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## Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia University

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# CAN URBAN UNIVERSITY EXPANSION AND SUSTAINABLE DEVELOPMENT CO-EXIST?: A CASE STUDY IN PROGRESS ON COLUMBIA UNIVERSITY

*Keith H. Hirokawa and Patricia Salkin\**

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## INTRODUCTION

The notion that our resource decisions should account for the needs of today without crippling future generations in their ability to make their own resource decisions<sup>1</sup> has captured models of corporate responsibility, land use planning, architecture, and even market assessments. Yet sustainability is not limited to environmental quality and natural resources. The concept of sustainability and the approach that it embodies extends throughout our social and economic institutions and applies to, among other things, housing and transportation policies, agricultural practices and food production, public health and medicine, national and international governance, and education. Sustainability is becoming a critical measure of assessment for government, corporate, and business decision making.

### A. General Sustainability Measures

The reason that sustainability has become so popular is undoubtedly related to the breadth of its governing principles. Sustainability is reflected, among other things, by the inclusiveness that can result from open and engaged public dialogue, in its resoluteness in seeking an equitable distribution of the benefits of resource use, and through the pluralism that follows the process of reconciling otherwise competing goals and perspectives. Sustainability is immediate and generational, consumptive and conservationist, and local and global. It strikes a chord of key quality of life factors in the public arena, and optimal long-term viable business considerations for the private sector.

The application of sustainability is no simple task.<sup>2</sup> The variability in what constitutes sustainability for different projects (e.g., geothermal pow-

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1. See, e.g., Gro Harlem Brundtland, *Our Common Future*, in UNITED NATIONS WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT 3, 14 (1987), available at <http://www.worldinbalance.net/intagreements/1987-brundtland.php>.

2. See, e.g., SIMON DRESNER, *THE PRINCIPLES OF SUSTAINABILITY* 2 (2008) ("Some environmentalists have claimed that sustainable development is a contradiction in terms, and can be used merely as a cover for continuing to destroy the natural world. On the other side of the debate, some economists have argued that sustainable development is too cautious about the future, potentially leading to sacrifices of economic growth for the sake of excessive concern about natural resources. Defenders of the concept argue that disagreement about sustainable development does not show that it is meaningless. Rather, it is a 'contestable concept' like liberty or justice. Most people support these goals but disagree about exactly what constitutes liberty or justice."); Lawrence J. MacDonnell, *Sustainable Use of Water Resources*, 12 NAT. RESOURCES & ENV'T 97 (1997) ("The virtue of sustainability as a concept sufficiently broad to embrace contemporary thinking about human objectives becomes the curse of vagueness when the discussion shifts from the general to the specific.").

er, subdivision, or timber sale), in different regions (depending on climate, population, and character), and in different settings (rural, suburban, or urban), appears to undermine the likelihood of identifying any universally applicable principles or standardization in application. Moreover, the notion that the traditionally competitive goals of economy, environment, housing, food, and population can be reconciled raises suspicions about the practicability of pursuing sustainable policies and projects.<sup>3</sup> Although such suspicions deserve consideration, it is important to note that sustainability is best understood as a process and a framework that acquires its meaning in particular contexts.

### **B. Sustainability and University Expansion: The Developing Columbia University Experience**

This Article employs sustainability as a framework to analyze the recent physical expansion plans of Columbia University for the purpose of illustrating the complexities that arise in urban development and higher education practices, as well as the problems of trying to simultaneously implement both. In this context, land-use planning and regulatory agencies, as well as courts, have traditionally provided a high level of deference and leniency in the application of land-use laws and regulations when it comes to siting and expansion issues for educational institutions. The issues that surround these situations generally include the siting of schools and related facilities (such as athletic fields) in zoning districts where such uses may not be permitted, and the reconciling of specific regulations such as historic district reviews, dimensional requirements, and environmental considerations. Institutions of higher education can further complicate matters, as available land for expansion is often a physical and political challenge, and the institutional business model behind expansion plans can overshadow the educational purposes that the expansion is intended to serve. Even more complex are expansions of educational institutions in urban areas, where the acquisition of new land can result in a “university creep” into neighborhoods, and where the scale of the proposed development may not be in keeping with past and present community character.

