

The Accidental Success of
Connecticut's Largest Housing
Development: 360 State Street in New
Haven

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In the summer of 2006, the City of New Haven decided to fill in what it saw as a gaping hole in its urban fabric.¹ For over 40 years, the site of the once-grand Shartenberg Department Store had sat, flat and unimproved, as a surface parking lot, the unfortunate consequence of the city's urban renewal efforts of the 1960s and 70s.² For city planners, the continued existence of a run-down parking lot where a New Haven iconic structure had once stood was a reminder of the economic decline of the city in the latter half of the twentieth century, and a cautionary tale about the perils of inappropriate city planning.³ Yet the site also represented a unique opportunity for large-scale development in the heart of the city's downtown – an accidental asset that presented a chance to do something new, different, and transformative.⁴ After years of waiting for something positive to emerge from the site, many city officials wanted an ambitious re-conception of a long-neglected block. “We were looking for the home run project.”⁵ What emerged was 360 State Street, a \$190 million, 32-story⁶ residential apartment complex with 500 units and plans for

¹ CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF 745 CHAPEL STREET (THE FORMER SHARTENBERG SITE), at 1, (2006). The Request for Proposals entices developers by noting, “This is a prominent site in downtown New Haven located just one block from the new Haven Town Green. This 1.5 acre parcel is one of the few remaining large development sites in downtown New Haven.”

² *Id.*, at 10; See also Paul Bass, *New Haven's New Skyline, Envisioned*, NEW HAVEN INDEPENDENT, Sept. 13, 2006, http://www.newhavenindependent.org/index.php/archives/entry/new_havens_new_skyline_envisioned/. Nostalgia for old New Haven department stores, including Shartenberg's, abounds in New Haven newspaper stories. “During the Christmas season, downtown New Haven was always festively decorated. The iron marquee across the front of Shartenberg's was filled with evergreens. Santa and his sleigh and reindeer, covered with colored lights, rode atop the entrance of the store from the day after Thanksgiving until the day after new Year's, for as many years as I can remember.” Mary Stokes Ahern, *Mom juggled family, Shartenberg's job in less hectic age*, NEW HAVEN REG., Sept. 6, 1990.

³ Interview with Tony Bialecki, Deputy Director of Economic Development for the City of New Haven, in New Haven, Conn. (Nov. 4, 2010) (discussing the reasons behind the city's decision to issue a RFP for the Shartenberg site in 2006, and the many failed attempts to develop the Shartenberg site before the 360 State Street project).

⁴ Allan Appel, *Downtown Gets Dose of Density*, NEW HAVEN INDEPENDENT, Apr. 13, 2007, http://www.newhavenindependent.org/index.php/archives/entry/downtown_gets_dose_of_density/ (“Speaking with confidence and pride, the mayor [John DeStefano, Jr.] pronounced the [360 State Street] project the flagship of a new phase in the development of downtown.”).

⁵ Interview with Roland Lemar, former Ward 9 Alderman for the City of New Haven, in New Haven, Conn. (Nov. 11, 2010) (discussing the 360 State Street approval process).

⁶ Different city agencies and news outlets count the number of stories in the building in different ways. Reports list the number of stories as ranging from 30 to 33.

a high-end grocery store on the street level.⁷ It is the largest private residential building in Connecticut.⁸ Perhaps most notably for a site long plagued with construction miscalculations, the building was completed on-budget and ahead of schedule, and has enjoyed a relatively positive response from renters and city residents.⁹

The selection of a massive residential tower represented a sharp strategic change for the city as it attempts to revitalize its downtown, towards the development of high-end housing. “A new argument is being made for density, for people to live, play and work in the same place.”¹⁰ Yet the fantastically complex deal that ultimately led to 360 State Street’s construction also called into question the degree to which the city itself was going to aid, direct, and shepherd this reimagining of the urban core. In pursuing the 360 State Street deal, the city relinquished much of the strategic vision it had used to guide past attempts to develop the former Shartenberg Department Store site in favor of a more market-friendly development approach.¹¹ The potential significance of the proposed development, coupled with the lessons of past development failures on the site, led the city to prioritize assurances that the developer had the proper financing to complete the project over a pre-conceived vision of what would be an appropriate use of the site.¹² As a result, what emerged from the complicated assemblage of public and private interests were a dramatic embrace of upscale housing as a chief downtown revitalization strategy, along with millions of dollars worth of city subsidies, including a one dollar purchase price for the city-owned land.¹³ This paper argues that while the city will ultimately benefit from the competent

⁷ Mary O’Leary, *Retailers, renters looking at 360 State*, NEW HAVEN REG., May 17, 2010.

⁸ Eva Galvan, *360 State celebrates construction benchmark*, YALE DAILY NEWS, Dec. 11, 2009.

⁹ Alexandra Sanders, *Move-in day at new, luxury 360 State St. building*, NEW HAVEN REG., Aug. 1, 2010.

¹⁰ Telephone interview with Karyn Gilvarg, Executive Director of the City Plan Department for the City of New Haven (Nov. 15, 2010).

¹¹ Interview with Tony Bialecki, *supra* note 3.

¹² *Id.*

¹³ Melissa Bailey, *Shartenberg Builder Defends “Thin” Dollar Deal*, NEW HAVEN INDEPENDENT, July 18, 2007, http://newhavenindependent.org/index.php/archives/entry/shartenberg_builder_defends_thin_dollar_deal/.

construction of hundreds of new housing units catering to urban professionals, the city's encouragement of downtown housing remains haphazard and unclear. When compared to another major project downtown that yielded upscale downtown housing, the conversion of the Eli building at 227 Church Street, and one that did not, the Landino project to build over two hundred luxury condominiums on nearby College Street, the 360 State Street project saw extensive city subsidy and project encouragement. The deal prioritized security of financing and speed over other considerations and volunteered millions in city subsidy as a result. But it was the city's notably market-oriented approach to the project, along with a reluctance to utilize its subsidization power to radically affect the use of the site, which aided in the construction of a project that was successfully completed and seems unlikely to saddle the downtown with an inappropriate use. While subsidization decisions were politically risky, past failures on the development site, coupled with an open-ended selection process, helped limit city exposure to potential failure. Whether the project yields long-term success, however, will depend far more on the vagaries of the market than on overzealous subsidization resulting in the foreclosure of future development opportunities.

I. Downtown Housing and Subsidization

Encouraging the development of upper-end housing in New Haven's downtown is a relatively new phenomenon for the New Haven city government. Yet "in the highly regulated real estate markets of central cities, hardly any new trend gets underway without government involvement."¹⁴ Though downtown housing development is seen as a fundamentally important component of New Haven's metropolitan future, the city has not articulated a particular vision for the ideal form, or income scale, that future development should target, beyond the

¹⁴ BERNARD FRIEDEN AND LYNNE SAGALYN, DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES 273 (1989).

opportunistic provision of “affordable housing” whenever possible.¹⁵ New Haven’s Deputy Director for Economic Development Tony Bialecki notes, “Quality of life issues had been improving and got people coming back [to downtown],” and “almost everyone agrees about the need for housing.” New Haven’s Mayor, John DeStefano, Jr., put the issue bluntly in his 2002 State of the City Address before the Board of Aldermen:

We must continue encouraging private investment in the development of housing in our downtown. People living downtown are what make it special. It’s what will allow the restaurants, shops, and nightclubs to continue to thrive and arts and culture [sic]. What we’ve become in such period of time in the City of New Haven. We’ve established ourselves as a city of unparalleled center of artistic and cultural accomplishment [sic].¹⁶

The reasons behind this housing push are fundamentally related to a desire to increase the city’s economic vitality and, in the long term, create a self-sustaining tax base that will help propel positive city growth.¹⁷

In New Haven, much of this renewed focus on downtown housing stems from anecdotal observations of the relative success of such developments, and marketing surveys suggesting a latent market for new types of housing units downtown, particularly from graduate students, empty nesters, and young professionals.¹⁸ The most influential study was commissioned in 1999, and has been used by the city to market downtown housing as an option for potential developers.¹⁹

¹⁵ Telephone interview with Karyn Gilvarg, *supra* note 10. “[Housing development] contributes to the desirability of residing and working in a downtown area. Residential comes first, and retail often follows. We already have some retail, and as density builds there will hopefully be more.”

¹⁶ *New Haven, Conn. Board of Aldermen Meeting Transcript*, 78 (Feb. 4, 2002).

¹⁷ LORETTA LEES, TOM SLATER AND ELVIN WYLY, *GENTRIFICATION 205* (2008) (“In cities that are highly dependent on property taxes as a source of revenue, such as those in the United States, seeking to increase your tax base by increasing the percentage of middle-class homeowners in the central city is seen to be fiscal pragmatism.”) These benefits are lessened in the case of middle-class renters, but still extant.

¹⁸ Interview with Tony Bialecki, *supra* note 3. “Smaller developers were continually coming to us with housing development ideas [before the Shartenberg RFP].”

¹⁹ CITY OF NEW HAVEN, *Draft for Comment: Points for Press Advisory on Downtown Development Opportunities* (May 1, 2000); ZIMMERMAN/VOLK ASSOCIATES, INC., *Market Position Analysis: Market-Rate Housing in Downtown New Haven* (June 22, 1999) (on file with author).

That study identified a market potential of roughly 2,000 housing units aimed at residents able to pay market rate downtown, which contained 6,936 people as of 2000.²⁰ A central conclusion of the study, adopted by city officials, is that

“To retain existing households, or attract new ones, appropriately-located, newly-constructed housing units must be provided in addition to units within rehabilitated buildings. The establishment of urban residential neighborhoods therefore need not be a ‘zero-sum’ exercise; rather than succeeding at the expense of other city neighborhoods, new market-rate housing opportunities, within the Downtown Study Area, when properly targeted, should expand the total number of households moving into or remaining within the city.”

These conclusions are supported by a market study commissioned by Becker + Becker, the developer of 360 State Street and outlining the project’s profit-making potential. In the Becker study, prepared in 2006, the evaluators find significant potential for new units targeted at the upper end of the housing market, which can capture a premium price above market rate for being the highest-quality rental units available.²¹ The study predicted 90 percent occupancy of rental units in a 405 unit building within 20 months, based in part on the ability of a large residential complex, unlike smaller projects, to engage in a full-fledged marketing campaign.²² The city was then left with the decision of how much of this sort of development it should encourage, and to what degree it should financially support such plans.

Municipal subsidy decisions are shaped, at least in part, by these predictions and on the hoped-for success of projects that seek to capitalize on the potential those predictions promise. Evaluating those subsidy decisions is, of course, difficult, dependent on varying measures of success: increases in a city’s tax base, commercial spillover effects, support for further

²⁰ *Id.* at 1. For population figures, *See* CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF 745 CHAPEL STREET (THE FORMER SHARTENBERG SITE), *supra* note 1, at 6. Between 2000 and 2010, a total of over 1,600 new units of housing were constructed downtown, including the Shartenberg development. CITY OF NEW HAVEN, *Downtown Crossing: TIGER II Capital Grant Application*, 16 (Aug. 21, 2010), <http://www.cityofnewhaven.com/economicdevelopment/pdfs/Downtown%20Crossing,%20New%20Haven,%20Project%20Narrative.pdf>.

²¹ ROBERT CHARLES LESSER & CO., LLC, *Market Analysis for 745 Chapel Street, New Haven, Conn.*, 10 (Oct. 18, 2006) (on file with author).

²² *Id.*, at 10.

development, improvement of a city's image, and many other such concerns. Speaking of city housing developments, one commenter observed, "Although the revitalization of inner neighborhoods amounted to less than met the eye, it was still important for the cities. It marked a turnaround in long-established trends and brought a new group of affluent residents within reach of the city assessor and close enough to downtown to support its theaters, restaurants, concert halls, and shopping."²³ Criticism of city subsidization techniques, including off-budget financing and sophisticated deal-making, which raise questions of democratic accountability, spending priorities, and limitation of future city freedom to deal with unexpected setbacks, is prevalent, but should be balanced against a municipality's limited range of options in attempting to spur positive growth.²⁴ The lessons of New Haven's past has militated against serious departures from market-driven development, but the city, perhaps inevitably, remains involved with almost all major housing developments. For New Haven, as with other municipalities, "the central

²³ FRIEDEN & SAGALYN, *supra* note 14, at 272. See also, Audrey McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power*, 8 U. PA. J. CONST. LAW 1, 6-7 (2006) ("The role that local government plays in the redevelopment process is also quite significant. Cities aid in redevelopment by entering into public-private partnerships to write down land acquisition and development costs by using regulatory freezes and eminent domain power, and by providing a number of business incentives to companies willing to relocate and participate in residential and commercial (entertainment and retail) development projects. This is done with geographically targeted commercial tax incentives such as enterprise zones, creative financing techniques such as tax increment financing, favorable taxing policies such as under-assessment of commercial property values, or even the waiver of taxes through nominal payments-in-lieu-of-taxes (PILOTS). However extensive the programs, the attendant 'restructuring of urban space' through class transformation has enormous social and legal policy implications.").

