

LEGAL TOOLS FOR HARNESSING THE POWER OF ARTS, SPORTS, AND ENTERTAINMENT USES TO STIMULATE URBAN REVITALIZATION



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Over the past 30 years, the Los Angeles region has been blessed with a massive public and private investment in artistic, cultural and entertainment projects. This paper examines three very different investments and deconstructs what made them work, the thorny legal issues that had to be resolved, and the takeaway lessons that offer a recipe for future success.

The Broad Museum, in Downtown Los Angeles, resulted from a significant public investment that was coupled with a philanthropic individual's financial support and extraordinary personal art collection. The

museum completes a long-standing civic vision of Grand Avenue as a true "Avenue of the Arts" and has been transformative of Bunker Hill, attracting massive crowds of younger, more diverse audiences to Downtown Los Angeles.

The Arts District, also in Downtown Los Angeles, is an organically developed and completely private investment in artistic spaces that ultimately led to explosive growth. More than 23,000 residential units have been developed in Downtown Los Angeles since 1999, largely in response to the City's artist-in-residence and

adaptive reuse ordinances¹. The Arts District is ground zero for the restaurants, retail and (more recently) office uses, that characterize the hip new Downtown.

In Inglewood, a city that had fallen on hard times, the \$100 Million renovation of the Fabulous Forum and the proposed multi-billion dollar NFL football stadium have jump-started the Inglewood real estate market and the City is on the verge of being transformed from economic backwater to one of the preeminent arts and entertainment destinations in Southern California.

Inglewood's renaissance promises to be complete with the proposed new NBA basketball arena that the Los Angeles Clippers have announced they plan to build adjacent to the football stadium.

It is undisputed that the addition of an arts, entertainment or sports use can have the power to galvanize development and revitalize an entire community. At the same time, there are just as many stories of arenas that fizzled or proved to be bad deals for a City. The three examples covered by this article relied upon varying degrees of public involvement. But each has elements that suggest there are "recipes" for arts developments that energize real estate. In the case of the Arts District, the low cost of attractive and historic industrial buildings drew the artists who ultimately created the interesting and culturally rich environment known as the Arts District. The government's role was to foster the development through implementation of zoning ordinances allowing residential occupancy in industrial spaces. In the case of the Broad, the government supplied the property and some of the funding for the project. And in the case of the Stadium, the citizens of Inglewood banded together and signed an initiative petition that allowed the Stadium to be fully approved in a record eight weeks from its public announcement. The voter-sponsored initiative also created a framework for a government rebate of sales taxes and other revenues to fund the public portions of the project. This allowed for the private sector to take all the construction/financing risk on the front end, and to benefit from the potential windfall in public revenues generated by that private risk-taking effort.

THE BROAD MUSEUM: LESSONS IN RECONCILING PRIVATE PHILANTHROPY WITH PUBLIC POLICY

On September 20, 2015, Los Angeles's Broad Museum (pronounced "brode") opened its doors to lines of

excited patrons. While media accounts from around the world focused on the new museum's impressive collection of contemporary art and striking architecture, the 120,000 square foot museum is also a monument to a remarkable collaboration between Los Angeles' private civil society and its local governments. This is a story of the successful marriage between the public and private sectors and the legal tools that were employed to ensure the long term public benefits that the Broad Museum was intended to bring to Los Angeles. It reveals the potential for governments, when aided by private-sector expertise and capital, to maximize the public benefits associated with arts and other cultural institutions. This section describes the background of the Broad Museum project, the negotiated provisions in the project's transaction documents, and conclusions for future analogous projects involving public and private actors.

How the Broad Museum Came To Be: The Grand Avenue Project

The background for the creation of the Broad Museum begins with an extraordinary collection of real estate parcels known as "Parcels L, M-2, Q and W-2" in the Downtown Los Angeles Civic Center. These parcels, one of the last undeveloped pieces of LA's 62-year-old Bunker Hill Redevelopment Project, are owned by the County of Los Angeles (Parcels Q and W-2) and by the City of Los Angeles' Community Redevelopment Agency ("CRA") (Parcels L and M-2) (collectively, the "JPA parcels"). Located in Downtown Los Angeles along Grand Avenue, the JPA Parcels are sandwiched between courthouses, public cultural institutions, and glass skyscrapers on Bunker Hill inhabited by law firms, accountants and banks.

To avoid the inter-agency conflict that had impeded a unified and cohesive approach to a master plan for the development of the JPA Parcels and to facilitate private capital investment in the development of them, in 2003 the County and the CRA formed a Joint Powers Authority under the California Joint Exercise of Powers Act (Government Code 6500 et. seq.) called the Los Angeles Grand Avenue Authority ("JPA"). The JPA was empowered to ground lease parcels from the CRA and County and then sub-ground-lease them, for terms of up to 99 years, to a private developer selected through an RFP process. The JPA formed a separate Real Estate Negotiator called the Grand Avenue Committee which was empowered to negotiate the various agreements

with the developer on behalf of the JPA. The agreements were subject to approval by the Board of the JPA, the County Board of Supervisors, the Board of the CRA and the Los Angeles City Council. Grand Avenue Committee members came from both the public and the private sectors and included leaders from LA's real estate community, including Eli Broad himself, who served as Co-Chair. ACREL panelist Paul S. Rutter and his firm, Gilchrist & Rutter, served as counsel to the Committee and worked in concert with its full time Executive Director, Martha Welborne, in the negotiation and disposition of the JPA Parcels.

