

Working with Development Agreements on Transportation Projects

Observations on best practices

Value Capture Webinar

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- Preliminary Observations
- A Note on Value
- A Framework for Consideration
- Step 1: Agreement Formation
- Step 2: Approach to Negotiation
- Step 3: Post Agreement Considerations
- Case Study 1: Allston Landing Commuter Rail
- Case Study 2: South Station Air Rights
- Case Study 3: Woburn Park and Ride

- They come by different names, but what I am going to talk about are the characteristics and observations concerning agreements pertaining land and development reached with property owners in lieu of more traditional condemnation for transportation projects.
- They represent a value based exchange, but don't always result in the vesting of development rights for the developer.
- They always need to reflect the authority in your jurisdiction and therefore, I will focus on themes and advice that I hope will be helpful in multiple jurisdictions rather than the actual techniques and law that have been used in Massachusetts.

- FHWA's Center for Innovative Finance Support refers to "value capture" as "mechanisms that may be used to derive monetary value from transportation improvements to help defray the cost of their implementation." It can be defined as "*a fair return in goods, services, or money for something exchanged*" (Merriam Webster).
- Value is not cost - these are different concepts, and, significantly, are different for each party and are often not completely understood.
- We tend to think of "value capture" as taking advantage of the future value that is created by the project on which we are working, and it does include that. But, consistent with FHWA's use of the term, it includes money, time, certainty, limiting or sharing of risk, economic development, effectively using human capital, and other items that offer value to the agency.

- Consider the Development Agreement as you would any other project.
- Begin with the end on mind. How do you define success?
- Develop a statement of purpose and need, an understanding of agency goals and objectives, a summary of the key considerations of the counter-party, and an evaluation of key risk issues sought to be avoided, minimized or shifted. These should be written out, vetted and endorsed by key personnel, and returned to often.
- Do not confuse cost and value. It may cost \$X to provide, but what is it worth?
- Visit the balcony – understand the perspective of the counter-party.
- It's not always “win-win,” but we must avoid zero-sum thinking.

- Spend time getting ready and organized before you negotiate.
- Try to leverage and build on past experience and examples.
- Develop an agreement schedule that includes pre-conditions to action.
- Make certain that every action to be undertaken by both parties is lawful and authorized.
- Use term sheets, letter agreements, statements of preliminary intent and understandings to make and measure interim progress. Do not pre-negotiate.
- Develop a benchmark approach for comparison and to keep agency options open – you always need to be able to walk away from the deal.

- Discipline yourself and your team to an approach with the counter-party.
- Do what works for you and the agency.
- Designate a spokesperson/key negotiator.
- Work within, not apart from, the project team. The best agreements adopt an “operations first” approach.
- Document and justify actions and expenses.
- Manage leadership expectations.

- Don't just put the agreement in the file.
- Document what has been agreed to in ways that people can understand and use.
- Inform project staff of the agreement terms.
- Perform after-action review. Learn from what has gone right and what has gone wrong.
- Anchor the progress into the organization.
- Do it again.

Project Highlights

Key Points

- Initiated by New Balance.
- The City of Boston and the community wanted, to varying degrees, the development and increased transit access from the new commuter rail station.
- The developer needed the station to assist with its permitting for a much larger project that has been well received.
- The MBTA accepted the station on the condition that it was paid for by others.

Legacy Items

- Project is often cited as an example of how future stations will be built.
- Commuter rail is not urban transit.
- The station has increased access to the area and has helped other projects.
- Station has added trip time between Boston and Worcester.
- Station is very close to other stations.



