STANFORD LAW SCHOOL
ENVIRONMENTAL AND NATURAL RESOURCES
LAW AND POLICY PROGRAM

SLS Simulation No. S002-98

The Redevelopment of the New York Coliseum

Introduction

The ambitious plans to redevelop the New York Coliseum, a vacant and unattractive municipal building at Columbus circle, one of New York's most important cross-roads, is in jeopardy. The developer, Mortimer Zuckerman, appears to have lost his major tenant and financial backer, Salomon Brothers. An influential historic preservation group, the Municipal Arts Society, has launched both a credible lawsuit and a major publicity campaign to fight the development. Finally, the strength of the real estate market, which supported the $455 million deal to purchase the land from the state and city, is in doubt since the October crash of the stock market. The major parties have much to gain and much to lose as they enter negotiations to solve the current disputes and allow the project to proceed.

Background

Economic Overview

In the fall of 1987 the economic outlook for both the country and the city of New York was uncertain. New York City and the country, as a whole, were on a roll, having experienced 5 years of uninterrupted economic growth. As of September, national unemployment stood at 5.9% and unemployment in New York City was 5.1%, the lowest level since 1973. The primary problem was the stock market, which fell 22% in one day on October 19. The market began rebounding quickly but it was unclear what the ramifications would be for the city and country's economy. Would there be a ripple effect throughout the rest of the economy or

Revised 8/99

would the disturbance be confined to the stock market? New York's economy at the time was dominated by the fortunes of Wall Street. A prolonged reduction in securities activity would significantly impact unemployment rates, wages and the general economic health of New York City. Over the last several years, Wall Street had been extremely profitable and many firms had hired thousands of new employees in New York. It was unclear whether the stock market crash had halted the expansion or whether it was a temporary hitch.

NYC Real Estate Market

Following the local economy and the financial markets in particular, the New York real estate market had experienced a boom unlike any other this generation. With projections for New York City personal income, employment and population (mostly through migration) steadily increasing, the value of land within Manhattan had been rising dramatically. In addition, the high asset values and projections for future growth had created a development boom with more new projects underway than at any time since the 1960's. Developers were paying prices that would have been considered outrageous just five years ago. These prices were justified by both the continued economic expansion and the assumption that tomorrow someone would always be willing to pay more than you did for the same piece of property. Again, it was unclear the extent to which the stock market downturn would take the region's economy and real estate prices down with it.

History of the New York Coliseum

Against this backdrop, in 1984 the New York State Triborough Bridge and Tunnel Authority ("TBTA"), a subsidiary of the New York State Metropolitan Transportation Authority ("MTA"), realized that it owned an extremely valuable asset in the New York Coliseum. The New York Coliseum was completed in 1956 by the TBTA, under the direction of Robert Moses, the Authority's powerful head. Moses' massive redevelopment projects, including most of the major bridges, tunnels and expressways in New York, changed the face of the city. The development of a coliseum at Columbus Circle had a similar impact. To get federal funding for the redevelopment effort, which had languished for years under the direction of another agency, Moses used the federal Title I Slum Clearing program to condemn the two square block area between Columbus Avenue, Columbus Circle, 58th Street and 60th Street. He also included a plan for middle income apartments in the development to qualify for further federal assistance. While the redevelopment in general and the use as a large coliseum in particular were praised, the aesthetics of the structure itself was always ridiculed. Even at the time, the design for a plain, windowless rectangular white brick structure on top of the coliseum base and an adjacent 20-story office slab was lambasted as inappropriate for the site and "utterly pedestrian".

The New York Coliseum functioned well as New York's main convention space until the increasing average size of national conventions outpaced the coliseum's capacity. A new convention center, The Jacob Javitz Center, was announced in 1979 to replace the Coliseum. Once the Javitz Center opened in 1986, there was no longer a demand for the Coliseum's space and the MTA, parent agency of the Triborough Bridge and Tunnel Authority started considering other uses for the site. Given the value of the site and the lofty real estate markets, an outright sale seemed to be the most profitable option.