In March 2007, after the selection of The Related Companies ("Related") and Frank Gehry Architects through an RFP process, a ground lease of Parcel Q and a Disposition and Development Agreement ("DDA") covering all of the JPA Parcels were signed by the JPA and a subsidiary of Related. Related was granted rights to develop parcel Q as the first phase of a multi-phase project, with Parcels L and M-2 to comprise the second phase and parcel W-2 to comprise the third phase. As part of the closing on the documents, Related paid an upfront, one time leasehold fee of \$50 million in consideration for the Parcel Q ground lease. These funds, along with other funds obtained by the JPA, were used to design and build the 12-acre Grand Park located in the heart of the Civic Center, which has become a hub of civic activity on Bunker Hill.

Soon after the Ground Lease and DDA were signed, Eli Broad was looking for a new home for his extensive private art collection. He previously planned to place his collection with the Los Angeles County Museum of Art ("LACMA"), but had changed his mind and was looking at three competing locations: Santa Monica, Beverly Hills, and Downtown Los Angeles. After seeing the first phase of the Related project delayed due to the financial crisis, which opened the possibility for a reconsideration of the master plan for some of the JPA Parcels, Broad resigned as Co-Chair of the Grand Avenue Committee and offered to negotiate with the JPA to locate his new museum on Parcel L on Grand Avenue, one of the JPA Parcels owned by the CRA. His goal was to make Grand Avenue, already host to the Music Center, Walt Disney Concert Hall, the Colburn School of Music, and the Museum of Contemporary Art, the center of world-class art and culture in Los Angeles.

Negotiating the Deal

In 2011, Related assigned a portion of its ground lease ("ground lease") of Parcel L to the Broad Collection and the Broad Collection at the same time entered into an amended DDA with the JPA. The negotiations with the Broad Collection over the use of Parcel L were aimed at ensuring the longest-lasting and maximum benefit to the people of Los Angeles. At the same time, the negotiations were conducted in a competitive environment—Eli Broad was being courted by Santa Monica and Beverly Hills, cities located in LA's tony Westside. While thrilled by the prospect of the Broad Museum coming downtown, the JPA wanted to make sure that Broad's art collection and the museum would be a public resource for all visitors to downtown Los Angeles and that it would lead to increased tourism and further economic and cultural development there. The JPA could not allow a private wealthy collector to receive a public subsidy on a prime parcel of public land in the heart of the Civic Center and end up with an empty building or a museum that did not fulfill its intended mission.

Important Deal Terms

After months of negotiations, including input from the County Board of Supervisors, the CRA, and the City, the JPA entered into a ground lease for an airspace parcel and an amended DDA with the Broad Collection. The CRA ground-leased the parcel to the JPA and the JPA, in turn, sub-ground leased the Parcel to the Broad Collection for 99 years. The interests of the CRA and JPA in the Parcel are never subject to subordination to any liens or mortgages. These agreements set forth a series of covenants and use restrictions designed to protect and assure ongoing public benefits from the Broad Museum (the "Museum"). Some of the important covenants and restrictions include:

- The Broad Art Foundation must maintain a net-worth of at least \$500,000,000 for the term of the Ground Lease, inclusive of a required \$200,000,000 endowment dedicated to the Museum;
- The Museum must be a "first-class" facility comparable in quality to MOCA, LACMA, the Hammer Museum, and the Norton Simon Museum;
- The Museum must be open to the public at least 30 hours and 5 days per week;

- Design review and approval by the JPA and the other public agencies involved in the Grand Avenue project, including requirements that the project include the development and maintenance of an elevated public plaza adjacent to the Museum over an existing street, in order to create an attractive and welcoming public space for pedestrians at the Grand Avenue grade. The final cost of the Museum was approximately \$140,000,000 and represented a major investment in the arts and culture core on Grand Avenue;
- The Museum must employ at all times a skilled and qualified museum director and competent curatorial, technical, and security staff, comparable in training and qualifications to the staff of MOCA, LACMA, the Hammer Museum, and the Norton Simon Museum;
- The Broad Collection must use good faith effort to collaborate with area schools, colleges, and universities, and to provide access to the Museum's collections for workshops, lectures, and study for students, educators, and art professionals;
- Admission rates to the Museum to be reasonable and comparable to other LA-area museums, and school group visits must be free. The Broad Collection decided to make admission to the Museum free to the public except for certain special events;
- Portions of Eli Broad's art collection must always be on display, coupled with restrictions on the amount of permitted artwork "loans" to other institutions;
- The Museum must be the headquarters of the Broad Art Foundation; and
- The Museum must provide a series of community benefits that comply with CRA policies, including local hiring requirements, payment of prevailing wages, utilization of women-owned and minority-owned businesses, and non-discrimination requirements for construction jobs.