Columbia University, in New York City, “the oldest institution of higher learning in the state of New York,”<sup>4</sup> is a private, non-sectarian university

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3. See, e.g., David G. Victor, *Recovering Sustainable Development*, 85 FOREIGN AFF. 91 (2006).

4. Columbia University, A Brief History of Columbia, [http://www.columbia.edu/about\\_columbia/history.html](http://www.columbia.edu/about_columbia/history.html) (last visited Mar. 10, 2010).



that has been operating in the borough of Manhattan since 1754.<sup>5</sup> Over time, the University's growth in prestige and student enrollment resulted in campus expansions and relocations, including, for example, a move uptown in the late 1890s into the Morningside Heights neighborhood, which was described as an "urban academic village."<sup>6</sup> Steady enrollment increases in the 1950s led to new buildings in the 1960s to house five different schools.<sup>7</sup> Expansion resumed in the 1980s and throughout the 1990s.<sup>8</sup>

Columbia first announced its most recent proposed expansion in 2003. The Public Authorities Control Board of the State of New York gave the plans a "green light" in May 2009.<sup>9</sup> The University plans to expand its thirty-six-acre campus by building an additional 6.8 million square feet of space for classrooms, research facilities, administration, housing, and parking, and intends to redevelop seventeen acres from West 125th to West 133rd streets, in a neighborhood called Manhattanville.<sup>10</sup> The expansion plan, estimated to cost approximately \$6.3 billion, is scheduled to take place in two phases, with Phase One scheduled for completion by 2015 and Phase Two scheduled for completion by 2030.<sup>11</sup> The first phase of construction will include the Jerome L. Greene science center, new homes for the Columbia Business School, the School of International and Public Affairs, and the School of the Arts, as well as a permanent site for the newly opened Columbia-assisted public secondary school for math, science, and engineering.<sup>12</sup>

The expansion proposal began in the Planning and Project Coordination ("PPC") unit of the Government and Community Affairs Department of Columbia University. The PPC

provides analysis, coordination and communication associated with physical planning, land-use development, and zoning policy. The unit pro-

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5. The University was initially founded as King's College and the name was later changed in 1784 following an eight-year suspended operation during the Revolutionary War. *Id.*

6. *See id.*

7. *See id.* During the tumultuous 1960s—in part due to the Vietnam War and in part due to the decline of cities—Columbia University was cast in the national spotlight because of student protests, halting, among other things, certain aspects of the then proposed expansion.

8. *See id.*

9. Columbia University, Manhattanville in West Harlem, <http://neighbors.columbia.edu/pages/manplanning> (last visited Mar. 3, 2010).

10. *See* Columbia University Expansion, <http://www.plannyc.org/taxonomy/term/689> (last visited Mar. 4, 2010).

11. *See id.*

12. Columbia University, Manhattanville in West Harlem: Construction Updates, [http://neighbors.columbia.edu/pages/manplanning/proposed\\_plan/updates.html](http://neighbors.columbia.edu/pages/manplanning/proposed_plan/updates.html) (last visited Mar. 4, 2010).

vides an important link between the community, the University and public officials, not only as it relates to the Manhattanville Campus Expansion Plan, but with regard to all University-initiated “bricks and mortar” projects. In addition, the staff monitors projects or proposals generated by government agencies and outside developers which may affect the upper Manhattan communities that surround University campuses.<sup>13</sup>

While Columbia University has hailed the project as a form of smart growth that will both exhibit sustainable practices<sup>14</sup> and generate thousands of jobs, keeping Manhattan in the center of world thought leadership,<sup>15</sup> others have criticized both the scale of the University’s plans and the manner in which the property for the project has been acquired.<sup>16</sup> Questions surrounding the process of meaningful public participation, the use of eminent domain to acquire certain needed parcels,<sup>17</sup> and the general “good neighbor” behavior of the University must be reviewed and balanced against the University’s stated commitment to bringing a “carefully considered, transparent, and predictable plan [that] will create a new kind of ur-

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13. Columbia University, Government and Community Affairs, [http://www.columbia.edu/cu/gca/docs/land\\_development/index.html](http://www.columbia.edu/cu/gca/docs/land_development/index.html) (last visited Mar. 4, 2010).