²⁴ FRIEDEN & SAGALYN, *supra* note 14, at. "Off-budget financing was one of the keys to the success of downtown revitalization. From the beginning it made the high cost of redevelopment a manageable issue in city politics by presenting the bill to someone other than the average taxpayer. After Washington cut renewal funds loose from specific projects in 1974 and encouraged each city to set its own community development priorities, mayors faced strong pressures to scatter their money across the city in order to do something for every district. Off-budget financing came to the rescue once more; it helped the mayors continue pouring resources into expensive projects by diffusing their cost over time and removing them from the annual competition for community development funds." The authors are assessing retail developments, but the general principles seem applicable to housing development as well.

negotiating task for the public sector is to translate its policy goals into fair and feasible business terms and conditions under which it will secure the public-benefit package.²⁵

Still, cities must remain cognizant of the fact that these developments, and the kinds of projects these subsidies enable, have real consequences in defining the future nature of the city and its population.²⁶ In particular, cities must evaluate whether downtown housing subsidies disproportionately favor a relatively small portion of the municipal population, not merely in terms of socio-economics, but in terms of raw numbers as well.²⁷ Such evaluations, however, are often difficult to make, as future outcomes might take a long time to materialize, and “success” of a downtown might depend to a large degree on the preferences of rapidly changing constituencies. Such evaluations must also take into account the limited set of options available to city planners in their attempts to engender downtown housing.²⁸

II. The Early History of the Shartenberg Site

Though the Shartenberg Site served as a parking lot in downtown New Haven for over 40 years until its recent redevelopment, its past history has been inextricably linked to the overall health of downtown New Haven. The full story of each original lot that comprised the eventual Shartenberg Site is beyond the scope of this paper. Instead this paper will offer a brief historical account of the lot that became the Shartenberg Department Store to give some context to later development discussions.

²⁵ Lynne Sagalyn, *Negotiating for Public Benefits: The Bargaining Calculus of Public-Private Development*, 34 URB. STUD. 1955, 1958 (1997).

²⁶ Robyne Turner, *The Politics of Design and Development in the Postmodern Downtown*, 24 J. URB. AFF. 533, 542 (2002) (“Like a self-fulfilling prophesy, a neighborhood made up of high-end residents defines the public that will determine how public spaces are used.”).

²⁷ Arthur Nelson and Kathy Young, *Limited Role of Downtowns in Meeting Municipal Housing Needs*, J. URB. PLAN. & DEV., MARCH 2008, at 7 (arguing that reports of a relative rise in downtown living, while real, is not particularly widespread and is unlikely to change municipal housing patterns).

²⁸ FRIEDEN & SAGALYN, *supra* note 14, at 21. “When [critics] faulted city government for rebuilding downtown inappropriately, they failed to recognize how few options the mayors had.”

Located at the intersection of Chapel and State streets, at the outer edge of the original Nine Squares that comprised the planned New Haven township, the lot of land that eventually became the Shartenberg Department store was originally a private residence.²⁹ As early as 1796, a two-story frame house belonging to William Lyon sat on a portion of the site.³⁰ Perhaps foreshadowing the “mixed-use” development mantra of present-day urban redevelopment and the 360 State Street project, Lyon oversaw the launch of New Haven’s first bank, the National New Haven bank, from his house, where he worked as the bank’s cashier.³¹

This stately house was razed in 1852 by Thomas Bennett to make way for the Lyon Building, which occupied a few lots on the lower half of the Chapel Street block and contained the Wilcox and Hall dry goods store, which preceded Shartenberg.³² The Shartenberg department store company was actually an import from Rhode Island, where Jacob Shartenberg, a Jewish immigrant, had started a successful department store in Pawtucket in 1881.³³ Shartenberg began operating in New Haven around 1896, eventually taking on Harry Robinson as a partner.³⁴ Control over the New Haven store fell to Shartenberg’s son, Henry, following Jacob’s death in 1915.³⁵

²⁹ *The Shartenberg Concern*, SATURDAY CHRON., Dec. 12, 1914, at 7.

³⁰ *New Haven Now and Then –No. 66: Lyon House in Chapel Street*, NEW HAVEN EVENING REGISTER, 1931 (on file with New Haven Museum, Mfilm 138, Reel 1).

³¹ *Id.* At any rate, Lyon seemed to quite enjoy his role as a New Haven icon. “The Lyon residence was also the scene of many social functions in the colonial days. Its owner entertained on a lavish scale, and its ‘open-house’ was always remembered by the officers of the Continental army, who never missed visiting here when they happened to be in this part of the country.” *The Shartenberg Concern*, *supra* note 29. A later newspaper article observes that retrofitting Lyon’s house for banking cost a mere “11 pounds, 9 shillings, and 10 pence.” *New Haven Now and Then –No. 66: Lyon House in Chapel Street*, *supra* note 30.

³² SANBORN MAP CO., Insurance Maps of New Haven, Connecticut, No. 4 (1886).

³³ *Shartenberg business sold to New York man*, NEW HAVEN REG., July 14, 1952 (on file with New Haven Museum. Dana Collection, Folder 4).

³⁴ *Id.* The Shartenberg Department Store is also known as Shartenberg & Robinson. This name persisted even after Robinson’s share in the company was purchased by Shartenberg’s two sons, Charles and Henry.

³⁵ *Id.*

In 1914, the Shartenbergs completed construction of a brand-new department store, a six-story temple to conspicuous consumption, complete with two massive Greek columns.³⁶ One newspaper from the time could barely contain its joy at the building's architectural addition to the cityscape. "The building is so beautiful in design and so complete in its appointments that it stimulates a desire to run riot with superlatives."³⁷ Though the Bennett family still owned the land under the department store when the new building was constructed, the Shartenberg & Robinson Company was busy acquiring adjacent land, including the purchase of a store containing a neighboring wholesale smoked meat business in 1909 to allow for store expansion.³⁸

By 1924, the Shartenberg & Robinson Company had succeeded in consolidating what was to become known as the Shartenberg site.³⁹ The land holding extended for most of the block from Chapel Street down to State Street, expending to Pitkin Street.⁴⁰ Business continued well into the postwar period, when, in 1952, the department store company was sold to an enthusiastic New York businessman named Nelson Miller, who evidently believed that New Haven was poised for further population growth and a strengthened downtown economy.⁴¹ Miller, of

³⁶ *The Shartenberg Concern*, *supra* note 29.

³⁷ *Id.*

³⁸ *Shartenberg and Robinson the purchasers*, UNKNOWN NEW HAVEN NEWSPAPER, (n.d.) (on file with New Haven Museum, MFilm 1a, Reel 26, Folder 4). Shartenberg and Robinson were estimated at the time to have paid around \$100,000 for the site. Land records from the time indicate that complexity regarding sale of the site was not unique to the twentieth century. A 1909 deal involved the sale, re-sale, and re-re-sale of the property back and forth between the Frank S. Platt Company, who originally owned land along State Street, and the Shartenberg & Robinson Company. Two of these transactions involved sales for the consideration of one dollar.

³⁹ SANBORN MAP CO., Insurance Maps of New Haven, Connecticut, No. 8 (1924). Indeed, department stores nationally had a central role in American downtowns. "Department stores made urban cores a focal point for city life, rather than a dreary and austere collection of offices. And department store buildings became symbols of urbanity and a central fixture of community identity." Mark Bauer, *Department Stores on Sale: An Antitrust Quandary*, 26 GA. ST. U.L. REV. 255, 260 (2010) (discussing the history of department stores in American cities).

⁴⁰ *Id.*

⁴¹ *Shartenberg business sold to New York man*, *supra* note 33. "Miller said today he has tremendous confidence in the future of the City of New Haven and of Shartenberg's New Haven. The increase in population of New Haven and surrounding area during the past 10 years and the growth of its industry and port augurs well for the future of a large, independently-owned, popular-priced department store with a reputation as fine as Shartenberg's, Miller said."

course, severely misjudged economic and population trends in New Haven (and other American cities) in the post-war period. “Beginning in the Great Depression and accelerating after World War II, however, the number of downtown stores steadily declined, their share of metropolitan shoppers and their dollars likewise shrinking.”⁴² The business foundered, and closed in 1962.⁴³ The building was razed soon thereafter,⁴⁴ and became a parking lot owned by the city but administered by a private parking company, with space for between 175 and 215 cars.⁴⁵ Though the Shartenberg site would never again host a department store, New Haven planning officials persisted in attempting to attract department stores downtown through a variety of urban renewal projects.⁴⁶ Still, Shartenberg’s symbolic imagery lived on. One prominent local commenter dubbed the city’s preoccupation with downtown department stores “Shartenberg Syndrome.” This affliction saw many downtown, government-led retail efforts, all of which ended in failure, and the author of the phrase lambasted city planners for living in the past.⁴⁷

III. The Modern Shartenberg Site and Government Intervention

⁴² Lizabeth Cohen, *Buying into Downtown Revival: Then Centrality of Retail to Postwar Urban Renewal in American Cities*, 611 *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE* 82, 84 (2007).

⁴³ Tom Connor, *Real Estate: Green Gamble*, *CONNECTICUT MAGAZINE*, Oct. 2010, <http://www.connecticutmag.com/Connecticut-Magazine/October-2010/Real-Estate-Green-Gamble/>.

⁴⁴ Diane Greer, *Re-imagined in New Haven: Developer Using Yesterday to Create Future*, *NEW YORK CONSTRUCTION*, Mar. 1, 2010, http://newyork.construction.com/features/2010/0301_NewHaven-1.asp. “The \$150 million, 32-story project is located at the site of the former Shartenberg department store, which was razed in 1962 under a then-ambitious urban renewal scheme. Redevelopment plans never materialized and for the past 48-years the 1.5-acre site laid fallow, used as a parking lot.” Other documents, including those produced by the city, seem to indicate a different demolition date. See *CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF SHARTENBERG SITE*, at 3 n.1, (May 22, 2000) (“The site is referred to as the Shartenberg site because it was the location of the Shartenberg department store, a family owned dry goods and department store that was acquired and torn down by urban renewal in the 1970’s.”). See also Mary O’Leary, *Sees growth sprouting at old store site*, *NEW HAVEN REG.*, Feb. 14, 2007 (putting the demolition date at 1966).

⁴⁵ See *CITY OF NEW HAVEN, AMENDMENT TO STATE STREET REDEVELOPMENT AND RENEWAL PLAN* (n.d.), (on file with author) (“The Shartenberg block now has 175 parking spaces.”); *REQUEST FOR PROPOSALS: DEVELOPMENT OF 745 CHAPEL STREET (THE FORMER SHARTENBERG SITE)*, *supra* note 1, at 10 (“The Shartenberg Site is currently leased by the City of New Haven to ProPark on a month-to-month basis for use as a surface parking lot with approximately 215 spaces for monthly and short-term parking.”).

⁴⁶ See, generally, Greer, *supra* note 44.

⁴⁷ Paul Bass, *Shartenberg Syndrome, R.I.P.*, *NEW HAVEN ADVOCATE*, Nov. 6, 1997. “The department store was an unfortunate symbol for that longing. It was, in part, Shartenberg Syndrome that made city politicians spend more than 30 years seeking downtown department stores as anchors for urban renewal. They tried to re-create the past.”