As part of the transaction, the Broad Collection paid \$7.7 million up front as a one-time ground rent payment for the 99-year term of the Lease, which represented a discount from the market value of the site and a public subsidy for the Museum. The competing cities were offering Mr. Broad significant public subsidies to locate the museum in their cities, knowing that the museum would provide a significant boost in tourism

and other arts and entertainment activities. The JPA, the other public agencies, and the Broad Collection agreed that the amount of the ground lease payment was a fair compromise. The JPA used the ground rent payment by the Broad Collection to subsidize affordable housing units in the adjacent apartment complex being developed by Related.

The Broad Collection is required to provide annual reporting to the JPA on its compliance with the various covenants and restrictions in the agreements and the economic benefits it generates.

The DDA covered obligations of the Broad Collection through the completion of the Museum and the Ground Lease set forth the long-term restrictions and covenants required by the JPA. The structure of the deal as an unsubordinated ground lease assures the local public agencies that the public benefits promised by the Museum will be in place for the long term will in place for generations to come, since a breach of these covenants could lead to a termination of the Ground Lease and the loss of the Museum.

Financial and Cultural Impacts of the Museum

The Broad Museum has captivated the public, with long lines of visitors regularly winding around the building as they wait to enter at their appointed times to visit the collection. The Museum has been tracking data on its visitors and has reported the following statistics on the Museum:

- Visitors since opening in September 2015—over 1.1 million;
- Visitor demographics—average age 33, national art museum average age 44;
- Caucasian: 38 percent—national art museum average: 77 percent;
- Ethnic breakdown—38 percent Caucasian, 34 percent Asian or Pacific Islander, 28 percent Latino, 6 percent Black (vs. average art museum 3 percent) (percentages add up to more than 100 percent, as survey respondents may choose multiple categories).
- Approximately 200 full-time and part-time permanent jobs created;
- Approximately 1,350 construction jobs created;
- In first full year, generated \$4,800,000 in federal, state, and local tax revenues.

Lessons Learned: Public/Private Collaboration in Cultural Projects

In its first several years of operations, the bargain struck by the JPA and the Broad Collection has been a great success. The volume of visitors evidences the popularity of the Museum. School groups have visited the Museum dozens of times each year; families have been enjoying the public plaza adjacent to the Museum as part of their visits to a revitalized area of Grand Avenue; the Grand Park that was made possible by the Grand Avenue Project has provided an attractive public open space for the city and attracted thousands of folks for special events; the Museum has anchored the development of adjacent restaurants; the Museum has hosted lectures and public events geared to families and made contemporary art accessible to many citizens that would not otherwise have been able to see it. The collaboration of public agencies, through a Joint Powers Authority, with a private civic-minded philanthropist, has proven that the public goal of using art institutions to leverage tourism, community benefits, and additional tax revenues, is a successful formula. The Museum has cemented the reputation of Grand Avenue as the home of many of Los Angeles' arts and cultural institutions.

The experience of the Broad Museum's negotiation and development offers a positive example for future private/public collaborations in the development of arts institutions. Some lessons learned include:

- The development of Parcel Q was delayed for 10 years by the financial crisis. The Broad Museum on Grand Avenue was made possible, in part, because of the opportunity afforded by Related's inability to complete all phases of its original development plan in compliance with its schedule of performance. The public agencies had a long time horizon and gave Related the additional time it needed to come out of the Great Recession, while at the same time working with Broad to modify the original master plan to include the proposed museum. The lesson here is that a key reason for the creation of the Museum on Grand Avenue is that the local public entities had the staying power and creativity to consider new opportunities in the face of the economic downturn.
- The Museum ground lease and amended DDA for the Museum were signed with the Broad Collection in May 2011. Later in 2011, the CRA was

dissolved by the State of California, as part of a statewide "unwinding" of redevelopment agencies. As a result, CRA/LA, a Designated Local Authority, as successor to the CRA, stepped into the shoes of the CRA as a member of the JPA and a new representative was appointed to the Board of the JPA. In other circumstances, this transition could have caused delays or disruption in the implementation of the DDA and Ground Lease for the Museum, however the JPA structure, with its Grand Avenue Committee, provided continuity and consistency in the implementation of the agreements.

- Eli Broad's enthusiasm for the Grand Avenue location, part of his larger vision for the street, was enhanced by his experience serving on the Grand Avenue Committee (before stepping down to negotiate the Museum deal). Mr. Broad already had demonstrated his interest in the success of Grand Avenue by leading the negotiations with Related for the Grand Avenue project. The collaborative enterprise that produced the Museum truly began when government agencies turned to volunteer appointees from the private sector.
- While the public agencies involved had little expertise when it came to running a museum, the JPA negotiators included experienced real estate professionals who could craft reasonable and actionable provisions in the deal that would ensure maximum public benefits for the longest time. These provisions left ample room for the Museum's creativity and flexibility, while ensuring that it would commit to its downtown location and would be an anchor for further economic development in the Civic Center.
- The creation of a quasi-public entity (the JPA and its Grand Avenue Committee) helped overcome the challenges of fragmented government agencies: the City of Los Angeles, the CRA and the County of Los Angeles had not been known for collaborating. By removing the negotiations for the Museum, and the rest of the Grand Avenue Project, from the traditional public sphere, it ensured that any inter-agency parochialism would not prevent a successful negotiation.
- A marquee art museum can drive economic development. Restaurants and food trucks have popped up near the Museum, and the stretch of Grand

Avenue that used to be a deserted bridge over a seldom used street is now busy with visitors.