14. Regarding sustainability, the University writes:

Environmental stewardship is a cornerstone of Columbia University’s commitment to being a responsible member of the community. A longtime practitioner of environmental sustainability, the University works actively to maintain a safe environment for staff, students, and neighbors. In 2006, the University established the Office of Environmental Stewardship to initiate, coordinate and implement programs to reduce the University’s environmental footprint. The academic expansion in the old manufacturing zone of Manhattanville in West Harlem will provide an excellent opportunity for Columbia to utilize best practices in environmentally sustainable construction and design to help revitalize this area.

Columbia University, Manhattanville in West Harlem: Planning, Design & Construction – Environmental Sustainability, [http://neighbors.columbia.edu/pages/manplanning/proposed\\_plan/environmental.html](http://neighbors.columbia.edu/pages/manplanning/proposed_plan/environmental.html) (last visited Mar. 6, 2010).

15. See Columbia University, Manhattanville in West Harlem, *supra* note 9.

16. See, e.g., WEST HARLEM ENVIRONMENTAL ACTION (WE ACT), OFFICIAL WRITTEN COMMENTS ON COLUMBIA’S PROPOSED MANHATTANVILLE IN WEST HARLEM ZONING AND ACADEMIC MIXED-USE DEVELOPMENT ENVIRONMENTAL IMPACT STATEMENT DRAFT SCOPE OF WORK (2006) [hereinafter WE ACT], available at <http://www.weact.org/Portals/7/WE%20ACT%20Official%20Written%20Comments%20on%20Columbia%20Expansion%20Plan.pdf> (last visited Mar. 4, 2010).

17. As will be discussed *infra*, at notes 210-17, on December 3, 2009 the New York State Appellate Division, First Department dealt a blow to Columbia University by invalidating the use of eminent domain for this project. See *Kaur v. N.Y. State Urban Dev. Corp.*, 892 N.Y.S.2d 8, 23-25 (App. Div. 2009). The fact remains, however, that Columbia owns or has rights to almost all of the property required for the project, suggesting that should the appeal not bode well for Columbia, significant expansion will still occur. In fact, New York City Mayor Michael Bloomberg reiterated his support for the project following the court ruling. *Bloomberg Reiterates Support for Columbia Expansion*, WNYC, Dec. 4, 2009, <http://www.wnyc.org/news/articles/145593> (last visited Mar. 21, 2010).

ban academic environment that will be woven into the fabric of the surrounding community.”<sup>18</sup>

This Article does not intend to suggest a “report card” on the sustainability of the Columbia University expansion project planning and approval phases. Rather, it will use the Columbia project as a case study to demonstrate the difficulty in labeling projects as sustainable or unsustainable when key stakeholders view the process and outcomes of sustainability differently. The Article points out that many of the actions taken by the University appear, on the surface, to promote concepts and principles of sustainability. At the same time, particular elements of the expansion plan, as well as the general approach exhibited by Columbia, have been criticized as failures to change the “business as usual” paradigm that underlies the very need for a shift to sustainable practices. Part II provides a fuller discussion of sustainability, highlighting key considerations of a sustainability framework particularly in an urban development context. Part III discusses generally the involvement of higher education institutions with sustainability: it explores areas where the Columbia University expansion may and may not be sustainable from a physical environmental perspective, still recognizing that stakeholder perspectives may differ. Part IV focuses on another key component of sustainable urban development projects: public participation, including accountability and transparency leading to issues of local identity. This section discusses, among other things, the role of public participation in the development of the community benefits agreement for the project, as well as public participation in the decision to use eminent domain to assemble needed parcels for the expansion. An update on the current eminent domain litigation surrounding the Columbia University expansion is also briefly discussed in this section. In addition, gentrification and displacement resulting from the project are briefly discussed in terms of a sustainability analysis. Part V concludes with the observation that any critique of a major (re)development project for purposes of analyzing sustainability involves a delicate balancing of facts, perspective, and ultimately stakeholder consensus, irrespective of labels selected by project sponsors and advocates.