The Shartenberg site was never intended to remain a surface parking lot.⁴⁸ Assembled as part of the New Haven’s State Street Renewal Plan, the Shartenberg lot was envisioned as a retail and office building.⁴⁹ This office/retail complex would front half a mile of linked multi-story parking garages with street-level retail that were to be constructed on the opposite side of State Street, and would accommodate up to 5,000 cars.⁵⁰ For planners, this redevelopment project would make “downtown the place where the action really is. It’s a place walked across by people with money in their pockets.”⁵¹ Housing was dismissed as a proper use of the site. Quoting then-city planning director John McGuerty, the Yale Daily News wrote, “As for using the land for housing instead of a garage, McGuerty said this would be ‘putting low-income housing in the worst possible site you can find.’”⁵² To a significant extent, the massive parking garage was intended to spur downtown development by both encouraging suburbanites to work and shop downtown. It also served to eliminate the need for surface parking lots, like those at Shartenberg, freeing those downtown sites for new construction.⁵³

The fate of the Shartenberg site became interwoven with rising public opposition to large-scale urban renewal efforts and dwindling supplies of federal money to finance construction.⁵⁴ While many properties across from the Shartenberg lot on State Street were

⁴⁸ See CITY OF NEW HAVEN, AMENDMENT TO STATE STREET REDEVELOPMENT AND RENEWAL PLAN (n.d), *supra* note 45.

⁴⁹ *Id.*

⁵⁰ *Id.*; Philip F. Falcone, Jr., *State Street Garage Key To Development*, YALE DAILY NEWS, Feb. 10, 1970, at 1.

⁵¹ Timothy Bates, *Aldermen Rethink Downtown Renewal*, YALE DAILY NEWS, June 2, 1968, at 9.

⁵² Falcone, *State Street Garage Key To Development*, *supra*, note 50.

⁵³ *Id.* “McGuerty expects the garage, with a tentative planned capacity of 5,000 vehicles, to significantly reduce the need for surface parking downtown. The Redevelopment Agency, which has bought a large portion of the land now used for surface lots, intends to take this land out of parking and turn it over to private developers.”

⁵⁴ Interview with Tony Bialecki, *supra* note 3; FRIEDEN & SAGALYN, *supra* note 14, at 55 (“Although Washington officials kept claiming steady progress in the sale of land to developers, the record was poor to the end. As late as 1971 more than half the projects begun between 1960 and 1964 still had land unsold, and only the very earliest projects—those begun between 1950 and 1959—had completed two-thirds or more of their land sales.” By 1968, the New Haven Board of Aldermen had already acted to limit the size of the proposed garage. Bates, *Aldermen Rethink Downtown Renewal*, *supra* note 51. See also Michael Sherman, *City Garage: Citizens Demonstrate*, YALE DAILY NEWS, Jan. 21, 1970 (“More than 3,000 city residents are expected to participate in this demonstration. The

cleared, the major garage construction and Shartenberg renewal projects never materialized.⁵⁵

The city moved on to other priorities, and Shartenberg remained a parking lot.⁵⁶

Public interest in the Shartenberg lot surfaced next in 1981, when New Haven received a bid for continuing development of the troubled Government Center site, a centrally-located project that encompassed City Hall, office tower skyscrapers, and parking facilities.⁵⁷ The Shartenberg site was envisioned as complementary to the office tower construction happening elsewhere on the Government Center site, intended to provide parking to downtown office workers.⁵⁸ Chase negotiated a series of long-term, deep subsidies from the city, in exchange for a 175-year lease on the Government Center properties, which were owned by the city.⁵⁹ The deal included a twenty-year tax abatement on the Shartenberg development site, along with a \$140,000 tax cap until the tax abatement went into effect following completion of the parking garage.⁶⁰ Delays in construction meant that if Chase ever actually constructed the garage, tax abatement privileges could have extended well into the 2000s.⁶¹ Chase was further promised support from a \$10.5 million Urban Development Action Grant.⁶²

Echoing the earlier visions of the developers of the State Street Redevelopment Plan, Chase proposed, in 1988, the construction of an \$80 million office tower on the site, instead of

protestors are opposed to the planned construction of a 5,000-car garage, half a mile in length, in downtown New Haven.”).

⁵⁵ See Greer, *Re-imagined in New Haven: Developer Using Yesterday to Create Future*, *supra*, note 28.

⁵⁶ Interview with Tony Bialecki, *supra* note 3.

⁵⁷ YALE DAILY NEWS, *City Gets New Development Plans*, YALE DAILY NEWS, Apr. 24, 1981, Special Issue.

⁵⁸ *Development Agreement between the City of New Haven as landlord and Deltron Development Corp. [a subsidiary of O & Y (U.S.) Development Corp., a New York Corporation] and Chase Family Limited Partnership No. 9 As Tenant*, Oct. 26, 2010 (on file with author).

⁵⁹ Mark Zaretsky, *Companies pay no taxes on site of former store*, NEW HAVEN REG., Oct. 28, 1998.

⁶⁰ *Id.* See also *Development Agreement between the City of New Haven as landlord and Deltron Development Corp. [a subsidiary of O & Y (U.S.) Development Corp., a New York Corporation] and Chase Family Limited Partnership No. 9 As Tenant*, *supra* note 58, at 11.

⁶¹ *Id.*

⁶² Leonard Honeyman, *City puts spurs to Chase tower*, NEW HAVEN REG., Apr. 20, 1990.

simply a parking lot.⁶³ Many doubted the wisdom of further office space development, and the plan went nowhere.⁶⁴ The planned development soon devolved into a series of accusations and counter-accusations between Chase and the city. Construction delays and mistrust ended in extensive litigation and a federal grand jury probe of possible corruption ties between Chase and former mayor Biagio DiLieto, fueled by the public relations disaster of Chase's decision to offer the former mayor a job at his development firm at the end of the mayor's term.⁶⁵ The project became mired in litigation, as well as sluggish lease-up rates for the completed office tower.⁶⁶

While a weak office market suggests a plausible, and more prosaic, reason for the delays, litigation tied up progress on the Shartenberg site until December 1998, more than 17 years after Chase first proposed development of the Shartenberg lot.⁶⁷ The final deal involved a \$1.75 million payment from Chase to the city to pay off the Urban Development Action Grant, and \$1.8 million in payments from the city to Chase (\$1.3 million for owed debts, and \$527,981 in grant money held in escrow by the Department of Housing and Urban Development).⁶⁸ While the city suffered a financial loss, the most important outcome of the litigation was a requirement that the city provide 175 parking spaces for tenants of Chase's Connecticut Financial Center building at either a Shartenberg lot or a nearby lot, and city reclamation of development rights on

⁶³ Steve Hamm, *Office developer plans \$80 million skyscraper*, NEW HAVEN REG., Apr. 9 1988.

⁶⁴ *Id.*

⁶⁵ Joseph Brady, *Grand jury probing Chase project*, NEW HAVEN REG., March 27, 1992. The mayor did not, in the end, accept the job. He did, however, appear on television supporting one of Chase's downtown office tower developments. Fred Vogelstein, *Developers pan DiLieto's role in TV ad*, NEW HAVEN REG., Nov. 24, 1988. Press reports also revealed that central to Chase's office leasing strategy was the use of "zero-coupon leasing," which allowed for deferred rental payments and which were, in effect, subsidized by the city tax abatement on the project.

⁶⁶ Chris Capot, *Chase faults city for uncompleted projects*, NEW HAVEN REG., June 3, 1995. "The city charged that because Chase never built a planned garage at Chapel and Orange streets [presumably Shartenberg, parcel D in the original Development Agreement] and never finished a plaza between the new City Hall and the Hall of Records, the developer violated the lease." Chase maintained that government meddling was the cause of the delays.

⁶⁷ Angela Carter, *Settlement clears way for development of site*, NEW HAVEN REG., Dec. 26, 1998.

⁶⁸ *Id.*

the site.⁶⁹ Deemed necessary for the financial success of the already-built Connecticut Financial Center office tower, the parking space requirement made future development of the Shartenberg site significantly more expensive than it otherwise would have been, with the cost absorbed by either future developers or the city itself.⁷⁰

The fizzling of the Chase development of the Shartenberg lot has led many participants to blame over-generous city subsidies as allowing a lack of market discipline and a cushion for extended delay.⁷¹ One former alderman later wrote such preferential tax abatements are plagued with inefficiencies. “The political rewards of granting such incentives—the ability to claim to have attracted investment and jobs—are immediate and visible. The economic costs of such incentives—reduced tax revenues—tend to fall in the future.”⁷² Accurate divination of a city’s future revenue needs, he added, is particularly difficult.⁷³

The city did not wait long before re-offering the Shartenberg site to developers. Plans, in fact, were already in the works for the Shartenberg site before the Chase settlement was finalized, the product of sustained interest from the mayor.⁷⁴ Spurred on by the promise of significant state and federal funding (expected to be around \$10 million of an expected \$15-16 million project price tag), the city proposed conversion of the department-store-cum-parking lot-cum-office tower-cum-parking lot into a municipal bus depot that would consolidate downtown

⁶⁹ CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF 745 CHAPEL STREET (THE FORMER SHARTENBERG SITE), at 10, *supra* note 1.

⁷⁰ Interview with Tony Bialecki, *supra* note 3; Telephone interview with Bruce Becker, President of Becker + Becker and developer of the 360 State Street project (Nov. 1, 2010). Becker estimated the cost of building 175 parking spaces at around \$6 million. The parking spaces were not, however, simply a free giveaway to Connecticut Financial Center tenets. Parkers were required to pay market rate for the spots.

⁷¹ Telephone interview with Edward Zelinsky, former Alderman for the City of New Haven and former member of the New Haven Board of Finance (Dec. 3, 2010). “I helped push through some early tax abatements in the DiLieto administration and when I meet my Lord I’m expecting to see a list of sins that will include my participation in those events.”

⁷² Edward Zelinsky, *Tax Incentives for Economic Development: Personal (and Pessimistic) Reflections*, 58 CASE W. RES. 1145, 1152 (2008).

⁷³ *Id.*

⁷⁴ Mark Zaretsky, *New bus and train stations part of city development*, NEW HAVEN REG., Oct. 9, 1998.

bus ridership, offer a shopping market for bus patrons, as well as air conditioned and heated facilities, public bathrooms, and a 300 to 350 car garage.⁷⁵ This proposal was intended to dovetail with the planned opening of the State Street Rail Station, which offered train service to New York, and is located across the street from the Shartenberg lot.⁷⁶ The city prepared architectural renderings of the proposed bus depot, commissioned a “conceptual study,” and issued a Request for Proposals in May of 2000.⁷⁷ The bus depot was intended to provide amenities to local transit riders and allow “convenient intermodal transfers” between the train station and bus lines.⁷⁸

This Request for Proposals failed, yielding no responses from developers.⁷⁹ Two developers interviewed about their lack of interest in the project “concluded that though the site was attractive for office, housing and/or retail mixed use, the co-location with the bus terminal would not work.”⁸⁰

Interestingly, the city’s aborted attempt to build a bus depot on the Shartenberg lot was launched simultaneously with an offer of sale of two downtown properties intended for redevelopment into downtown housing projects, an offer bolstered by a 1999 study, commissioned by the City Plan Department, that highlighted extensive market demand for

⁷⁵ *Id.*; Telephone interview with Karyn Gilvarg, *supra*, note 10; JEETER, COOK & JEPSON ARCHITECTS, INC., CITY OF NEW HAVEN: DOWNTOWN BUS DEPOT, (2000) (conclusions on file with author).

⁷⁶ *Id.*; CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF SHARTENBERG SITE (2000), *supra* note 44.

⁷⁷ *Id.*

⁷⁸ Interoffice Memorandum from Karyn Gilvarg, Executive Director, New Haven City Plan Department, to Thayer Baldwin, Corporation Counsel for the City of New Haven (Jan. 25, 2001) (on file with author).

⁷⁹ Interoffice Memorandum from Karyn Gilvarg, Executive Director, New Haven City Plan Department to Henry Fernandez, former Economic Development Administrator, City of New Haven (N.d.) (on file with author); Telephone interview with Karyn Gilvarg, *supra* note 10.