When governmental agencies and private citizens work together towards a common goal of furthering the arts, the long-term returns to the public can well exceed short-term costs and the result can be, as in the case of the Broad Museum, a successful marriage.

THE HISTORY OF THE LOS ANGELES ARTS DISTRICT: USING ZONING TO FOSTER ORGANIC REVITALIZATION AND ECONOMIC GROWTH

Los Angeles' Arts District has seen a dramatic rise in prominence in the past 15 years. National and international travel guides feature it as a must-visit cultural destination in the city. Property values have skyrocketed and the climate for development of offices and homes there is white-hot. According to some estimates, there are over 5,000 residential units and 3,000,000 square feet of office and retail development in the pipeline, all in an area of the city that is but 60 square blocks. The area is home to some of the city's best restaurants and most fashionable stores, and globally-recognized names have decided to set up shop there, like the art gallery Hauser & Wirth, music label Warner Music Group, and exclusive social club SoHo House. To many Angelenos, this occurrence is shocking. How did a low-slung, gritty, industrial neighborhood adjacent to Skid Row become one of Los Angeles' most desired neighborhoods?

While in the previous section, we explored how arts development could arise with the careful and well-orchestrated collaboration of the government and private wealth, here we discuss how the Arts District came to be a cultural center despite that lack of institutional support. Located squarely in City Hall's blind spot, a community was born in the Arts District while no one was watching.

A Brief History

The Arts District, located on Downtown's eastern edge along the concrete channel known as the Los Angeles River, has seen historical changes that reflect the growth trajectory of Los Angeles. After European settlement of the area in 1781, the area was soon home to various agricultural uses, being conveniently located near the river which served as a source of irrigation. One of the principal farms in the area was a vineyard called "El Aliso," owned by Jean-Louis Vignes, a French

immigrant for whom a nearby street is named. Around the time California entered the Union, Vignes's vineyard was the largest producer of wine in the state, growing primarily cabernet and sauvignon blanc vines. As the 19th century wore on, vineyards gave way to citrus orchards, and after the arrival of a spur of the transcontinental rail railroad to Los Angeles in 1876, the area quickly became industrial.

By 1905, three transcontinental railroads had their western termini in the area: the Southern Pacific, the Atchison, Topeka, and Santa Fe, and the Union Pacific. Near the various railroads and terminals, the riverside neighborhood was conveniently located for food storage and production and was host to breweries, a pickle factory, and dairy processing plants. Industrial uses intensified there throughout the first few decades of the 20th century, and the district came to include foundries, clothing factories, printing presses, and rubber plants. Los Angeles's 1908 zoning law, the nation's first, reflected this reality: the arts district and areas around it were designated as areas where industrial activity was permitted.

However, by the post-war years, as railroads gave way to trucks as the primary form of shipping and transport, the rail-based architecture of the arts district became obsolete and industries decamped to more spacious areas further outside the city. As a result, they left behind the old workhorses of Los Angeles' industrial period—hulking brick warehouses with narrow loading bays and docks that became useless in the age of the 18-wheel truck. Building owners could find little, if any, value in these structures, using them to store items like toilet paper and cardboard boxes. The neighborhood was dormant, home to empty buildings and lots, and inhabited mostly by vagrants who wandered over from LA's Skid Row.

The Artists Come

Into this bleak atmosphere filtered young artists looking for cheap and spacious units for their studios. Arriving as early as the late 1960s, young artists would negotiate with landlords for large spaces in warehouses and subdivide them among friends to serve as places in which to create and live. Rents were as cheap as a nickel per square foot, which compared very favorably to other popular neighborhoods such as Venice and Hollywood.

The lives they led were not glamorous: the buildings were ancient and never designed for human habitation.

As a result, they often lacked hot water, insulation or cooling (artists describe freezing winters and sweltering summers), and in some cases even lacked electricity. At the time, Downtown Los Angeles was a forbidding place, constantly shrouded in eye-burning smog, and property crime was rife. In the film “Young Turks,” artists commiserate over witnessing stabbings in the streets, frequent midnight burglaries, and generally having to brave the “wilds” of a downtown it seemed the whole city had left in its rear view mirror. One artist, describing the original Hard Rock Café nearby on Skid Row, noted that “it was the kind of bar you could lose your life in.” To add to all this, because the artists’ homes were illegal, whenever the building or fire department came by for inspections, they would scramble to erase all traces of their living arrangements.

Nevertheless, in spite of these challenging circumstances, a tightly knit and cohesive community emerged, centered around neighborhood businesses like the legendary punk venue Al’s Bar, the local general store, Gorky’s café, and several community theaters. Soon, the area was home to thousands of artists, photographers, and other artisans, and art galleries began popping up and moving in. After a slight downturn during California’s recession in the early 1990s, the neighborhood was officially christened as the “Arts District” in response to a petition from residents. Several organizations were formed to help address neighborhood issues: among these, the Los Angeles River Artist and Business Association (“LARABA”), the Historic Cultural Neighborhood Council (“HCNC”), and several intermittent urban planning workshops called “Uncommon Ground.” By the new millennium, the Arts District continued to gain momentum, as the Southern California Institute of Architecture (“Sci-Arc”) moved into a quarter-mile-long former train depot on Santa Fe Street and activity in the neighborhood intensified.