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18. Columbia University, Manhattanville in West Harlem, *supra* note 9.

## I. SUSTAINABILITY, URBAN AREAS, AND SUSTAINABLE DEVELOPMENT IN CONTEXT

### A. Towards Defining Sustainability

Sustainability owes much of its presence to the growing international attention to the effects of human activity and consumption on natural resources.<sup>19</sup> The term “sustainability” largely emerged in political dialogue in the 1970s, followed by its recognition in the United Nations’ recommendation of “sustainable development” as a means of resolving the competing demands of economic growth and environmental quality.<sup>20</sup> Sustainability was intended to relieve resource inequities over time: sustainable development concerned contemporary resource needs, but also the resource needs that would concern future generations.<sup>21</sup> At the outset, however, the novelty of sustainability rested on the suggestion that economic growth and industrial progress are not necessarily incompatible with environmental quality.<sup>22</sup> There was a notion that the goals of environmental protection and economic and social development could only be achieved by working together in a way that allowed one to complement one another.<sup>23</sup> In other words, “sustainability means pursuing economic activity *while* promoting sound environmental management . . . .”<sup>24</sup>

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19. The International Union for Conservation in Nature (“IUCN”) mandate in 1969 reflected on “the perpetuation and enhancement of the living world—man’s natural environment—and the natural resources on which all living things depend,” which referred to management of “air, water, soils, minerals and living species including man, so as to achieve the highest sustainable quality of life.” See W.M. ADAMS, *THE FUTURE OF SUSTAINABILITY: RE-THINKING ENVIRONMENT AND DEVELOPMENT IN THE TWENTY-FIRST CENTURY* 17 n.3 (2006), available at [http://cmsdata.iucn.org/downloads/iucn\\_future\\_of\\_sustainability.pdf](http://cmsdata.iucn.org/downloads/iucn_future_of_sustainability.pdf).

20. *Id.* at 4.

21. SIMON DRESNER, *THE PRINCIPLES OF SUSTAINABILITY* 1 (2d ed. 2008). See generally REPORT ON THE WORLD COMMISSION ON ENVIRONMENTAL DEVELOPMENT: OUR COMMON FUTURE (1987), available at <http://www.un-documents.net/wced-ocf.htm>.

22. See ADAMS, *supra* note 19, at 1.

23. Ileana M. Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 FORDHAM URB. L.J. 537, 541 (2009).

24. Bosire Maragia, *The Indigenous Sustainability Paradox and the Quest for Sustainability in Post-Colonial Societies: Is Indigenous Knowledge All That is Needed?*, 18 GEO. INT’L ENVTL. L. REV. 197, 204 (2006) (emphasis added); see Keith H. Hirokawa, *A Challenge to Sustainable Governments?*, 87 WASH. U. L. REV. 203, 204 (2009) (“Sustainability converges economic, environmental, and social concerns into policies and practices that prioritize human long-term needs in our present-day infrastructure, residences, offices, and other consumer-based decision-making processes. Hence, sustainability is not aimed at causing the economic regicide that some may have feared: sustainable practices do not compel the cessation of economic growth, or that we cease constructing buildings or extracting resources.”).

Reconciling economics and environmentalism has since underlain discussions on sustainable development. Both environmental sustainability and economic prosperity, however, are “more a means than an end, and human well-being—rather than prosperity—is the primary goal of society and public policy.”<sup>25</sup> As suggested, a third element, equity, rounds the sustainability analysis into a “triple-bottom-line.”<sup>26</sup> In recognition of the importance that future resource and economic decisions consider—if not directly serve—the needs of the many, the United Nations World Commission on Environment and Development concluded that sustainability must incorporate three main elements: economic growth, environmental protection, and social equality.<sup>27</sup> In what has come to be known as the Brundtland Report, the U.N. Commission argued that sustainability must prioritize the resolution of inequitable distribution of natural resource advantages:

Sustainable development . . . contains within it two key concepts: the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.<sup>28</sup>

Likewise, according to the Johannesburg Declaration on Sustainable Development, “[t]he deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and

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25. Robert Paehlke, *Environmental Sustainability and Urban Life in America*, in ENVIRONMENTAL POLICY: NEW DIRECTIONS FOR THE TWENTY-FIRST CENTURY 58 (Michael E. Kraft & Norman J. Vig eds., 2003). See also THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEV., TOWARDS A SUSTAINABLE AMERICA (1999), available at <http://clinton2.nara.gov/PCSD/Publications/tsa.pdf> (“A sustainable United States will have a growing economy that provides equitable opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends.”).