Site Description

Situated on Columbus Circle at the Southwest corner of Central Park, the four-acre site is ideally located, from a real estate developer's point of view. Directly to the north are Lincoln Center, the cultural center of New York, and the prestigious Upper West Side residential neighborhood. Directly to the south and east is the midtown commercial district. Also, Columbus Circle is a major transportation hub on the path of multiple municipal bus routes and with access to several subway lines below ground. The site's massive size and location at a major metropolitan crossroads presented a unique development opportunity. Because it is within walking distance of both a residential neighborhood and the midtown commercial district, which employs millions of people, the site could support a massive residential, commercial or retail development, or some mixed-use combination. In addition, because the site is on the edge of a commercial district, the prevailing zoning permitted more massive buildings. Also, in 1983 the City Planning Commission enacted zoning changes increasing Floor Area Ratios (FAR's)[1] in the West Side area to encourage West Side expansion and take pressure off the East Side. While the permitted density on the Coliseum site is in keeping with the commercial character to the south, it is substantially larger than many buildings in the Upper West Side residential neighborhood, north of the site.

As a result of the site's location, size, and the flexibility of permitted uses, a private developer would have the potential to maximize the value of the parcel by incorporating the "highest and best use" and by developing the maximum number of square feet permitted. The MTA was well aware that developers traditionally pay for sites based not on the land area but based on the "FAR square feet"- the total number of square feet that can be built on the site. Therefore, because of the density permitted on the site plus the possibility of zoning bonuses based on the improvement of a nearby subway station, this site was enormously valuable.

Background of Sale Contract

Relationship between Government Entities

Before the Coliseum could be sold, however, its ownership had to be resolved. Both the TBTA, a subsidiary of the New York State Metropolitan Transportation Authority, and the City claimed ownership. After a year of negotiations, on December 19, 1984, the city and MTA announced an agreement to share the proceeds of a sale of the Coliseum. Fifty percent of any sale proceeds would go to the City, which would dedicate its portion to the New York City Transit Authority, the MTA subsidiary that operated New York City's buses and

[1] Floor Area Ratio is a land use tool for regulating the number of square feet that can be built on a development site. To determine the maximum amount that can be built, one must multiply the total square foot area of the site at ground level times the FAR. This gives the total amount of building area that can be built above ground. An increase in the FAR allows for larger buildings to be built in general. A decrease in the FAR restricts the maximum size of the building that can be built on a specific site.

subways, for capital expenditures. The city's portion would be devoted to the improvement of the city's bus and subway stations. The rest of the proceeds would go towards capital expenditures on the MTA's Metro-North and Long Island Railroad commuter rail subsidiaries.

Bidding Process

The Metropolitan Transportation Authority then issued a Request for Proposals for the Site to interested developers. Fourteen developers responded with proposals by May 1985. The proposals reflected both the significance of the site and the heady economic times. Several offered purchase prices in excess of $300 million for the four acre piece of land that was purchased by the city in 1953 for only $2 million. Three of the proposals included plans for the largest building in the world: two of 135 stories and one of 137 stories. Several of New York's most prominent real estate development organizations participated, including Donald Trump, the Lefrak Organization, the Zeckendorf Company, and Silverstein Properties.

Zuckerman Selected

In July 1985, after only two months of deliberation, the city selected Mortimer Zuckerman and his Boston Properties, Inc. Zuckerman bid an astonishing $455.1 million dollars or the site, the largest real estate sale in the city's history. Zuckerman had proposed a 2.7 million square foot development consisting of office, residential condominiums, retail and hotel space. The design included two towers- one of 57 stories and one of 75 stories- connected by a curved retail "galleria" at the base. Salomon Brothers, the investment bank, was a major partner in the project. In addition to relocating its world headquarters to the site, Salomon agreed to both contribute money to become a part owner in the development with Zuckerman and to lend the remaining money necessary to build the project.

The deal looked extremely compelling from both the City's and the MTA's point of view. In addition to the $455 million that would be contributed to mass transit improvements in the New York Area, the city expected $100 million in additional annual tax revenue from the project once it became fully operational.

There was one interesting provision in the purchase contract that, had it been between two private parties, would have been unremarkable. Zuckerman promised $25 million to repair and refurbish the Columbus Circle subway station, an entrance to which was included on the site. Under existing zoning guidelines, a 20% FAR zoning bonus was available, subject to approval by the City Planning Commission, for improvements made to an adjacent subway station. The Zoning resolution stated explicitly that the bonus was provided only because the improvement of an adjacent subway facility compensates for the greater density. As negotiated by Zuckerman and the MTA, the $455.1 million purchase price was to be reduced by $57 million if the zoning bonus was not approved by the CPC. The $57 million was to go into the MTA's general coffers and was not designated for the improvement of local facilities.