Salutary Neglect: the City’s Response

While the Arts District was largely ignored during the 1960s and 70s, the City did notice the new residents illegally living in the neighborhood by the late 1970s. Concerned primarily with the safety of the new residents, the City in 1981 passed a zoning law permitting the artists’ informal settlement of the district. According to this law, known as the “Artists-in-Residence Law” (“AIR”), buildings in commercially or industrially zoned areas (the district is, to this day, primarily zoned as manufacturing), could be used as joint live/work spaces for

artists and artisans, as long as they obtained a conditional use permit (“CUP”) from a zoning administrator and the administrator made the following additional findings:

- That a business tax registration certificate had been issued by the City Clerk to the applicant to engage in business as an artist or artisan;
- That the uses of property surrounding the proposed location of the joint living and work quarters and the use of the proposed location would not be inimical to the health, safety and welfare of prospective residents of such quarters; and
- That the proposed joint living and work quarters would not displace viable industrial uses and would not substantially lessen the likelihood that such property would be used for industrial uses.

The ordinance also provided that “off-street automobile parking spaces required by this Article may be reduced or eliminated if there is no area available for parking on the site.” Finally, it required that “one or more signs or symbols of a size and design approved by the Fire Department shall be placed by the applicant at designated locations on the exterior of each building approved as joint living and work quarters to indicate that these buildings are used for residential purposes.” This last requirement would help firefighters know that residents might be inside in case of a fire.

To smooth the runway even further, the conditional use permits could be granted without any hearing, as long as abutting property owners did not express objections in writing. A fee of \$225 was charged for one joint living and work quarter, \$450.00 for two, \$675 for three, and \$900 for four or more. In 1994, the ordinance was slightly revised, but its essentials remained—the requirement that tenants be registered artisans, the nominal fee, the relaxed parking requirements, and the sign placed on the outside of the building.

The simplicity of the procedure ensured its success. Soon, artists began to undertake more conversions and the community continued to grow, while at the same time preserving and improving the historic architecture of the neighborhood. The AIR not only allowed artists to continue to do what they were already doing, but it also granted them subsidies in the form of reduced parking requirements (and later, reduced setback requirements). At the same time, it ensured the

safety of the residents by requiring that neighboring land uses be suitable and requiring signs warning firemen that a building contained residents. It was also notable that the CUP was oriented towards artist-tenants as the applicants, rather than building owners, who played a rather passive role in the conversion process. By getting out of the way, the City allowed an already existing community to flourish and transform an entire neighborhood from somnolent and forbidding to vibrant and welcoming.

Looking Forward: a Community Under Pressure

While the Arts District's informality and DIY qualities have made it a capital of global "cool", those very qualities are under threat. In March of 2017, a series of warehouse buildings in the area sold for \$662 a foot—a far cry from the cheap conditions artists enjoyed decades ago. International architects like Herzog & de Meuron and Bjarke Ingalls have been contracted to design billion-dollar developments nearby. Residential rents are more appropriate for lawyers and doctors than artists. In the absence of a new community plan, many new residential projects currently in approvals are asking for individual spot-zone changes, without much consideration for the cumulative effects the addition of thousands of housing units will have on the neighborhood. As they are all going through approvals simultaneously, the 20 or 30 projects are viewed by community members as a "ticking time bomb" that will completely rob the neighborhood of its charm in one fell swoop.

In this context, disputes over land-use policy and controls in the area have emerged in the past few years. Long-time residents and some developers have objected to new apartment buildings that fail to engage with the street, replace historic structures, and lack the large floorplates that enabled the neighborhood's original rebirth as a haven for artists. These projects, mostly built as "type 5" construction, with wood framing above a concrete podium, and load supporting walls instead of columns, necessarily have a useful life of 40 years and require units and floorplates to be small. Critics argue that these design features dramatically clash with the "bones" of the arts district: its timeless buildings with huge, adaptable floorplates that can function as workspace or living quarters (or both). Finally, community members are concerned over the Arts District's historical legacy of being an area of the city filled with jobs and industry as purely residential/

retail projects replace warehouse structures and artists are priced out.

The most recent focus of the conflict has been the City's new Hybrid Industrial Live/Work Zone ordinance, which aims to encapsulate the spontaneous magic of the Arts District's development in a new zoning category to govern new construction. While Arts District community groups participated extensively in drafting an earlier version of the ordinance, they allege that new ordinance as it stands does not resemble the community consensus gained in the earlier version. Adopted in February 2016, the law was set aside in March 2017 as a result of a writ of mandate action in state court, for the City's failure to undertake CEQA analysis of a non-exempt "project." At the time of this writing, the ruling is still subject to appeal by the city, but has yet to be appealed.