26. See U.S. INTERAGENCY WORKING GROUP ON SUSTAINABLE DEV. INDICATORS, SUSTAINABLE DEVELOPMENT IN THE UNITED STATES: AN EXPERIMENTAL SET OF INDICATORS 9 (1998) (“If we think of sustainable development as a three-legged stool, then one leg can be thought of as representing the economy, another as representing the environment, and the third representing society, or equity.”).

27. Judith Perhay, *The Natural Step: A Scientific and Pragmatic Framework for a Sustainable Society*, 33 S.U. L. REV. 249, 269 (2006); see also Paehlke, *supra* note 25, at 57-58 (distinguishing “broad” and “narrow” sustainability definitions: defining sustainability broadly includes human health, ecosystem health, and resource sustainability; the narrow definition is confined to resource sustainability).

28. Brundtland, *supra* note 1, at 54; see also Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 5, U.N. Doc. A/CONF.151/26 (Aug. 12, 1992) [hereinafter *Rio Declaration*] (proclaiming “the essential task of eradicating poverty as an indispensable requirement for sustainable development”).



developing worlds pose a major threat to global prosperity, security and stability.”<sup>29</sup> Therefore, what is clear is that, “[i]n its broadest sense, any definition of sustainable design or construction must include considerations of how the development will acknowledge its social impact on both residents and the surrounding community.”<sup>30</sup>

Despite the velocity and breadth of the discussion of sustainability, there has not yet been an agreed-upon meaning of the term.<sup>31</sup> Even twenty years after the Brundtland Report’s publication, there remains broad but inconclusive discussion about the distance between the definitions of sustainability and sustainable development, and also as to the most appropriate means of seeking sustainable development.<sup>32</sup> Accordingly, when sustainability is unable to answer some seemingly simple questions about development choices (e.g., which community features are worth keeping? Which fish and birds are so important as to justify ruining a farming or logging community?), some have claimed that the very notion of sustainability is meaningless, at best a buzzword that amounts to empty rhetoric. As Stanley Temple of the University of Wisconsin said, “[t]he word sustainable has been used in too many situations today, and ecological sustainability is one of those terms that confuse a lot of people. You hear about sustainable development, sustainable growth, sustainable economies, sustainable societies, sustainable agriculture. Everything is sustainable.”<sup>33</sup>

The claim that sustainability is susceptible of no single definition is trivially true: sustainability was never intended as the type of substantive approach that gives one single answer to specific resource allocation questions. Of course,

[a]t the root of the definitional problem is that sustainable development requires trade-offs between three important values, yet can tell us nothing determinate about the right balance. . . . The principle of sustainable development can guide us by reminding us of these competing needs and

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29. World Summit on Sustainable Development, Johannesburg, S. Afr., Aug. 26-Sept. 4, 2002, *Report of the World Summit on Sustainable Development*, U.N. Doc A/CONF.199/20 [hereinafter *Johannesburg Report*].

30. Stephen Del Percio, *Affordable Housing*, in JONATHAN E. FURR ET AL., *GREEN BUILDING AND SUSTAINABLE DEVELOPMENT: THE PRACTICAL LEGAL GUIDE* 205, 205 (2009). See generally James A. Kushner, *Social Sustainability: Planning for Growth in Distressed Places—The German Experience in Berlin, Wittenberg, and the Ruhr*, 3 WASH. U. J.L. & POL’Y 849, 871 (2000) (“Social sustainability should be recognized as a vital non-ecological element to the larger environmental model of sustainability.”).