Opponents of the redevelopment immediately criticized it on several grounds. First, architecturally, the building was too large, too bulky, would cast massive shadows on Central Park and was out of character with the smaller structures further north in the Upper West Side neighborhood. The New York Times' architecture critic said that the proposed building "bears no relationship to this important site or to the traditions of skyscraper design in New York." Second, the building was lambasted, aesthetically, as "simplistic" and consisting of "towers of anxious angles, their shape cutting into the sky in a way that can only be called random." Third, opponents complained that the process used to select Zuckerman was too short and lacked public input. Fourth, opponents charged that the MTA was more motivated by financial considerations than good design or the lasting effect on the neighborhood. A committee of four city officials and four MTA officials, none of whom were urban designers, chose the developer. Finally, residents were concerned that the scale of the development would overburden municipal services in the area.

Approval Process

The formal public review process began in September, 1986 when three Manhattan Community Boards in neighborhoods to be affected by the development reviewed the project.[2] All three rejected it on the grounds that it was too tall, too bulky, out of scale with the neighborhood. They criticized the MTA for forcing developers to build the biggest building possible and for selecting a winner based only on financial considerations. In addition, they said the traffic, noise and air pollution effects of the development would overwhelm the neighborhood. Finally, the $25 million subway improvements were insufficient to justify a 20% zoning bonus.

In December, 1986, ignoring community opposition, the City Planning Commission unanimously approved the project. Final approval was subject to the consent of the Board of Estimate. The supporters of the project (including the City) took an aggressive stance. Instead of suggesting the possibility of compromise, they pushed for the project as designed. At the hearing in front of the board, the president of Salomon Brothers threatened to pull out of the development if the project were modified or reduced. Also, the city's Finance Commissioner argued that if the project were blocked, the city would lose tax revenue, worsening an already dire financial situation. He threatened massive layoffs and rising subway fares. It was unusual for a developer and the City to jointly take the position that a project couldn't be changed and there would be no compromise. In the face of the threats, the Board of Estimate granted final approval of the project in February 1987.

Municipal Arts Society Lawsuit

After the initial approval by the Board of Estimate, the developer announced plans to begin construction by the summer. However, in June, the Municipal Arts Society and two other community groups filed suit to block the project. They stated publicly that they were

[2] In New York City, Community Boards are elected bodies that represent individual neighborhoods. For real estate development projects, the Boards act only in an advisory capacity. They may approve or reject a particular project, but their vote is only one of many inputs into the planning process. The City Planning Commission may chose to abide by or ignore the Boards' decisions.

disappointed in both the lack of influence they had in the public approval process and the developer's unwillingness to compromise. Their primary claims were that the City required developers to incorporate the maximum zoning bonus in their bids; that the maximum size was required without environmental assessment; and that once an environmental assessment was conducted it was incomplete and based on bogus data.

Their final and most potent claim related to the contract provision which granted the developer a reduced purchase price if the City Planning Commission failed to approve a 20% FAR zoning bonus for the adjacent subway station renovations. Section 81-53 of the New York City Zoning Resolution provides that a bonus is to be given only in exchange for improvements to an adjacent bus or subway station. A City Planning Commission report adopted in May, 1982 explained the rationale behind providing bonuses only for adjacent station improvements: "A floor area bonus is provided for a substantial subway entrance improvement adjacent to a development site. . . An offsite subway station improvement does not provide any compensating reduction in density. The proposed bonus is justified because it improves direct access to the larger development. For off-site subway improvements direct financial incentives appear to be more appropriate than zoning measures."

In addition to the $25 million promise to renovate the Columbus Circle subway station, the contract provided that the purchase price of the land would be reduced by $57 million if the CPC did not approve the 20% zoning bonus. If the bonus was granted, the $57 million payment (which was to be split by the MTA and the City as per their agreement for the rest of the proceeds from the sale) was not earmarked for capital improvements on the site. In fact by a February 6, 1987 amendment to the agreement between the City and the MTA, the City's portion was no longer to be used for capital expenditures but to relieve the City's obligation to provide operating subsidies to the MTA.

The opponents analogized that it would be obviously illegal for the City to grant a permit in return for a cash payment. Similarly, because the city was the beneficiary of half of the purchase price for the site, it was illegal for it to receive an additional $28.5 million the CPC granted the developer a zoning bonus. The payment in anticipation of the receipt of a zoning bonus was nothing more than a cash purchase of additional FAR feet.

The defendants argued in response that the MTA and the City are two entirely different organizations. The MTA, which negotiated the transaction, was an arm of the New York state government. The City Planning Commission, which ultimately makes zoning findings, had no formal or informal relationship to the Triborough Bridge and Tunnel Authority or the MTA and would not itself benefit from the extra $28.5 million. The MTA and City (as sellers of land) appeared before the CPC as any other landowner would have. To consolidate the two organizations and treat them as two arms of the same body didn't comport with either the formal relationship between the parties or any informal working relationship. The MTA took actions no different than any private landowner who was trying to maximize the value of the parcel would have by making the ultimate sales price contingent on the receipt of additional zoning benefits.