Lessons Learned: Growth from the Pavement Up

The writings of Richard Florida and other urbanist scholars have characterized cities as laboratories of creative ideas that lead to economic growth. While the growth most people envision comes from legal activity, informal, or outright illegal activity, can often reflect growth opportunities that cities would do well to endorse, rather than staunch (think about the example of Uber). LA's Arts District is a perfect example of economic and cultural development from the ground up: where governments, banks, and other institutions dared not tread, artists set up shop without asking anyone for permission, and the results have been astounding. Los Angeles's approach of gently regulating the activity of artists in the neighborhood, with a focus on the safety of residents (a point that is even more salient after the tragic Ghost Ship fire in an unpermitted artist studio in Oakland), has been borne out as extremely wise. While, today's questions about the future of the neighborhood are vexing, they also reveal the Arts District's amazing success. As investment continues to flow into the Arts District, it will be exciting to witness the neighborhood's next stage.

THE INGLEWOOD STADIUM, A UNIQUE APPROVAL PROCESS

The Los Angeles region had been without an NFL team for more than 20 years, following the Raiders departure for Northern California. Many had tried to bring the NFL back, and there had been stadiums proposed or approved in Downtown Los Angeles, City of Carson,

Irwindale, and Pasadena, among others. But no one had been able to secure a team or build a new stadium.

The City of Inglewood is a separately incorporated Charter City adjacent to Los Angeles and Los Angeles World Airport². As of 2004, it was the location of the “Fabulous Forum,” an iconic building constructed as the home of the Los Angeles Lakers in the late 1960’s, as well as a 238-acre horse racing track: “Hollywood Park”. The Forum, a venue designed by the same architect who designed Madison Square Gardens, is located on a 30-acre piece of property adjacent to the track. It had fallen on hard times when the Lakers decamped for Staples Center in Downtown Los Angeles, and was bought in 2010 by the Faithful Central Bible Church for \$22 million³. The Church had a hard time operating the venue and was on the verge of bankruptcy when the Forum was bought by Madison Square Gardens in 2010. Madison Square Gardens entered into agreements with the City, by which the City provided it an \$18 Million subsidy and development approvals allowing for a comprehensive renovation to turn Forum into an entertainment only venue, directly competing with Staples Center. The renovation and subsequent splash in the entertainment world put Inglewood back on the map.

Meanwhile, on the adjacent Hollywood Park property, Stockbridge Realty and Wilson Meany as developers had engaged in a five-year master planning process and had secured approval for a major mixed-use development with housing, retail, parks and the potential for a hotel. Given Inglewood’s economics, there was limited market for office, at best.

In between the Forum and Hollywood Park was a 60-acre piece of property owned by Wal-Mart. It acquired the site in 2004, and failed in multiple attempts to construct a super store at that location. That property sat vacant for years, and was used as overflow parking for the track and the Forum.

WILL THE RAMS RETURN?

In late 2013, the owner of the St. Louis Rams, Stanley Kroenke, caused a media frenzy when he purchased the 60-acre Wal-Mart site. It was rumored that he was going to bring the Rams back to Los Angeles (where they had played until 1994), but with 60 acres, he did not have enough land to build a stadium and the surrounding parking and ancillary uses. Mr. Kroenke approached Stockbridge with the goal of securing a chunk of Hollywood Park’s 238 acres. However, from

the Stockbridge perspective, if they sold less than the whole site to Kroenke, they would have to restart the master planning process, which had taken more than five years. Therefore, they were unwilling to sell only a portion of the site. Moreover, in the intervening time period, Stockbridge had secured \$175 Million of EB-5 financing, which allows immigrant investors to secure a green card for a \$500,000 investment in a depressed community. The catch was that the project had to generate jobs pursuant to a required formula and those jobs had to be generated within two years of the investment of the money. Stockbridge was on a short time frame and did not have another three to five years to allow Kroenke to pursue a stadium proposal by conventional entitlement.

A deal was struck whereby Kroenke agreed to purchase the entire site, and secure entitlements through a voter-sponsored initiative process, that would be completed in no more than eight months. If they did not secure the entitlements for the Stadium, they would commit to pursue the master plan project that Stockbridge had already entitled in order to generate the jobs required under the EB-5 loan.

The Initiative Process

California has a unique constitutionally protected right reserved to the people to directly enact legislation. And, most importantly, approval secured through the initiative process is exempt from review under the California Environmental Quality Act or CEQA, as it is commonly called. CEQA requires that local agencies study the potential environmental consequences of their actions. In practice, CEQA tacks on at least three and many times, five years to the process for controversial proposals. The strategy was to craft the Stadium approvals as amendments to the previously issued legislative approvals for the Hollywood Park project.

In order to ensure that the initiative was truly “voter-sponsored,” the public agency (i.e. the City) could not be involved in the preparation of the entitlement package. This meant that the Stadium development team had to negotiate a proposal that they thought would be enticing enough to get voters to sign the petitions to put the proposal on the ballot, and if necessary, ultimately vote in favor of the proposal. The project already had a development agreement, which is a contract between the City and the owner of the Hollywood Park Property authorized by statute,⁴ and adopted by ordinance.

Using the development agreement the “City” can make enforceable promises to the developer.