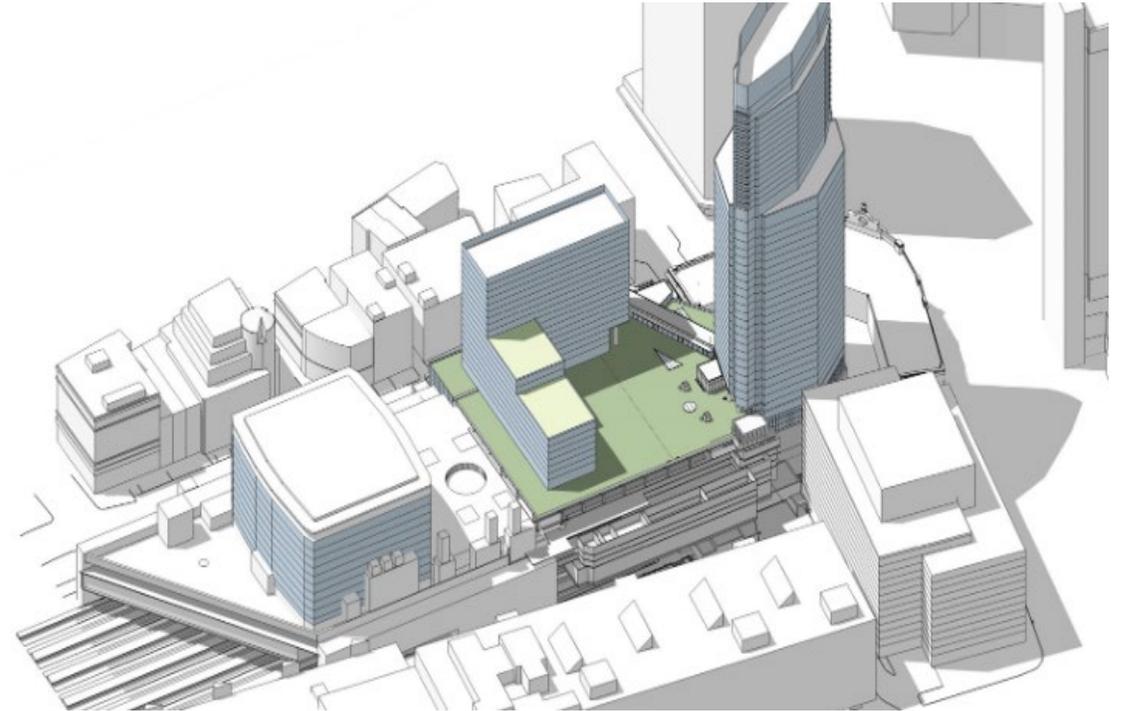
Project Highlights

Key Points

- Initiated in the 1960s by the Boston Redevelopment Authority.
- The BRA sold South Station to the MBTA, reserving to the BRA the air rights behind the station, and obligating the MBTA to build a bus station, subject to availability of funding.
- Part of the bus station was built in the 1990s.
- The MBTA is receiving, as consideration for the conveyance of some of the air rights, the bus terminal. The BRA is receiving monetary consideration for its conveyance of the air rights that were reserved in the original sale of the station.

Legacy Items

- Project has a unique set of facts.
- Project is only possible because of its location and the large relative value of the air rights.
- Project will complete the transportation elements of the station over 50 years after they were first envisioned.

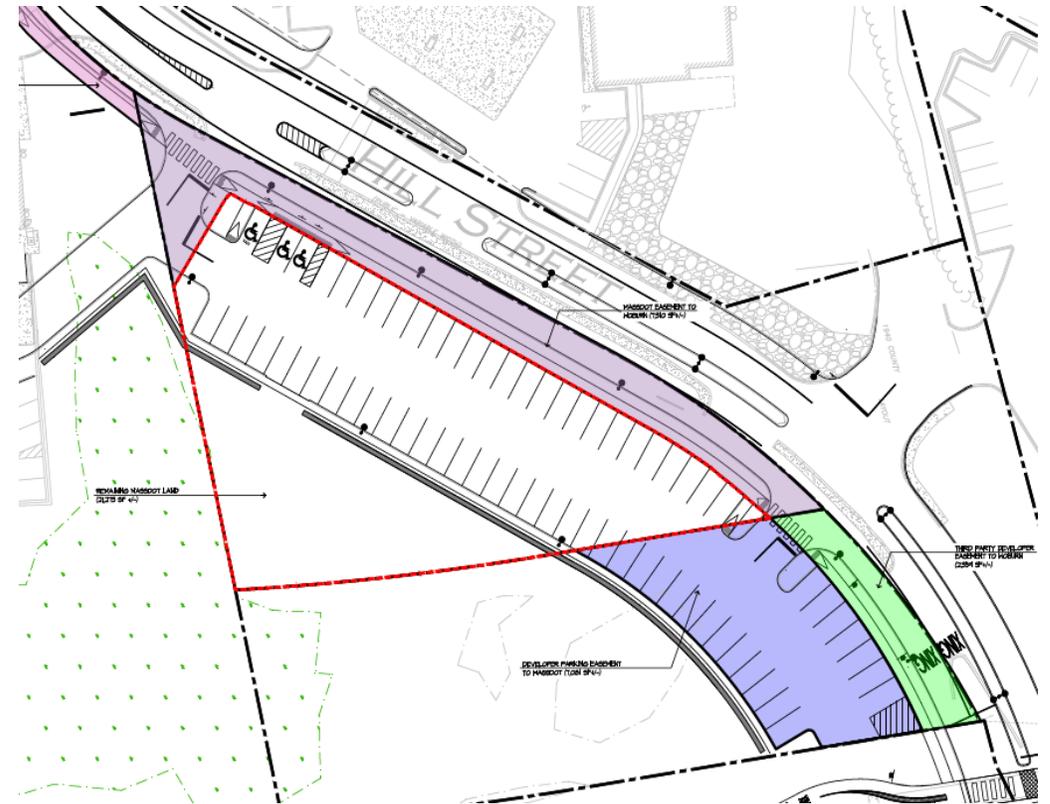


Key Points

- MassDOT owns a lot near I-95 that is used informally as a park and ride.
- The City of Woburn and the developer of adjacent land needed to widen the street on which the park and ride is located.
- MassDOT is permitting a part of the park and ride to be used for the street in exchange for rights over adjacent property that keeps the size of the park and ride whole, and an agreement by the developer to both rebuild the park and ride to MassDOT's standards and agrees to perform routine maintenance on the park and ride.

Legacy Items

- Value capture comes in many forms – doesn't always have to be a large project.
- Leveraged simple agreements that were used before.
- Highlights the importance of using land in the negotiation.
- Developer was proud to make these improvements.



Thank you