⁸⁰ Interoffice Memorandum from Karyn Gilvarg, Executive Director, New Haven City Plan Department to Henry Fernandez, former Economic Development Administrator, City of New Haven, *supra* note 61.

higher-end downtown housing.⁸¹ Housing was not proposed for the bus depot site.⁸² The utter lack of developer response in incorporating the bus depot led the city to shelve plans for developing the Shartenberg site, and city officials turned to other priorities.⁸³ At least publicly, however, the city's mayor, John DeStefano, Jr., attributed the shelving of the bus depot plans to an inability to secure state funding resources, as opposed to a lack of developer interest.⁸⁴

IV. The 360 State Street Development and the One Dollar Deal

The forty-year string of city-backed development failures of the Shartenberg Site colored the negotiations surrounding the ultimate development of the 360 State Street residential tower, pushing city officials to offer the site, for the first time, without any significant specifications of what had to be built there.⁸⁵ The Comprehensive City Plan, developed by the city in 2003, is likewise relatively silent on what, exactly, the city hoped for from the Shartenberg lot now that so many development attempts had fallen by the wayside, or how aggressively the city should subsidize development efforts.⁸⁶ The lot is simply identified as a “promising office space / mixed use opportunit[y].”⁸⁷ When the City finally decided to issue a Request for Proposals for the Shartenberg site (the fourth in Shartenberg's beleaguered history), the language used was broad,

⁸¹ CITY OF NEW HAVEN, DRAFT FOR COMMENT: POINTS FOR PRESS ADVISORY ON DOWNTOWN DEVELOPMENT OPPORTUNITIES, *supra* note 19; ZIMMERMAN/VOLK ASSOCIATES, INC, MARKET POSITION ANALYSIS: MARKET-RATE HOUSING IN DOWNTOWN NEW HAVEN, *supra* note 19.

⁸² Telephone interview with Karyn Gilvarg, *supra*, note 10.

⁸³ Telephone interview with Henry Fernandez, former Economic Development Administrator for the City of New Haven (Dec. 9, 2010) (Discussing how development of Shartenberg in 2000 was premature because of other growth opportunities downtown, and his opposition to development of the bus depot).

⁸⁴ Joseph Straw, *Central bus terminal plan put off*, NEW HAVEN REG., Jan. 18, 2002. The mayor, however, did mention that housing for a new parking garage could figure into the site's future development. “The city is now focusing on developing the former department store site for residential uses, and possibly a new parking garage to bear traffic from the new Shoreline East Commuter Rail station across State Street.” Such efforts were not particularly active. Four years would pass before the city issued a new RFP for the site.

⁸⁵ Interview with Tony Bialecki, *supra* note 3. “We really just wanted to see what would come out of the woodwork.”

⁸⁶ CITY OF NEW HAVEN, COMPREHENSIVE PLAN OF DEVELOPMENT, Section VI, 24 (October 15, 2003) (on file with author).

⁸⁷ *Id.*

expansive, and purposefully vague.⁸⁸ “Rather than proscribe a specific mix of uses for this site, the City is releasing this RFP to seek developer’s proposals for develop which is market-driven and which will fit into the downtown neighborhood.”⁸⁹ One city official observed, “Everyone thought this would be a good site for mixed use development, and the more density the merrier.”⁹⁰ City officials note that while part of the newfound openness to a market-based, developer-driven development project for the Shartenberg site was the result of years of inability to develop something on the site, the city was also hamstrung by a decided lack of available subsidy funding that could be used to shape the development.⁹¹ “The focus in 2006 was that developers were not going to get a lot of money from the city, so what can you do that is largely market-based and market-driven?”⁹² Not only had the city been chastened by past dealings, the city could not afford truly significant subsidies.⁹³ “Those kinds of [federal and state subsidy] programs were gone or hugely diminished. And the city had not done a tax abatement since 1994, except for true public housing.”⁹⁴

The City assembled a team of eight community stakeholders and city officials to evaluate submissions and make a recommendation to city about which project proposal represented the

⁸⁸ Interview with Tony Bialecki, *supra* note 3.

⁸⁹ CITY OF NEW HAVEN, BUREAU OF PURCHASES, REQUEST FOR PROPOSALS: DEVELOPMENT OF 745 CHAPEL STREET (THE FORMER SHARTENBERG SITE), at 8, *supra* note 1. The City lists ten specific goals for the project: “Continue the growth of the downtown as a residential and commercial neighborhood; generate new jobs and retain existing jobs; Generate new tax revenue; Reinforce New Haven as a regional destination for visitors and businesses; Compliment the nearby Ninth Square and Wooster Square neighborhoods in use and appearance; Build on the design quality that makes the historic downtown an attractive and unique place; Engage residents in street-level activity; Support and leverage New Haven’s excellent institutions for education and the arts; Advance New Haven as a city of diversity; Support projects that are high-quality and economically feasible.”

⁹⁰ Telephone interview with Karyn Gilvarg, *supra* note 10. *See also* Andy Bromage, *New Haven, Conn. Seeks developers for downtown property*, NEW HAVEN REG., Jun. 20, 2010. “Mayor John DeStefano Jr. said he envisions a single building more than four stories high but less than 12, housing street-level retail and a mix of housing or office space above. The parcel is zoned BD-1 and could support up to 400,000 square feet of commercial or high-density residential space.”

⁹¹ Telephone interview with Karyn Gilvarg, *supra* note 10.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

best use of the Shartenberg site.⁹⁵ Nine developers submitted proposals by August, 2006, representing a range of potential visions for the Shartenberg site.⁹⁶ The eventual winning proposal, submitted by Becker + Becker, initially proposed construction of a \$150 million, 420-unit housing tower comprising rental apartments and condominiums.⁹⁷ Some of the apartments were deemed “affordable,” but it remained unclear what price range was envisioned for those units.⁹⁸ Assuming full responsibility for the legacy of the Chase-era parking space agreement, Becker + Becker proposed provision of over 500 parking spaces without particularized parking lot construction subsidy.⁹⁹ This initial proposal suggested a one dollar land purchase price, along with various subsidies providing for green building construction, the provision of child care, and affordable housing.¹⁰⁰ Most crucially, the Becker + Becker proposal came with assured financial backing from Kennedy Associates, the investment arm of Multi-Employer Property Trust, a real estate equity fund with financial contributions from 323 pension funds, mainly representing workers unions.¹⁰¹

Of the initial nine proposals for the site, three survived an initial round of review.¹⁰²

Taking advantage of the evidently high levels of developer interest in the property, the city

⁹⁵ Paul Bass, *New Haven's New Skyline, Envisioned*, *supra* note 2. The eight members of the Review Committee, organized by the city, included downtown Alderwoman Frances (Bitsie) Clark, Executive Director of the Town Green Special Services District Scott Healy, President of Empower New Haven Althea Marshall, Founder of New Haven's Community Development Bank Chandler Howard, President of the New Haven Chamber of Commerce Anthony Rescigno, Economic Development Administrator Kelly Murphy, City Plan Director Karyn Gilvarg, and Deputy Director of Economic Development Tony Bialecki. *See also* CATHERINE SULLIVAN-DECARLO, CITY OF NEW HAVEN PUBLIC INFORMATION OFFICE, STRONG SHOWING IN SHARTENBER [SIC] PROPOSALS, Aug. 16, 2006 (on file with author).

⁹⁶ Mary O'Leary, *Sees growth sprouting at old store site*, *supra* note 29.

⁹⁷ Paul Bass, *New Haven's New Skyline, Envisioned*, *supra*, note 2.

⁹⁸ *Id.*

⁹⁹ KELLY MURPHY AND JOHN DEStEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: COMPARISON OF PROPOSALS SUBMITTED, 3, July, 2007 (on file with author).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*; Multi-Employer Property Trust, <http://www.mept.com> (last visited Dec. 12, 2010).

¹⁰² NEW HAVEN REG., *New Haven attracts more developers*, NEW HAVEN REG., Nov. 30, 2006.

eliminated from contention those proposals lacking a stated plan for financial backing.¹⁰³ Though the RFP had requested extensive documentation of the developer's financial plan, city officials initially felt little pressure to move forward extremely quickly with their selection. "This was all before the economy went downhill, everything was going pretty well at the time."¹⁰⁴ The RFP itself had been precipitated by increasing informal contacts between small developers and city planners inquiring about a Shartenberg lot sale, lending those officials confidence that something would get built on the Shartenberg site.¹⁰⁵ Still, there was little momentum within city government for delay in the RFP process to allow some of the less complete development proposals time to secure more financial backing. "We see the deal, and part of our job is to get the deal done."¹⁰⁶

Of the viable proposals, developers presented radically different visions for the Shartenberg site.¹⁰⁷ The city ended up interviewing three of the developers for advanced negotiations: Becker + Becker, Christie Wareck, and C.A. White.¹⁰⁸ The most serious contender to Becker + Becker's proposal was submitted by repeat New Haven developer C.A. White, who presented a design from Robert Orr & Associates, an architectural firm with its office a mere block from the Shartenberg development site.¹⁰⁹ In contrast to Becker + Becker's single residential tower, C.A. White proposed a medley of shorter buildings, 163 residential units,

¹⁰³ KELLY MURPHY AND JOHN DEStEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: COMPARISON OF PROPOSALS SUBMITTED, at 2, *supra* note 99.

¹⁰⁴ Interview with Tony Bialecki, *supra* note 3.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Paul Bass, *New Haven's New Skyline, Envisioned*, *supra* note 2; Interview with Tony Bialecki, *supra* note 3.

¹⁰⁸ Mary O'Leary, *Sees growth sprouting at old store site*, *supra* note 29.

¹⁰⁹ Paul Bass, *New Haven's New Skyline, Envisioned*, *supra*, note 2; Interview with Tony Bialecki, *supra* note 3; Telephone interview with Frances (Bitsie) Clark, Ward 7 Alderwoman for the City of New Haven (Nov. 28, 2010).

24,000 square feet of retail space, 34,000 square feet of office space, and new mini-streets to achieve a streetscape with a New Urbanist design flair.¹¹⁰

The estimated \$90 million C.A. White proposal carried with it a markedly different set of expected city and state subsidies from the Becker proposal.¹¹¹ Becker + Becker's offer of one dollar for the Shartenberg site was replaced with a \$5 million offer.¹¹² This offer, however, was conditional. If asked to comply with hiring requirements of the city's Commission on Economic Opportunities, which enforces rules for contractors related to hiring of minority and female workers, the \$5 million offer shrank to \$2 million, ostensibly to offset the cost increase of hiring labor.¹¹³ The project, the developer noted in the proposal, would further require \$4 million in city subsidies for provision of parking facilities and \$1 million in environmental subsidy to pay for remediation of the Shartenberg site.¹¹⁴ Absent financial considerations, the C.A. White proposal was the clear design favorite of the City Hall-appointed review committee, which was drawn primarily to its aesthetic attributes.¹¹⁵

A third proposal from developer Christie Wareck offered 430,000 square feet of new construction with an estimated cost of \$97 million, split between a 56-room upscale hotel, mixed-income housing, a cabaret theater, and a public plaza.¹¹⁶ Offering a land purchase price of \$1,531,950, the Wareck proposal envisioned \$11.4 million in city subsidies to offset the parking

¹¹⁰ MURPHY AND JOHN DEStEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: COMPARISON OF PROPOSALS SUBMITTED, at 1, *supra* note 99.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* Becker + Becker agreed to abide by this requirement.

¹¹⁴ *Id.*

¹¹⁵ Telephone interview with Frances (Bitsie) Clark, *supra* note 109; Interview with Tony Bialecki, *supra* note 3;

¹¹⁶ KELLY MURPHY AND JOHN DEStEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: COMPARISON OF PROPOSALS SUBMITTED, at 1, *supra* note 84.

encumbrance attached to the site as a result of the settlement from the David Chase litigation.¹¹⁷ This would entail moving the Chase spots to an off-site location, or city funding for an underground parking lot to provide the spaces.¹¹⁸ Such underground construction is particularly costly on the Shartenberg lot, an unfortunate consequence of a high water table that requires sophisticated engineering to overcome.¹¹⁹ An additional \$1 million from the city for environmental remediation was also included.¹²⁰ The project's proposed financing scheme was also dependent on state subsidy, including at least \$1.6 million from the state Department of Economic and Community Development.¹²¹

Taken together, these proposals offered a wide variety of not only potential development futures for the Shartenberg site, but widely divergent levels of government subsidy to satisfy developer balance sheets. Yet the city had consciously avoided coming up with any predetermined amount of subsidy they were willing to contribute to the project.¹²² “This was ‘make us a proposal.’ We didn’t want to say a number first... We wanted the developer to propose the minimum [subsidy] necessary.”¹²³

After decades of stagnation on the Shartenberg site, however, and stung by the lingering effects of what many city officials came to see as a wrong-headed tax abatement deal with David Chase, the mayor applied pressure to the review committee to assure that the selected proposal would actually generate positive tax revenue.¹²⁴ As a result, tax abatements beyond the city’s

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Interview with Tony Bialecki, *supra* note 3.

¹²⁰ KELLY MURPHY AND JOHN DESTEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: COMPARISON OF PROPOSALS SUBMITTED, at 3, *supra* note 99.