In essence, the people signing the petition and voting on the initiative would act as the “City” for purposes of modifying the contract. Thus, the initiative proponent has a unique opportunity to bind the City and write the agreement to include the exact terms they want (assuming they can get enough signatures and votes). An initiative is placed on the ballot once the proposal is circulated to the voters and secures signatures of either 10 percent or 15 percent of the electorate.⁵

At the time the Stadium was proposed, the City of Inglewood was laboring under a structural deficit of between \$8 and \$15 million a year. There was no way that a proposal that committed the City to subsidize or spend money on the Stadium would be viable. Indeed, it is not clear whether such commitment could be accomplished through the initiative process in any event. Thus, from the beginning it was clear that the Stadium would have to be built without any public money. This meant that even the public components of the project such as roads, streets, sewers, traffic improvements, park improvements, and other improvements of a “public nature” had to be funded by the private developer upfront.

A Unique Public/Private Revenue Sharing

It was apparent that the Stadium, once operational, would be an economic bonanza to the City. The City of Inglewood has one of the highest ticket taxes in the State of California (10 percent flat fee on all tickets) as well as parking taxes and higher than typical sales taxes (among others). The City also has a one percent tax on all construction materials utilized to build projects. Therefore, part of the initiative amended the development agreement to allow for reimbursement of specified public cost fronted by the developer. Using the framework of the pre-existing statutory development agreement, the initiative provided for the City to reimburse the developer for expenses of a public nature from the net new public funds generated by the project, above a specified annual payment of \$25 million to the City (escalated by CPI).

The provision providing for the reimbursement was as follows:

“15.3 Reimbursement for Public Improvements. The 2009 Fiscal Analysis provided that, at

stabilization of the Original Development Project, the City would receive approximately \$14 million per year in gross new revenue to the City’s general fund. In the event that the Landowner elects to proceed with the Stadium Alternative Project, then it is estimated that at stabilization of the Stadium Alternative Project, the City will receive significantly greater general fund gross revenues, estimated to be at least \$44 million per year. At the same time, implementation of the Stadium Alternative Project requires a significant expenditure of private monies for Public Improvements, including public roads and infrastructure, park construction and maintenance, as well as event day public safety costs of retaining City police, EMT, and other services and operating public shuttles from off-site public parking lots. Accordingly, if the total sales taxes under the laws of California from (i) taxable construction materials sales on the Property that have the City and the Property designated as the point of sale, (ii) ticket taxes, (iii) parking taxes, (iv) transient occupancy taxes, (v) franchise fees, (vi) property taxes, (vii) utility users taxes, and (viii) business license taxes, in each case generated by the Stadium Alternative Project during any fiscal year of the City meet or exceed a threshold of Twenty-Five Million Dollars (\$25,000,000), excluding any gaming and card club tax revenue from the casino, and to be adjusted annually by the CPI Factor beginning in the first fiscal year following the later to occur of City’s issuance of the final certificate of occupancy for the Stadium and the Stadium opening for business to the public (the “City Revenue Hurdle”), then the Retail Property Landowner shall be entitled to receive reimbursements (“PI Reimbursements”) of amounts advanced and spent for Public Improvements set forth on Exhibit C-1, as well as amounts advanced and spent for event day public safety costs of retaining City police, EMT, and other services and operating public shuttles from off-site public parking lots and other expenditures of a public nature, in each case together with interest accruing on such amounts from the date of expenditure at a rate equal to the then-applicable rate available to municipalities (“PI Expenditures”), not to exceed the amount in any one fiscal year by which such new general fund revenues exceed the City Revenue Hurdle (the “Maximum Reimbursement Amount”). Landowner acknowledges

that the City will utilize tax revenues generated by the Stadium Alternative Project solely to measure the City Revenue Hurdle, and that no provision of this Agreement is intended to or shall be deemed to be a designation or set-aside of any tax revenues generated by the Stadium Alternative Project for any purpose other than the deposit of such tax revenues into the City's general fund. Within sixty (60) days following the end of each fiscal year of the City during the Term, Retail Parcel Landowner shall submit to City written evidence of all PI Expenditures advanced during the preceding fiscal year. Within fifteen (15) days after submission of such written evidence, City shall notify Retail Property Landowner of any deficiencies in the evidence submitted by Retail Property Landowner and/or any need for additional information. Retail Property Landowner shall provide such information as is reasonably requested by City in response to any request therefor. Within sixty (60) days after receipt of reasonable documentation of the PI Expenditures that were advanced, City shall remit to Retail Property Landowner PI Reimbursements in respect of said PI Expenditures, up to the Maximum Reimbursement Amount. Notwithstanding anything to the contrary in this Agreement, Retail Property Landowner shall only be eligible for PI reimbursements after it makes the election to proceed with the Stadium Alternative Project. In any given fiscal year, if PI Expenditures exceed the Maximum Reimbursement Amount, then such unreimbursed PI Expenditures shall accrue and be eligible for reimbursement in any subsequent fiscal year, provided that in no event shall the aggregate PI Reimbursements to Retail Property Landowner hereunder exceed the aggregate Maximum Reimbursement Amounts accruing over the Term of this Agreement. City and Retail Property Landowner expressly acknowledge and agree that the PI Reimbursements are not a subsidy, but rather a reimbursement of costs of a public character that, but for the Stadium Alternative Project, the City would not otherwise have the resources to fund and thus were advanced by a private party. PI Reimbursements may not be used to reimburse the construction costs for the Stadium or any other private improvements."