The judge's decision in the case was expected in December. A victory for the Municipal Arts Society would have significantly strengthened its position in forcing the MTA and Zuckerman to compromise of the design and scale of the building.

The Municipal Arts Society did not stop at a lawsuit in its campaign to derail the Coliseum Redevelopment. It also began a formidable publicity campaign. Jacqueline Onassis, a board member of the Municipal Arts Society and Bill Moyers, the television journalist, formed a group to oppose the development called Coalition for the Coliseum Site Lawsuit. The group opposed the impact on the air and sunlight, particularly in Central Park. Speaking in sweeping language that was televised throughout the metropolitan area, Moyers said "Central Park is the people's park. It is the last great preserve of democracy in the City. It does not belong to the highest bidder." Other celebrities including Paul Newman, Norman Lear, and Henry Kissinger leant their names to the effort. On October 19, Onassis led a high-profile, 800 person rally in Central Park that protested the development. The group had adopted black umbrellas as their symbol, representing the shadows to be cast over Central Park by the project. On cue, the 800 people opened their umbrellas one by one in a wave. Community pressure seemed to be reaching a high point.

Parties to the Negotiation

Given the tense nature of the situation in the last few months of 1987, the major parties agreed to meet to discuss the situation. Negotiating teams represented the four following primary parties:

The City/ Mayor Ed Koch:

Ed Koch had been the well-loved Republican mayor of New York since 1977. His popularity has begun to wane recently as New York City's budget crisis has worsened. Koch sees the redevelopment of the Coliseum as a potential turning point that could help him repair any damage to his reputation. Successfully brokering the high-profile, desirable redevelopment of an urban eyesore that would bring hundreds of millions of dollars into the city's treasury at the same time would substantially strengthen his position. As a result, he was instrumental in both settling the dispute with the MTA that allowed the agency to proceed with the sale of the Coliseum and in the selection of Mortimer Zuckerman as the developer. Getting a significant cash infusion for the New York City budget is clearly critical to Mayor Koch and to his 1989 reelection campaign. His likely Democratic opponent, David Dinkins has been an outspoken critic of the project and was the lone vote against it on the New York Board of Estimate. Dinkins has criticized Koch for participating in a process that sought only to maximize profit, not to pick an aesthetically appropriate design or combination of uses for the site. On top of that, Koch is seen by many of its critics as the "handmaiden of development, unresponsive to the concerns of its citizens, interested primarily in increasing tax revenues." Regardless, Koch is now committed to Zuckerman and his plan. Any reduction in the size of the proposal is likely to be seen as a defeat for Koch. However, from his point of view, any project started during this term is better than no project at all.

MTA:

The Metropolitan Transportation Authority is the state-chartered agency responsible for mass transit in New York City and its environs. Through the Triborough Bridge and Tunnel Authority, the MTA owns the Coliseum site, which it has been eager to dispose of since the Javitz Convention Center opened in 1986. The MTA knows that real estate markets are cyclical and that in the early fall of 1987 the market in New York seems to be at a high point. The MTA is unsure how the stock market crash will affect the real estate market, but it is eager to close on the disposition agreement immediately before the real estate market tumbles and Zuckerman backs out. The MTA has kept a low public profile about the Coliseum and, as a result, many are unsure where exactly it stands.

Developer:

Mortimer Zuckerman is a businessman with diverse holdings. In addition to Boston Properties, a major developer and owner of real estate projects nationwide, he owns The Atlantic Monthly and US News and World Report. The Coliseum project would be by far his biggest real estate undertaking and would firmly establish him as one of the nation's top developers. The size and prominence of the project would make it a signature project for which he would always be remembered. He has the financial sophistication and contacts to execute the project, once he closes on the land. However, he recognizes that the strong New York real estate market won't last forever and that the clock is ticking.