¹²¹ *Id.*

¹²² Telephone interview with Karyn Gilvarg, *supra* note 10; Interview with Tony Bialecki, *supra* note 3.

¹²³ Telephone interview with Karyn Gilvarg, *supra* note 10.

¹²⁴ *Id.*

established five-year as-of-right abatement were off the negotiating table.¹²⁵ Developers, it seems, took that message to heart, and Becker + Becker readjusted its proposal accordingly.¹²⁶

The city position was clear: “We’re done offering tax abatements.”¹²⁷

With all five primary developers offering radically different payment, subsidy, and product packages, evaluators were left searching for a proper rubric for evaluating what constituted the “best deal” for the city.¹²⁸ “I don’t know that any of us thought in concrete terms. The deal was so complex, with so many moving parts, it was hard to put a dollar amount on what [the developer] was getting, what the city was getting, who got the better deal.”¹²⁹

In February 2007, the city selected Becker + Becker’s proposal as the winning bid.¹³⁰ Securing city backing turned primarily on three factors: Developer and architect Bruce Becker’s willingness to alter the design of his building to set the main tower back from the street and reduce its size, the perceived security of his financial backing from Kennedy Associates/MEPT, and Becker’s willingness to include in his project other city benefits, such as affordable housing units and the inclusion of an urban grocery store on the project’s ground level.¹³¹¹³² Part of decision involved a slight scale-back of the original Becker development proposal, now known

¹²⁵ *Id.*

¹²⁶ Melissa Bailey, *Shartenberg Builder Defends “Thin” Dollar Deal*, NEW HAVEN INDEPENDENT, *supra* note 13. “Becker said he originally asked for a 20-year tax abatement on the project—a deal he said he got for a similar project in New York City. The city rejected the idea, offering instead a standard five-year phase-in of property tax on new construction.”

¹²⁷ Telephone interview with Karyn Gilvarg, *supra* note 10.

¹²⁸ Interview with Roland Lemar, *supra* note 5.

¹²⁹ *Id.*

¹³⁰ DEREK SLAPP, CITY OF NEW HAVEN PUBLIC INFORMATION OFFICE, CITY OF NEW HAVEN SELECTS DEVELOPER FOR SHARTENBERG SITE, Feb. 13, 2007 (on file with author).

¹³¹ *Id.*; Telephone interview with Frances (Bitsie) Clark, *supra* note 109; Allan Appel, *Downtown Gets Dose of Density*, *supra* note 4. “The fact that Becker can bring \$100 million of pension-fund financing to the work continued to be, the mayor reiterated, one of the biggest pluses for the city.”

¹³² Aldermen interviewed for preparation of this paper discounted notions that Becker’s selection resulted from the developers political connections, rather than his project offerings. Bitsy Clark rested her defense on the fact that Becker’s firm, unlike that of local developer C.A. White, was an unknown outsider at the beginning of the selection process. Telephone interview with Frances (Bitsie) Clark, *supra* note 92.

as 360 State Street.¹³³ The 420-unit project had shrunk to 400 units, with 50 affordable housing units and the promise of a street-level urban grocery store.¹³⁴ Yet the version of 360 State Street understood by the city at the time of selection began to change as the developer dove more into the financial realities of his project.¹³⁵

By April of 2007, the number of residential units had jumped to 475, and were, by this time, all offered as rental units.¹³⁶ By July of 2007, the estimated costs of the project had begun to escalate, up \$25 million to \$175 million.¹³⁷ The nature of Becker's requested city subsidy had changed as well. Along with the one dollar land purchase price, Becker had swapped initial appeals for long tax abatement with a negotiated deferred payment of building permit fees.¹³⁸ Even this building permit fee deferral had to be negotiated.¹³⁹ Becker initially proposed a complete waiver of the fees, only to be rebuffed by the Economic Development Administrator, spurred on by influential members of the Board of Aldermen.¹⁴⁰ The city calculated the value of the building permit fee deferral, which would involve a phased-in payment over the course of 30 years, at \$814,000 in present-day dollars, based on a total deferral amount of around \$3.1 million.¹⁴¹

Stiff negotiation from the city, though, also yielded increases in other subsidies to the developer. Along with the building permit fee deferral and the one dollar land purchase price,

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Telephone interview with Bruce Becker, *supra* note 70.

¹³⁶ Mary O'Leary, *Vision for Elm City downtown taking shape*, NEW HAVEN REG., Apr. 25, 2007.

¹³⁷ Melissa Bailey, *Shartenberg Builder Defends "Thin" Dollar Deal*, *supra*, note 13.

¹³⁸ Angela Carter, *Downtown building rights may sell for \$1*, NEW HAVEN REG., July 9, 2007.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Kelly MURPHY AND JOHN DESTEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: SECOND RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, 2, July 24, 2007 (on file with author). Payment of the building permit fees was complicated. No payments would be due for the first 12 years after completion of the project. For the next five years after that, payments would total \$100,000 per year. After that, payments would jump to \$200,000 per year until the total sum was exhausted.

Becker asked for, and later received, permission to reduce the number of parking spots he was required to provide with his development from 500 to 333, in addition to the 175 spaces from the Chase agreement.¹⁴² While this parking space reduction was technically an issue before the Board of Zoning Appeals and was unconnected to the Chase Agreement, the reduction effectively eliminated the additional cost of adhering to the Chase Agreement for all but eight parking spots. The city also agreed to provide up to \$500,000 to improve the sidewalk and streetscape in the project area.¹⁴³

Complicating these discussions were fluctuating estimates of what, exactly, the Shartenberg land was worth, and how much it would cost a developer to remediate the site and prepare it for construction.¹⁴⁴ Initial assessments put the value of the land at \$2.3 million.¹⁴⁵ A second appraisal, delivered just days before the Aldermanic vote to approve the Becker Development Agreement, upped that assessment to \$4.4 million.¹⁴⁶ The fluctuating land values prompted quick criticism from some members of the Board of Aldermen, who wondered how appropriate negotiations could take place without a full understanding of the value of the land being negotiated.¹⁴⁷ One Alderwoman was particularly blunt with her opposition: “You cannot

¹⁴² Allan Appel, *Shartenberg Builders Want Cyclists, Not Drivers*, NEW HAVEN INDEPENDENT, Jul. 11, 2007, http://newhavenindependent.org/index.php/archives/entry/shartenberg_builders_want_cyclists_not_drivers/.

¹⁴³ KELLY MURPHY AND JOHN DE STEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, 10, July, 2007 (on file with author). Other city subsidies included \$3.1 million from the Housing Authority of New Haven, via HUD, to support affordable housing, promises from the City to work to transfer \$9.9 million in Connecticut Department of Economic and Community Development Urban Act funds (that had been initially allocated to development efforts in the Ninth Square renewal area), up to \$50,000 for a potential median cut in State Street to allow for easier access to the site, and promises to aid the developer in attempts to secure millions in additional state and federal subsidies.

¹⁴⁴ RICHARD MICHAUD & CINDY LEFFELL, MICHAUD COMPANY, APPRAISAL OF: 745 CHAPEL STREET, NEW HAVEN, CONNECTICUT, 2, Aug. 14, 2007 (on file with author).

¹⁴⁵ Melissa Bailey, *Dollar Deal Under Fire*, NEW HAVEN INDEPENDENT, July 10, 2007, http://www.newhavenindependent.org/index.php/archives/entry/dollar_deal_under_fire/.

¹⁴⁶ Angela Carter, *Former Shartenberg store site appraised at \$4.4 million*, NEW HAVEN REG., Sept. 4, 2007.

¹⁴⁷ *Id.* One Alderman observed, “Why wouldn’t you have appraisals completed before you start negotiating? The appraisal value is almost \$2 million more than what [Economic Development Administrator Kelly Murphy] has stated. That certainly raises additional questions and concerns.”

explain to me why we're giving someone a building for a dollar... This is absolutely insane! We have people who don't know how they're going to make a tax bill this year."¹⁴⁸ For the developer, the land sale price was offset by his willingness to assume the risks of environmental remediation of the site, a cost initially estimated at \$1 million, but later revealed to be about \$1.5 million higher than that initial estimate.¹⁴⁹

Behind the scenes, however, much of the decision-making processes regarding the one dollar land sale were motivated by a new threat: a rapidly changing economy.¹⁵⁰ By the time of the Aldermanic vote in September of 2007 to formally approve the project, "People kind of had a sense that [development] wasn't as easy as before."¹⁵¹ Rumors of residential leasing troubles in nearby cities, coupled with a couple of aborted or stalled New Haven projects, including a 19-story condominium tower planned for a nearby street, along with the first inklings of a larger economic downturn, fueled fears that a seemingly promising deal might fall apart if deliberations were delayed too much.¹⁵² "People were apprehensive, asking is all this excitement for nothing? Are we going to miss all of these opportunities? There was some sense of urgency. No one wants a site to be vacant for 40 more years. Do you want the perfect to be the enemy of the good?" Still, that same Alderman acknowledged the deal, as structured, presented severe public relations concerns. "I hate the way [the land sale] looks."¹⁵³ He also particularly lamented the fact that the city's sale of the land for one dollar occurred in a year when city budget cuts led to staff layoffs.¹⁵⁴

¹⁴⁸ Melissa Bailey, *Dollar Deal Under Fire*, *supra* note 145.

¹⁴⁹ *Id.*; Telephone interview with Carl Goldfield, Alderman for the City of New Haven, Conn. (Nov. 19, 2010).

¹⁵⁰ Interview with Roland Lemar, *supra* note 5

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Bitsie Clark, downtown's representative in the Board of Alderman and a member of the original Review Committee for evaluating the Shartenberg site proposals, downplayed the extent to which anyone thought the land sale subsidies and building permit fee deferrals threatened the city with unfavorable economic circumstances. "There was no question in this case that their questions got answered. There was no question that the development was terrific. There was money to actually build it, and people said, 'Wait, we're giving away the land.' There was a whole lot of stuff in the paper and then it just petered out. Now everyone's forgotten about it."¹⁵⁵

The Board of Aldermen's Joint Community-Development Finance Committee took up much of this debate in its July 25, 2007 meeting to recommend approval of the Development Agreement that had been worked out between the city and Becker + Becker. By that time, the city had to consider not only the appropriateness of the proposed development design, but the one dollar land purchase price, the \$3.1 million in deferred building permit fees, transfer of a \$9.9 million grant to offset parking lot costs (not technically city money) and affordable housing subsidies, set against considerations of relief from responsibility for environmental remediation costs, \$100 million in assured financing from Kennedy Associates, and contractual penalties that would goad Becker into delivering on promises.¹⁵⁶ Becker argued the one dollar sales price did not reflect his assumed costs of environmental remediation and the costs of providing parking

¹⁵⁵ Telephone interview with Frances (Bitsie) Clark, *supra* note 109. Her assessments are echoed by Carl Goldfield, a fellow Alderman. "From my perspective we don't want to subsidize anything anymore...All the other proposals wanted money, like tax abatements. [Becker] wanted the land for free, with nothing directly out of the city's pocket...and he would take on environmental costs, and provide 50 subsidized apartments, and he was the only one to commit to a grocery store. People who were opposed referred to a dollar land deal, I looked at it as if we had bought [services] from the guy... You get people who think, it just sounds bad, that they got this land for nothing. He didn't get the land for nothing. He paid us for it." Telephone interview with Carl Goldfield, *supra* note 149.