And, for purposes of securing the reimbursement, the definition of a public improvement was

as follows: "Public Improvements. The lands and facilities, both on- and off-site, to be improved and constructed and maintained by Landowner, and publicly dedicated or made available for public use, as provided by the Project Approvals and this Agreement, all as listed on Exhibits C or C-1, as applicable. Public Improvements consist of all right-of-way improvements, designated public streets and roads within the Property; all utilities (such as gas, electricity, cable television, water, sewer and storm drainage); pedestrian and bicycle paths and trails; parks and open space (including maintenance); the off-site public improvements; the fair share Mitigation Measures; and all other improvements and facilities required or called for by the Mitigation Measures and this Agreement to be implemented by Landowner."

The list of reimbursable public improvements required to be implemented pursuant to the Development Agreement including wet and dry utilities, traffic signals, sewer mains, curbs, streets, gutters, and enhanced utility structures and the like. There was also a catchall phrase included in the definition of public infrastructure as follows:

"For purposes of calculating the amount of reimbursement for a particular work of Public Improvement, the reimbursable amount shall include the aggregate amount of all costs incurred by Landowner in connection with the planning, design, development, entitlement and construction of such Public Improvement, including, without limitation, hard costs and soft costs, direct and indirect costs, and construction financing costs (including without limitation fees, costs and interest), and equity procurement costs (including without limitation fees and costs). Public Improvements shall also include other improvements or facilities of a public nature required to be implemented by Landowner in accordance with the Project Approvals."

The overall concept was to capture all things that could possibly be reimbursed without running afoul of the California Constitution prohibition on using public funds for private purposes. And this unique mechanism enabled the Stadium to be built without any public subsidy but at the same time allow the Stadium developer to share in the economic upside to be generated by its multi-billion dollar investment.

Enabling Authority for the City's Reimbursement

As a charter city, Inglewood has considerable power over its municipal affairs, which need not be expressly authorized. See, e.g., *City of Redondo Beach v. Taxpayers*, 54 Cal.2d 126, 137 (1960) (charter city has authority to issue bonds to obtain funds for construction of harbor independently of state statute). As the court explained in *Cawdry v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993), "a city charter is not a grant of powers, but rather an instrument which accepts the privilege granted by the Constitution of complete autonomous rule with respect to municipal affairs, and which otherwise serves merely to specify the limitations and restrictions upon the exercise of the powers so granted and accepted." *Id.* at 1221-22. Thus, "any such power not expressly forbidden may be exercised by the municipality, and any limitations upon its exercise are those only which have been specified in the charter." *Id.* at 1222.

As a general matter, the levying of taxes for municipal purposes is considered to be a "municipal affair." *City of Los Angeles*, 33 Cal. App. 3d at 939; see also *Century Plaza Hotel Co. v. City of Los Angeles*, 7 Cal. App. 3d 616, 622 (1970). The power to levy taxes for municipal purposes presumably encompasses the concomitant authority to grant tax abatement or rebates for "municipal purposes." Because there is no state law occupying the field, or a limitation in the City's Charter on the authority of the City to grant rebates for a municipal purpose, the City was authorized to rebate taxes for "municipal purposes."

The Stadium Is Approved in Record Time

The postscript of the story is that more than 22,000 Inglewood residents signed the petition in favor of the initiative. Due to a quirk in the California law, the City Council was not required to actually place the initiative

on the ballot to approve it. To put the number of signatures obtained in perspective, only 15,000 residents of Inglewood (the City of just over 100,000 people) had voted in the previous mayoral election. With the popular enthusiasm for the Stadium overwhelming, the City Council voted unanimously to approve the Stadium and the entitlement package a mere eight weeks after the petition was first circulated to the voters.

The Stadium is an example of how the government can work in partnership with private investment to clear the way for use that will stimulate and revitalize the City.

GLOBAL TAKEAWAYS

The Arts District, the Broad Museum, and the Inglewood Stadium represent three very different approaches to harnessing the powers of art and entertainment for economic development. In the case of the Arts District, there was no direct subsidy or public involvement specifically, but the government facilitated the development by creating zoning laws that fostered the nascent market forces and allowed the creativity and ingenuity of the artists themselves to create an inviting, interesting, and attractive place to be. In the case of the Broad, the public involvement provided, literally, the foundation for the museum's development but also exacted from the developer the promises and commitments necessary to keep the use available for the public and attractive as a world-class facility. In the case of Inglewood, the government serves as an economic partner on an ongoing basis, but only after the government has received first priority call on taxes and other public revenue generated by the project. The secret to utilizing arts and entertainment uses is to allow the market forces to do their job, but ensure that the public supports the investment and potentially can share in the upside. 🍀

Notes

- 1 <https://www.downtownla.com/do-biz/dtla-by-the-numbers/residential-growth>
- 2 Under California law, "charter cities" have greater authority over their so-called "municipal affairs" such as zoning.
- 3 <http://articles.latimes.com/2010/aug/30/business/la-fi-ct-forum-20100831>
- 4 California Government Code 65864
- 5 If the higher number of signatures is secured, the proponents can force the City to hold an election more expeditiously.