Community Groups

The Municipal Arts Society is a private, nonprofit group founded in 1893 to promote issues of aesthetics, planning and public spaces. The group, which is comprised primarily of New York's social elite, had not sued the city in 15 years before the Coliseum project. However, high profile members of the organization such as Jacquie Onassis, Bill Moyers, Paul Newman and Henry Kissinger have been sparked into action by the Coliseum's size and potential impact on the neighborhood. MAS' primary concerns are the excessive shadows produced by the project and that the massive scale doesn't mesh with the neighborhood. The shadows on Central Park is an issue that has galvanized the support of celebrities while the scale of the development has proved to be a catalyst among neighbors. "The neighborhood is eventually going to end up congested and overpriced- just like the East Side" said Bert Halem, owner of a local deli. Ludwig Gelobter, Chairman of Community Board 7 which covers part of the Coliseum site, concurred, "A lot of us feel threatened by the surge of 30- and 40-story buildings because they are undermining the human scale of the area."

Negotiation Tips

Successful participation in a negotiation session requires much more than just a strong personality and willingness to take a hard stance. A more nuanced view of negotiation requires substantial preparation to understand your own position and to try to predict the behaviors and interests of the other participants. In terms of thinking about your own position, a good starting point is your BATNA: your Best Alternative to a Negotiated Agreement. If the negotiation process doesn't successfully produce an agreement, what will you likely do? Understanding your BATNA provides you with an appropriate metric by which to measure possible outcomes of the negotiation.

In addition, it is important to consider what you hope to get from the negotiation. Negotiation experts suggest starting this thinking process by considering what your interests are underlying the specific negotiating positions. If you go into a negotiation with a list of demands, you are likely to be inflexible during the process. However, if you are negotiating from your interests (defined as the concerns, wants, needs, hopes and fears that underlie and motivate your positions and demands) you will be more open to potential solutions that may ultimately satisfy you and be more acceptable to the other parties.

Preparation Questions

What are the interests of each party? These are the concerns, wants, needs, hopes and fears that underlie and motivate the positions demands and contentions of the different parties.

What are each party's options- the possible ways of dealing with an issue that require mutual agreement of the parties, whether or not currently acceptable to the parties?

What are each side's alternatives- possible actions that a party can take without the agreement of the other parties?

What are the standards by which the parties will consider an agreement "fair"? Are they different?

What are the historic and prospective relationships between the parties? Is there already a good working relationship and a foundation of trust? Is there some suspicion that will prevent the parties from trusting each other?

Are there natural coalitions, either involving you or not? What are the common interests that will bring the coalitions together? Are there fundamental disagreements that will drive the coalitions apart?

Negotiation Rules

At the start of class, students will be divided into groups of four: one student for each role. Each of the groups will have a facilitator, to be played by an experienced faculty member or a practitioner. There are several roles the facilitator can take. At one extreme, the facilitator can act more like an arbitrator: actively bringing the parties together, suggesting solutions, imposing conditions both to the negotiated solution and to the process and sanctioning the final agreement. At the other extreme, the facilitator can passively let the parties find their own rhythm, develop their own solutions and only become involved when the parties request.

In this negotiation, the negotiation is likely to be most successful if the facilitator is somewhere in between. The issues here are complex enough, and there is enough animosity between the parties that a facilitator is likely to make the negotiation more efficient. However, it is up to the parties to decide how to use the facilitator.

Before the negotiation begins, the parties will have 30 minutes to talk individually with any other party in the group. Recognize that the negotiation begins immediately. Some parties may ally themselves immediately and not talk to the other parties. A party might be ostracized or in heavy demand. Each party's conception of its own power, the power of the other groups and of the dynamics of the entire group will be formed here. The facilitators can try to impose a structure on this period but the parties might not accept it.

Many participants will find this period useful to probe the interests of the other parties. If you determine that it is appropriate, you are free to form a coalition in advance of the negotiation with another party. That coalition can take a tough stance in the negotiation or not. You can also try to pre-negotiate with individual parties to solve some of the tougher issues before the actual negotiation begins.

The negotiating session should last an additional hour. Your goal is to maximize your own interests. If you can do so by coming to an agreement that all four parties find acceptable, you should push for it. There are no restrictions as to the negotiating process or the kinds of additional agreements you make. You can impose any additional side restrictions or grant any privileges within your power regardless of whether or not such restrictions are contemplated in the materials. In fact, creative problem solving is explicitly encouraged! Remember, though, that at the end of the exercise, any concessions you make to get a deal done will be revealed and compared against your classmates in other groups so you don't want to be too lenient.

Your task is to come to agreement about four major issues: the height of the development, its size in square feet, the terms of the MAS' lawsuit, and the shadow impacts of the new building. In addition, there are two other issues which are relevant only to a subset of the parties but which may be used to help facilitate agreement on the larger issues: the purchase price and any additional tax breaks to be granted in an attempt to keep Salomon Brothers in the development.