¹⁵⁶ *New Haven, Conn., Board of Aldermen Joint Community Development-Finance Comm. Minutes* (July 25, 2007). Performance penalties included a \$250,000 one-time fine for failure to secure a first floor grocery store tenant and various \$20,000 penalties for failures to meet construction targets. *Development Agreement between the City of New Haven and Becker Development Associates, LLC*, Oct. 5, 2007 (on file with author).

per the Chase Agreement and of providing affordable housing.¹⁵⁷ City Economic Development Administrator Kelly Murphy argued in favor of the project that the building permit fee delay could be partially offset by state tax credits, which the city would aid the developers in applying for.¹⁵⁸ The motion for recommendation of the Becker project passed, with two abstentions and a single dissenting vote.¹⁵⁹

At the subsequent full Aldermanic meeting to take up the final approval of the deal, debate swirled over the proper amount of subsidy the city should offer to Becker, and whether the land sale price reflected a giveaway or a sophisticated bargaining chip that allowed the city to avoid potential liability for environmental remediation and expensive parking garage construction responsibilities in order to fulfill the mandates of the Chase Agreement.¹⁶⁰ The Board ultimately approved the development deal by a wide margin.¹⁶¹

While approval of the Development Agreement put a formal end to subsidy negotiations between the city and Becker, approval only marked the beginning of Becker's internal financial machinations to actually construct the project.¹⁶² For Becker, the wider economic downturn that began in late 2007 represented both a blessing and a curse. Despite over \$100 million in

¹⁵⁷ *New Haven, Conn., Board of Aldermen Joint Community Development-Finance Comm. Minutes, supra* note 156.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *New Haven, Conn. Board of Aldermen Meeting Transcript, Sept. 4, 2007.* The Aldermen considered four items. First, the Board considered an amendment to the negotiated development agreement that would alter the expected split of proceeds from possible subsidies from the State of Connecticut Urban and Industrial Sites Reinvestment Tax Credit Program. Originally, Becker and the City would split the credit dollars 50-50, but the Board approved altering that deal towards a 60-40 split in favor of the city. Later, however, one Alderman proposed a second amendment, changing the ratio yet again, to 70-30. The Board rejected this as pushing the development deal too far. One representative Alderman commented, "So we don't want to sweat the last dime out of any potential partners who want to come to New Haven. We want to protect the interest of the taxpayers, which was why we agreed to an alteration in the original form. But then we want to be reasonable partners. I think what we offered our board is a reasonable agreement, and I hope my colleagues will support it." This second amendment failed by a 16-11 vote. The approval of the total 360 State Street deal occurred with an 18-8 vote. One Alderman voting in opposition regarded Aldermanic approval as a "rubber stamp" of an unfair deal to the city taxpayers. Another Alderman observed, "I hope we're doing this once a year, and I hope by the time we are done we are positively ruthless, and that those who work with us have no idea how badly we have taken them."

¹⁶¹ *Id.*

¹⁶² Telephone interview with Bruce Becker, *supra* note 70.

promised financial backing from Kennedy Associates, Becker never possessed guarantees that the gap construction cost was fully covered by city, state, and federal subsidies.¹⁶³ The economic downturn had yielded lower than normal construction costs and interest rates, so Becker “decided to go ahead even without all of the funding.”¹⁶⁴ This strategy backfired in 2008, when construction costs were suddenly revised upward by Becker’s contract manager, Fusco Corporation.¹⁶⁵ Becker, while publicly praising Fusco as “an outstanding firm,” fired them for issues of “basic competence.”¹⁶⁶ The new projected costs significantly altered construction plans.¹⁶⁷ Despite the negotiated reduction in the number of units that preceded the city’s endorsement of the Becker project, 360 State Street grew to include 500 units, all rentals.¹⁶⁸ Becker downgraded to a cheaper building material, cut his developer fee, and personally guaranteed funding in order to re-secure backing from Kennedy Associates, which would end up upping its financial commitment to around \$140 million of a ballooning \$190 million construction price tag., proving, at least, that the city had guessed correctly that the union-backed pension fund money would prove reliable.¹⁶⁹ According to Becker, the escalating costs, combined with an economic downturn than led many pension funds to rebalance their portfolios, and mounting problems related to securing state subsidies, nearly led Kennedy Associates to pull

¹⁶³ Telephone interview with Sara Bronin, then-counsel for Becker + Becker (Nov. 18, 2010).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* See also Mary O’Leary, *Shartenberg project enters crucial phase*, NEW HAVEN REG., June 23, 2008.

¹⁶⁶ *Id.*; Telephone interview with Bruce Becker, *supra* note 70.

¹⁶⁷ *Id.*

¹⁶⁸ Mary O’Leary, *Shartenberg project enters crucial phase*, *supra* note 165. The city had, by this time, given up on attempts to persuade Becker to include condominiums in his project to encourage a more permanent downtown population. “It wasn’t a question of pushing for condos. It wasn’t going to happen.” Interview with Tony Bialecki, *supra* note 3. Changing market conditions, along with MEPT’s preference for longer-term projects meant condominiums were never seriously discussed after Becker’s initial response to the city’s RFP.

¹⁶⁹ Telephone interview with Bruce Becker, *supra* note 70.

out of the project.¹⁷⁰ Becker cautioned, “this was going to be one of the other hundreds of projects that didn’t get done because of the economy.”¹⁷¹

Once the pension-fund money was assured, however, Becker was confident. “We always had 95% of the financing.”¹⁷² Still, Becker persisted in the necessity of a one dollar land purchase price, despite evidence of great flexibility in funding sources, and an evident willingness of Kennedy Associates to up its investments by over \$30 million. What possible importance could \$2 or \$3 million have to a project of this size? For Becker, the answer was less economic than symbolic. “I never pay more than a dollar for any property. If I am not getting the land for a dollar than there isn’t really demonstrated public commitment [to the project].”¹⁷³ Becker continued, “This was a hard project to pull off, so flexibility on subsidies [was important].”¹⁷⁴

By the time of the project’s official groundbreaking in December of 2008, funding was far from finalized.¹⁷⁵ It took until October 2008 to secure sales tax exemptions from the Connecticut Development Authority worth about \$3.2 million, which Becker told the Authority was the final necessary funding component in order to begin construction.¹⁷⁶ After missing out

¹⁷⁰ *Id.* Cajoling the investors to remain with the project, according to Becker, involved a series of moral, emotional, and financial arguments. Mainly, he appealed to the fund’s desire to provide union construction jobs in Connecticut, cut his developer’s fee by 60%, and promised to personally cover potential project cost overruns. Raising the number of units in the project, he said, also raised potential revenues to the point where Kennedy Associates was more assured of an adequate monetary return on their investment. These assertions are generally verified by Sara Bronin, the lawyer attached to the project, but were not independently verifiable. According to a news source, Becker cut his developer’s fee from \$5.1 million to \$3.2 million, less than 60%. Mary O’Leary, *Builder Seeks sales tax exemption*, NEW HAVEN REG. Sept. 18, 2008. The New Haven Register reported that by mid-2008, steel prices had jumped more than 50%. Mary O’Leary, *Shartenberg project enters crucial phase*, *supra* note 165. To counter some of these cost jumps, Becker applied for and received sales tax exemptions on construction materials purchases from the state. Mary O’Leary, *Builder Seeks sales tax exemption*, NEW HAVEN REG. Sept. 18, 2008.

¹⁷¹ Telephone interview with Bruce Becker, *supra* note 70.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Telephone interview with Sara Bronin, *supra* note 163.

¹⁷⁶ Mary O’Leary, *Builder Seeks sales tax exemption*, *supra* note 170; Mary O’Leary, *Despite problems elsewhere, development in city ‘steady,’ officials say*, NEW HAVEN REG., Oct. 16, 2008.

on tax credits initially expected when Becker submitted his original proposal, Becker, along with local politicians, supported the Green Tax Credit Bill, which made \$25 million in tax credits available, beginning in 2012, to Connecticut firms creating “green” jobs or firms using “green” building techniques.¹⁷⁷ After years of waiting, the project also received approval in September of 2010 for New Market Tax Credit Loans, which are funded by the United States Department of the Treasury and are intended to encourage investment in low-income areas.¹⁷⁸ Originally expecting about \$26 million in loans, the developer now believes the value will likely be in the “single digit millions.”¹⁷⁹ To provide affordable housing, the developer secured \$3.1 million from the Housing Authority of New Haven to provide 20 units to Section 8 voucher holders, \$1 million in federal HOME funds and \$1.1 million from the Connecticut Housing Trust Fund.¹⁸⁰ A final \$1.3 million in Connecticut Health and Educational Facilities Authority funds for a childcare center was held up by the state government.¹⁸¹

The city does not maintain particular metrics for measuring if their 360 State Street investments were worthwhile, though anecdotal evidence suggests early success in both

¹⁷⁷ Melinda Tuhus, *360 State Shoots for Platinum*, NEW HAVEN INDEPENDENT, June 18, 2009, http://newhavenindependent.org/archives/2009/06/360_state_is_go.php; Jacqueline Rabe and Mark Pazniokas, *‘Green’ jobs bill heads for Rell’s signature*, CONNECTICUT MIRROR, May 3, 2010, <http://www.ctmirror.org/story/5714/green-jobs-bill-passes-house-rells-office-says-shell-sign-if-senate-passes-it>. In response to the law’s passage, Becker improved some environmentally-friendly features of the 360 State Street in order to qualify as a LEED Platinum project, the highest designation of “green” building practices. This designation allowed the project to qualify for additional tax credits through the law. The amount Becker may receive in tax credits remains unclear. Telephone interview with Sara Bronin, *supra* note 163. The building also contains a fuel cell, the installation of which was eased by a \$900,000 grant from the Connecticut Clean Energy Fund. Tom Condon, *Rules may bar green building power plan*, HARTFORD COURANT, Dec. 21, 2008.

¹⁷⁸ Roger Groves, *The De-Gentrification of New Markets Tax Credits*, 8 FLA. TAX REV. 214, 217 (2007) (offering a general description of the tax credits. The article offers a critique of use of these tax credits for projects like 360 State Street, which are not primarily focused on the economic needs of low-income individuals.).

¹⁷⁹ Telephone interview with Sara Bronin, *supra* note 163. One article puts this figure at \$6 million, though Sara Bronin says this figure has yet to be determined. Emily Barasch, *Building a new New Haven on State St.*, YALE HERALD, Sept. 10, 2010, at 1.

¹⁸⁰ Telephone interview with Sara Bronin, *supra* note 163; KELLY MURPHY AND JOHN DESTEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, at 10, *supra* note 143.

¹⁸¹ Telephone interview with Sara Bronin, *supra* note 163.

apartment lease-up rates and positive private market reactions to the project.¹⁸² As of September 10, at least 109 of the building's 500 units were rented, according to one report.¹⁸³

V. Downtown Housing and Rehabilitation: Government Intervention Lite

Not all attempts to bring market-rate housing into downtown New Haven required such extensive debate regarding city subsidies. One of the earliest entrants into the market-rate downtown housing market in downtown was The Eli.¹⁸⁴ Currently home to 145 apartments, The Eli once served as the corporate headquarters for the Southern New England Telecommunications Corporation.¹⁸⁵

Unlike the 360 State Street project, the conversion of the Eli involved an exclusively private land deal.¹⁸⁶ ELK Investors, a New York real estate firm, purchased the building from the telecommunications corporation for \$1.8 million in 1997, with initial plans to lease the building as corporate office space.¹⁸⁷ For several years, the purchasers tried unsuccessfully to find a business plan that would allow the building to work as commercial space.¹⁸⁸ During this time, the owners drew no subsidies.¹⁸⁹

By 2002, the developers had decided the local New Haven market would best support higher-end housing units, and they began preliminary work to convert the building, one of the

¹⁸² Telephone interview with Karyn Gilvarg, *supra* note 10; Andy Ross, *Studio 607 Heads West*, NEW HAVEN INDEPENDENT, Nov. 26, 2010, http://newhavenindependent.org/index.php/archives/entry/studio_607_heads_west_as_salon_lulu/ (profiling the opening of Salon Lulu next to 360 State Street. The article quotes the business owner as noting, "I wanted to take advantage of low interest rates for a business loan and get in on what I feel is the ground floor of the area immediately surrounding 360 State Street.").

¹⁸³ Emily Barasch, *Building a new New Haven on State St.*, *supra*, note 179.

¹⁸⁴ Claire Stanford, *Luxury apartments dress up downtown housing options*, YALE DAILY NEWS, Feb. 25, 2004.

¹⁸⁵ KARYN GILVARG, NEW HAVEN CITY PLAN COMMISSION SITE PLAN REVIEW: 227 CHURCH STREET, Jan. 21, 2004 (on file with author) (approving Site Plan for conversion of the building into apartments).

¹⁸⁶ Staff and Wire Reports, *Buyer on deck*, HARTFORD COURANT, Apr. 1, 1997, at F6.

