading to recommendations.

In closing, I'd like to introduce some concepts which were of great value to me as I worked on Mission Bay, as well as the Pacific Bell Ballpark, the Unreinforced Masonry Building Program, and other projects:

A good negotiator is a good listener

A negotiator has got to hear what the other party wants—and it may not be what they are asking for. It may be respect, or a sense of being heard, or a desire to show toughness or to avoid letting down their constituents by seeming to compromise. These personal motivations can be as important as what is apparently on the table and should be treated accordingly.

Net Benefit

Public policy decisions involve trade-offs and each position will have its own constituency. Typically, the costs and benefits are in different arenas, such as housing vs. preservation or open space

commitment and good will of armies of participants—from the community, the developers, the bureaucracy, and the elected and appointed officials—flowed from a shared sense that what we were doing was important and that our contributions were meaningful and valued. It didn't matter what side of the table we sat on, we were creating a legacy. As project manager, I felt that it was an important part of my job to communicate that spirit. The UMB program, Mission Bay, and the Ballpark are better projects, resulting from better processes, because of the sense of purpose we shared.

After a dozen years working for nonprofit community groups, David Prowler spent a dozen years in

City Hall. During that time he served on the Planning Commission, designed the city's Unreinforced Masonry Building Program, managed

*the negotiations and entitlement of Mission Bay and Pacific Bell Ballpark, and was acting director of the Mayor's Office of Economic Development. He is now a development consultant and can be reached at prowler@sirius.com. **