¹⁸⁷ *Id.*; Telephone interview with Morry Kalimian, partner at ELK Investors (Dec. 3, 2010).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

first city developers to do so downtown.¹⁹⁰ Yet even this conversion required some input of government funding in order to become a reality.¹⁹¹ Operating off of an \$18 million bank loan,¹⁹² the developers applied and qualified for Federal Historic Preservation Tax Incentives, which provide a tax credit equal to ten percent of the rehabilitation costs of a building built before 1936, or a tax credit equal to twenty percent of the rehabilitation costs of a certified historic building.¹⁹³ The developers were awarded several million dollars.¹⁹⁴ “There was no crafting anything on our behalf to fit in the program or not.”¹⁹⁵ What requirements existed were basic: the credits were phased-in over a five-year renovation of the building, and in order to qualify for the credits the developers had to spend a sum of money at least equal to the purchase price of the site.¹⁹⁶

However, this private-market deal, partially funded by federal tax credits, also tried to make use of a different kind of city subsidy: construction of a parking lot that would accommodate The Eli’s resident’s vehicles, and those of tenants of surrounding buildings.¹⁹⁷ The garage, known as the Mid-Block Garage, was initially conceived of as a \$21 million public outlay to ease a downtown parking crunch.¹⁹⁸ The garage was planned to be constructed immediately behind The Eli.¹⁹⁹ “The garage plan was resurrected in 1998, considered integral for the redevelopment of the SNET building, which the telephone company sold to ELK Investors in 1997 for \$1.8 million.”²⁰⁰ The city contemplated the use of municipal bonds to pay for the

¹⁹⁰ Joseph Straw, *Garage issue could affect housing plan*, NEW HAVEN REG., Apr. 11, 2002.

¹⁹¹ Telephone interview with Morry Kalimian, *supra* note 187.

¹⁹² *Open-end mortgage deed and security agreement between Connecticut Properties, LLC and Deutsche Banc Mortgage Capital*, Nov. 30, 2004 (on file with author).

¹⁹³ United States Department of the Interior, National Park Service, *Historic Preservation Tax Incentives*, 2009, http://www.nps.gov/history/hps/tps/tax/download/HPTI_brochure.pdf.

¹⁹⁴ Telephone interview with Morry Kalimian, *supra* note 187. The author was unable to find out the exact amount of subsidy.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Joseph Straw, *Garage issue could affect housing plan*, *supra* note 190.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

structure, offset by parking revenues.²⁰¹ The developers of The Eli and surrounding business owners lobbied hard for creation of the garage. At the time, Morry Kalimian was quoted as noting, “It all depends on a resolution of the parking” and the article’s author observed, “The developers will not proceed with construction until one of the two plans moves forward to erect the long-awaited parking garage behind the building.”²⁰² The city initially moved ahead with the plan, voting to seek \$4 million in state aid for the garage, even though a private developer had emerged proposing to build its own garage on the site.²⁰³ As part of the developer’s Site Plan review, the property was granted a waiver of a city requirement that adequate parking be within walking distance of the building until construction of the Mid-Block Garage.²⁰⁴ That waiver still remains in effect.²⁰⁵

However, no garage had yet emerged by 2004, when 36 of The Eli’s units had already been converted into apartments.²⁰⁶ In 2005, the city scrapped plans for the Mid-Block Garage, citing cost and difficulty in acquiring land.²⁰⁷ Instead, the city bought a much cheaper, nearby parcel for construction of a garage, too far away, Kalimian says, to serve as primary parking for

²⁰¹ *Id.*

²⁰² *Id.*; Eleanor Charles, *Downtown New Haven’s Multifaceted Rehabilitation*, N. Y. TIMES, Sept. 29, 2002, at 11-4. “Morry Kalimian, a principal at ELK, bought the property some years ago for about \$2 million, but delayed renovations until he was assured that the city would build a parking garage on land he owns behind the SNET building.” This statement does not capture the whole truth of ELK Investors’ strategy. The link between residential conversion and the parking garage did not come until after the firm had spent several years extensively exploring use of the building as commercial office space. They found they had misjudged the commercial market and could not profitably lease the space as offices.

²⁰³ Joseph Straw, *City to seek funding for downtown garage*, NEW HAVEN REG., May 27, 2002. “The issue sparked a debate among city legislators over whether downtown as a whole would be better served by a public and therefore not-for-profit garage, or if the city should welcome private investment and the tax revenue it generates. Speaking in favor of the city’s plan, city Economic Development Administrator Henry Fernandez said the public plan will take into account the needs of the downtown as a whole, while a private plan might only consider the immediate needs of its investors.” These concerns included ensuring the garage was open for public parking during major city events.

²⁰⁴ KARYN GILVARG, NEW HAVEN CITY PLAN DEPARTMENT, NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT: 227 CHURCH STREET, Feb. 17, 2010 (on file with author).

²⁰⁵ *Id.*

²⁰⁶ Tara York, *Former SNET building finds new tenants*, NEW HAVEN REG., Jan. 21, 2004.

²⁰⁷ Mary O’Leary, *City drops plan to build Mid-Block garage*, NEW HAVEN REG., Nov. 28, 2005.

The Eli.²⁰⁸ No garage was ever built. By 2008, plans for the new garage were suspended, with the city citing a lack of demand in that section of downtown.²⁰⁹

Looking back, Kalimian downplays the importance of promised city subsidy in deciding to proceed with downtown housing rehabilitation. “We expected [the city] to build the Mid-Block Garage, and we were promoting it and we wanted it build. But it was not the lynchpin to start or stop the project. When the garage never happened...it did not really have a tremendous adverse effect.”²¹⁰ Kalimian discovered, fortuitously, that downtown apartment dwellers desire fewer parking spaces than he had originally anticipated.²¹¹

It remains unclear if city promises for parking lot construction – in effect a type of developer subsidy – motivated the rehabilitation of The Eli earlier than would have been accomplished otherwise. Such subsidy, at any rate, was evidently not needed, and private construction continued. In February of 2010, the developer was granted approval for creation of twelve new efficiency units in the building, which, combined with consistently high lease-up rates, is a sign of continued demand.²¹²

VI. Downtown Housing and New Construction: Minimal Subsidy, No Construction

At nearly the same time that the city was accepting proposals for the Shartenberg site, another developer embarked on a plan to develop market rate housing in New Haven’s downtown with new construction.²¹³ The imagined \$140 million project began with a private \$7

²⁰⁸ Mary O’Leary, *City buys \$1.85M parcel for new garage*, NEW HAVEN REG., Jan. 4, 2007. The new garage was estimated to cost \$24 million and would accommodate 600 cars; Telephone interview with Morry Kalimian, *supra* note 187.

²⁰⁹ Mary O’Leary, *City assesses parking spots, eyes future projects*, NEW HAVEN REG., Sept. 25, 2008.

²¹⁰ Telephone interview with Morry Kalimian, *supra* note 187.

²¹¹ *Id.* While Kalimian originally anticipated a need for two parking spaces for every unit, the true demand was less than half a spot per unit.

²¹² KARYN GILVARG, NEW HAVEN CITY PLAN DEPARTMENT, NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT: 227 CHURCH STREET, *supra* note 204.

²¹³ Melissa Bailey, “*College Square*” *Would Add Luxury Condo Tower Downtown*, NEW HAVEN INDEPENDENT, Sept. 14, 2006, http://www.newhavenindependent.org/archives/2006/09/college_square.php.

million deal to purchase a downtown lot from the longtime owners.²¹⁴ Initial projections saw a 19-story building featuring 232 luxury condominiums, 434 parking spaces, and street-level retail.²¹⁵

City subsidy was primarily non-monetary. The developer, Robert Landino, a former state representative, hired a politically-connected attorney, Anthony Avallone, a former state senator who represented clients funded by the New Haven Housing Authority, to shepherd the project through the city approvals process.²¹⁶ Praised as a “big project and one big investment that says something about New Haven and downtown” by Kelly Murphy, the project was rapidly approved by city officials despite a lack of guaranteed financing, and, in fact, before the developer had actually purchased the land.²¹⁷ The speed of the approvals took at least one Alderman by surprise. “I mean, talk about an expedited approvals process. That approval was done in less than a year.”²¹⁸

Within a year of winning approvals, Landino had evicted most of the commercial tenants on the property and razed an existing restaurant.²¹⁹ The City offered minimal relocation assistance. “We’ve been working with all of them to try and relocate...but at the end of the day, it’s not our project and it’s not our obligation.”²²⁰ A changing financial climate soon derailed the

²¹⁴ Cara Baruzzi, *Land acquired, work expected to begin this fall*, NEW HAVEN REG., Feb. 25, 2007.

²¹⁵ *Id.*

²¹⁶ Melissa Bailey, “College Square” Would Add Luxury Condo Tower Downtown, *supra* note 213; Paul Bass, *The Juice Man is back*, NEW HAVEN ADVOCATE, July 23, 1998 (detailing Avallone’s history). Interestingly, Landino’s father was a development administrator under Frank Logue, who served as New Haven’s mayor in the 1970s. Frank Logue’s brother, Edward, was one of the most influential initiators of New Haven’s urban renewal projects.

²¹⁷ Mary O’Leary, *City approves plan for 19-story tower*, NEW HAVEN REG., Nov. 17, 2006; KARYN GILVARG, NEW HAVEN CITY PLAN COMMISSION SITE PLAN REVIEW: 188, 196 COLLEGE STREET AND 285 GEORGE STREET, Nov. 15, 2006 (on file with author) (approving the development with certain conditions. Construction completion was anticipated by August 2009).

²¹⁸ Interview with Roland Lemar, *supra* note 5.

²¹⁹ Melissa Bailey, *Storeowner Fights to Relocate as Stalled Condo Project Buys More Time*, NEW HAVEN INDEPENDENT, Sept. 26, 2007, http://www.newhavenindependent.org/index.php/archives/entry/storeowner_fights_to_relocate_as_stalled_condo_project_buys_more_time/.

²²⁰ *Id.*, quoting Kelly Murphy.

original development plans. The 232 condominiums became a 250-room hotel and 124 condominium project,²²¹ and then a seven or eight story hotel with ground level retail.²²² The reasons given centered on changed financial terms with Landino's bank, Amalgamated Bank, and a lack of demand for condominiums.²²³ Plans have been suspended indefinitely, for "personal reasons," though in an interview Landino hinted at possible future development.²²⁴

VII. Evaluating the 360 State Street Deal

Any attempt to evaluate the municipal subsidization decisions involved in the 360 State Street project are, of course, limited by the project's extreme youth. The project may or may not make money, and could fail, from the city's perspective, by vacuuming up all available private market demand for downtown housing and choking off further growth and spill-over effects.²²⁵

Yet the history of development of the Shartenberg site, along with the varying fortunes of other housing development projects in downtown New Haven, offer a chance at a preliminary evaluation of a deal that significantly altered the New Haven skyline. While imperfect, considerations of the project via cost-benefit analysis and horizontal equity offer at least some

²²¹ Eric Gershon, *Hotels going upscale: With Yale as a draw, developers look to fill need for rooms in New Haven*, HARTFORD COURANT, Dec. 4, 2007, at E1.

²²² Paul Bass, *College Square hotel on hold*, NEW HAVEN INDEPENDENT, Aug. 21, 2008, http://www.newhavenindependent.org/index.php/archives/entry/college_square_hotel_on_hold/.

²²³ *Id.* In an interesting parallel to the 360 State Street project, Amalgamated Bank's funding comes in large part from union-backed pension funds. The bank's tagline is "America's Labor Bank."

²²⁴ Telephone interview with Robert Landino, CEO of Centerplan Companies, developer of the College Street hotel project (Dec. 1, 2010).

²²⁵ Philip Langdon, *New Haven Choosing Big Mistake Downtown*, HARTFORD COURANT, Feb. 18, 2007. "[The project] is a throwback to favoring intense development on certain parcels at the expense of the well-being of downtown as a whole."; Eric Gerson, *Will high-rise sap lower Chapel hopes?*, HARTFORD COURANT, Aug. 28, 2007. It is apparent that no one in the city ever contemplated such a large development for the site. "Mayor John DeStefano originally sought a project that 'reflects the scale of adjacent uses' -- mostly three and four-story buildings. But, citing the tax revenue Becker's project would provide, estimated at \$1.5 million annually starting in the fifth year, DeStefano's administration got behind Becker's project instead."

window for figuring out the degree to which the 360 State Street development represented a positive one for the city.²²⁶

Overall, of course, the degree of city subsidy in the 360 State Street project pales in comparison to that of the great failure of city-driven Shartenberg development ideas: the Chase-era office tower/parking lot. Understandably wary from a string of past failures, and publicly eager to avoid another 40 years of lot vacancy, officials sought the project most assured of actually being constructed while coming close to ensuring a significant potential for future tax revenue from the 360 State Street project. Projections of city tax revenue from the project offered to the Board of Aldermen as they considered their approval decision, for instance, promised over \$1 million in annual revenue for the city beginning as soon as 2013.²²⁷ Gone were the revenue-sapping tax-abatement deals of the Chase era, replaced with a city negotiating position that rejected, early and forcefully, requests from the developer for just such a deal. To the extent that the city registered a marked improvement via its 360 State Street project negotiation – by yielding an actually-completed building that produced positive tax revenue from the very beginning of construction, the deal seems entitled to the label of “success.”

Further, while the openness of the city’s subsidy position produced potential problems as detailed above, the strikingly open-ended RFP, and city flexibility regarding project selection, resulted in a significant response from a wide range of investors, assuring the city ample

²²⁶ See Dan Tarlock, *An Economic Analysis of Direct Voter Participation in Voting Change*, 1 UCLA J. ENVTL. L. & POL’Y 31, 33 (arguing that efficiency considerations are a consensus focus of evaluators of public land use choices, particularly with regards to zoning, and that other normative methods suffer doctrinal weaknesses). While this article refers mainly to zoning considerations, subsidy decisions involve similar particularized considerations of the relative worth of individual projects. See also Shruiti Jayaraman, *Unplanned Change—Challenging Tradition in Land Use Controls: The Case of New Haven’s Planned Development District*, 39 URB. LAW. 415, 453-455 (discussing the general applicability of cost-benefit analysis to land use decisions).

²²⁷ KELLY MURPHY AND JOHN DEStEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, *supra* note 143, at 3. Those projections, based on a building containing 420 units, grow as follows: 2008 - \$94,087.68, 2009 - \$94,087.68, 2010 - \$246,616.91, 2011 - \$509,159.89, 2012 - \$788,345.61, 2013 - \$1,084,919.40, 2014 - \$1,399,656.36, 2015 - \$1,444,468.68, 2016 - \$1,490,625.38, 2017 - \$1,538,166.77, 2018 - \$1,538,166.77, 2019 - \$1,637,571.06.

opportunity to compare and evaluate competing projects. The most recent development efforts of the nearby, and long-troubled, Chapel Square Mall, for instance, yielded only three developer responses.²²⁸ In most other downtown housing decisions, which have dealt with private land purchases, of course, the city makes its development decisions without the luxury of project comparisons at all. Evident from the city's strategy was an overwhelming desire to not only select a politically and socially beneficial project, but also one with the closest situation to bankable assurances of construction and completion of a project than a development deal is likely to get.

In negotiations to select developers, the city placed its greatest emphasis on selecting a project with solid, committed financial backing, even if this meant choosing an aesthetically less desirable project from the perspective of review committee members, and one that placed far more housing units downtown than city officials had anticipated. This insistence on financial security meant that a relative outsider (Becker is based in Fairfield, Conn., and though he attended Yale for business school and architecture school, his firm had never previously worked in New Haven)²²⁹ could win the Shartenberg commission. This reliance, however, meant that the necessity of guarantees for Becker's unconventional union-backed pension fund investors held sway in the negotiations process. As a result, symbolic city subsidy – particularly in the form of the one dollar land purchase price and the deferred building permit fees – became fundamentally relevant, despite a clear willingness on the part of Kennedy Associates to finance ever-larger portions of the project. Financial considerations permitted the project size to swell from 400 to 500 units, without any corresponding downwards adjustment in the nature of subsidy required

²²⁸ Telephone interview with Henry Fernandez, former Economic Development Administrator for the City of New Haven, *supra* note 83.

²²⁹ Telephone interview with Bruce Becker, *supra* note 70. For information about Bruce Becker's work history *see* BRUCE BECKER, RESUME (N.D.), <http://www.beckerandbecker.com/documents/BRB%20resume%20for%20website.pdf>

from the city. Most of this increase, according to Becker, was required by unforeseen budgeting issues stemming from misjudgment from the project's initial contract manager, but such financial considerations were not presented to the city after the initial Board of Alderman approvals. It is not, of course, clear that mid-project subsidy changes would have had much effect on the completion of the project. The Landino project, despite receiving expedited approvals, did not come to fruition when its terms of financing changed. The Eli, however, succeeded despite the city having to provide very little at all.

Perhaps the most controversial aspect of the city's subsidization decisions regarding the 360 State Street project involved the one dollar land purchase price. This was alternately characterized as a giveaway,²³⁰ or a bargaining chip in a larger financial deal that included eliminating city liability for environmental remediation, developer assumptions of responsibility for parking construction, provision of an urban grocery store subject to stiff fines for non-compliance, and supply of 50 affordable housing units.²³¹ In terms of raw numbers, it is not clear that the city ended up losing money. Environmental remediation costs, estimated but unknown at the time of approval, were significantly higher than expected, and Becker's preferred method of financing parking lot construction (using non-municipal subsidies and a city zoning variance to lower the number of spaces that needed to be constructed) did not directly cost the city anything,

²³⁰ Melissa Bailey, *Dollar Deal Under Fire*, *supra* note 145;

²³¹ *New Haven, Conn. Board of Aldermen Meeting Transcript*, *supra* note 160, at 657-8, quoting Roland Lemar, "I've heard a number of comments in the media and from some colleagues and general concern among constituents about the price of the land, because of the idea of selling the land for \$1.00, and that we're giving this property away. And that is so far from the truth. By selling this land for \$1.00 what we are actually doing is saving the city about \$7.1 million. There is a 175 parking space requirement that we took on when we built the Connecticut Financial Center. And to accommodate that parking, we'd have to spend probably about \$6 million in construction costs somewhere else in the city. Also, Becker & Becker assumes full responsibility for all the environmental remediation on site, which is a significant risky investment on their part. It could be upwards of \$8.1 million. At the end of the day, it's just alleviating those two requirements from our responsibility and handing it off to this developer in association with the land, and it makes the \$1.00 land price that is so easy and quick to be quoted an inaccurate statement that is often made that has no real bearing or relevance to the actual costs of this property and the purchase price of this property."

except the revenue from the previous lot's parking spaces, something the city intended to forego by developing the property in the first place.²³²

Cost-benefit analysis of the Shartenberg development is further complicated by the difficulty of assessing the various appraisals of the site's value performed by outside contracted agencies. The appraisal delivered just days before the actual Aldermanic approval vote, for instance, raised the appraised value of the site to \$4.4 million, nearly doubling the value of the city's subsidy. Yet that appraisal specifically disclaimed responsibility for determining how environmental remediation concerns, which were beyond the competence of the report preparers to assess, would affect how much the market would pay for the parcel.²³³ While the city can be forgiven for not wanting to antagonize a developer who had symbolic reasons for wanting a one dollar land purchase price, it is not entirely clear that Becker's financial investors, who were willing to up their stake in the project by \$40 million over initial projections, would not have absorbed a higher land cost as well. How close Becker actually was to the edge of financial profitability is not available from the private firm, but Becker's willingness to lower his personal development fee suggests that, for the project, there was very little in the way of profit padding. Kennedy Associates was clear and consistent in the amount of its expected return – 7% –²³⁴ leaving the city with the clear choice of fighting over \$4.4 million at the risk of losing an assured investment of over \$100 million. Though impossible to predict at the time, the larger economic downturn, which stalled, at least in part, the Landino project, suggests that the city's deference to a financing scheme that offered greater stability, in the end, allowed the city to recognize

²³² Interview with Tony Bialecki, *supra* note 3.

²³³ RICHARD MICHAUD & CINDY LEFFELL, MICHAUD COMPANY, APPRAISAL OF: 745 CHAPEL STREET, NEW HAVEN, CONNECTICUT, at 36, *supra* note 144.

²³⁴ KELLY MURPHY AND JOHN DESTEFANO, JR., OFFICE OF ECONOMIC DEVELOPMENT AND CITY OF NEW HAVEN, SHARTENBERG DEVELOPMENT PROJECT BRIEFING INFORMATION: RESPONSE TO QUESTIONS SUBMITTED BY THE BOARD OF ALDERMEN, at 9, *supra* note 143. Becker asserts that, in truth, the financial uncertainties of the larger 2007-8 economic downturn led the project's investors to accept less than their stated rate of return. Interview with Bruce Becker, *supra* note 70.

significant future tax revenues and spillover benefits from new downtown housing residents when it could have easily ended up with no deal at all. Current lease up rates from the 360 State Street project confirm at least some of the latent apartment demand that drew Becker to the site to begin with. Whether this development will attract outsiders to the market or simply cannibalize existing tenants from other housing developments, however, remains to be seen.

It is in considerations of horizontal equity, however, that questions can be raised about the efficacy of the Shartenberg subsidization decision-making process.²³⁵ Subsidization decisions regarding the 360 State Street development were characterized by a distinct lack of advanced planning on the part of the city. The RFP was remarkably open-ended, even compared with earlier RFPs issued for the very same site. Interviews with city planning officials yielded a consensus view of a decided “wait-and-see” approach to developer proposals, an approach that yielded a diversity of proposals both in terms of their development conceptions of the site, and their understandings of the municipal financial support that would accompany those projects. City officials’ assurances that tax abatement deals of the past were no longer available, or that the city would be flexible regarding land purchase prices and post-approval increases in the number of developable units but unwilling to yield on the subject of building permit fees, were far from transparent to developers, potentially impacting what, exactly, a market-oriented project was expected to produce. If “The central negotiating task for the public sector is to translate its policy goals into fair and feasible business terms and conditions under which it will secure the public-benefit package,” then the terms of that debate were unknown, possibly to the detriment of serious responses to the city’s RFP.²³⁶ The potential pitfalls for the public fisc were most apparent in subsidization issues regarding the Chase Agreement’s encumbrance of 175 parking

²³⁵ Jayaraman, *supra* note 226, at 460-466.

²³⁶ Lynne Sagalyn, *Negotiating for Public Benefits: The Bargaining Calculus of Public-Private Development*, *supra* note 25.

spots. Where other proposals demanded extensive city subsidies upfront to defray the cost of parking lot construction, the Becker proposal offered to provide the parking free of charge, only to reduce its parking burden via a zoning variance long after he had been chosen as the preferred developer, and a pledge from the city for aid to turn a previously-awarded \$9.9 million subsidy into one that could offset Becker's construction costs. Such an arrangement is not immediately ripe for denunciation as damaging to the city's overall ability to benefit from the project, and is certainly no guarantee that other developers, given a similar understanding of the rules of negotiation, would have ended up shouldering more of the financial burden, but it raises concerns that the "market-driven" nature of the project was partially endangered by unpredictable subsidization arrangements.

VIII. Conclusion

The development of 360 State Street yielded the largest privately financed residential building in Connecticut, and one of the only major new residential construction projects in New Haven in decades. City officials contended with a long legacy of failure of development on the site, seeing city driven proposal after city-driven proposal end in failures of misjudgment of the market, over-subsidization, allegations of corruption, and incompetence. The 2006 RFP for the Shartenberg site yielded something different – an actual building, finished and on-time, where actual people are paying market rents and the building will generate property taxes.

Yet the city also reengaged itself in sustained negotiations over subsidization, forced to confront the question of how much exactly the city was prepared to spend on its broad, vague goal of revitalizing that section of downtown New Haven. On the whole, the city seems to have gotten a fairly good monetary deal, trading off some economic benefit on the cost of the land itself to secure indemnity from uncertain environmental remediation costs, and to purchase peace

of mind that developer financing would be particularly secure. The process suggests that the city's success was born of both sophistication and accident, having located good projects only when they decided to apply almost no restrictions to the proposal process at all, and having been driven to that negotiating strategy by the spectacular failure of past dealings. In stepping away from conceptual shaping of the site itself, the city created space for success, even though that also entailed a lack of control, and an eventual building that was far larger, and a far more intense use of the property, than city officials had originally thought wise.

Yet the process' relative openness also made unclear to developers exactly what financial parameters, and subsidization options, could reasonably be expected as part of the deal. While there is no guarantee that reform, or a more upfront statement of city subsidization offers, would have yielded a different result, such considerations are not without value.

Perhaps the only thing that can be said for certain about the 360 State Street project, and the subsidization decisions that accompanied it, is that New Haven has demonstrated, conclusively, that it is a fertile ground for development and a city in firm support of the attraction of new, upper-income residents. Now city officials have "proof that downtown is no longer a graveyard of ambitious plans."²³⁷ Only time will tell what the effects of this project will be, economic, symbolic, or otherwise. New Haven, to say the least, has built big buildings before. Not all of them have stood the test of time.

²³⁷ FRIEDEN & SAGALYN, *supra* note 14, at 315.