31. Joyeeta Gupta, *Non-State Actors in International Governance and Law: A Challenge or a Blessing*, 11 ILSA J. INT’L & COMP. L. 497, 497 (2005).

32. Maragia, *supra* note 24, at 198.

33. THOMAS DAVIS, WHAT IS SUSTAINABLE DEVELOPMENT?, <http://www.menominee.edu/sdi/whatis.htm> (last visited Feb. 27, 2010).

values, but ultimately, the trade-offs will depend on a political decision.”<sup>34</sup>

Yet sustainability is a pluralistic and inclusive framework, guiding the process by which we formulate strategies to avoid such problems. As a framework, sustainability is markedly pragmatic and noticeably inclusive. Most importantly, however, it is unmistakably divergent from “business as usual.”<sup>35</sup> The shift to sustainability is intended to compel a shift in thinking and a corresponding reorganization of values. As such, although the notion of sustainability involves broad environmental, economic, and social considerations, sustainable development cannot be accomplished by viewing each of the triple-bottom-line elements in isolation. Instead, the manner in which each element is satisfied should reflect and rely upon the manner in which a project satisfies other elements of the equation.<sup>36</sup> This is a process of pluralism, of course, and is intended to diverge from past practices of assessing economy, environment, and social well-being in isolation, as if such criteria are autonomous.<sup>37</sup>

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34. Porras, *supra* note 23, at 569.

35. The authors acknowledge, however, that the amorphous definition of sustainability can result in all interest groups “co-opting” what has become a popular and socially accepted buzz phrase to justify actions, whether or not “business as usual.”

36. See, e.g., Robert J. Klee, *Enabling Environmental Sustainability in the United States: The Case for a Comprehensive Material Flow Inventory*, 23 STAN. ENVTL. L.J. 131, 144 (2004) (“The central goal of environmental sustainability is to achieve balance in situations where human-technological systems and natural-environmental systems co-exist without one system corrupting or disrupting the other.”).

37. For instance, Barbara Stark argues that, “[s]ustainable development’ is an intentional oxymoron, a paradox. It is a self-contained deconstruction in which one term endlessly undoes the other.” Barbara Stark, *Sustainable Development and Postmodern International Law: Greener Globalization?*, 27 WM. & MARY ENVTL. L. & POL’Y REV. 137, 152 (2002). In like manner, Robert Paehlke asserts that the process of integrating economics, environment, and equity is like a checklist. Paehlke argues that “each of [the three dimensions of sustainability] is understood and measured separately and independently.” Paehlke, *supra* note 25, at 60. Obviously, sustainability would not itself be sustainable if founded in a contradiction.

The objection we make to Stark’s and Paehlke’s proposals is that the sustainability paradigm was meant to collapse any felt distinctions between environment and economy, between production cost and externality, and between sustainability and development. Far from being an endless experiment in contradiction, sustainability invokes pluralism, inclusiveness, and context. Here, the problem involves the critique of Cartesian distinctions: by requiring independent consideration, each element is thought to exhibit, contain, or represent merits independently of its relation to satisfying the other criteria. Worse, by considering each element in isolation, and by thinking of the elements as attainable in isolation, it is a short step to prioritizing among the elements in difficult cases: the risk of turning sustainability into a calculus is the possibility of allowing particular projects to calculate one or another of the bottom-line elements out of the project. (This may be done, and perhaps must be done in particular cases, but such prioritizing should be the exception, rather than the rule).



## B. Urban Sustainability

Some of the controversy over the meaning of the term “sustainable” can be resolved in its application to particular projects, in large part because application of sustainability becomes less ominous in context. For this Article, the important context for analysis is the urban area. Urban areas play a significant role in achieving sustainability for a variety of reasons, including demographics, density, and the reach of urban political decision making. At the start of the twentieth century, a mere fourteen percent of the world’s population lived in cities.<sup>38</sup> By the start of the twenty-first century, the world’s urban population increased to over fifty percent.<sup>39</sup> By 2030, the world’s urban population is expected to double, making the majority of earth’s inhabitants urban dwellers (an estimated five billion people).<sup>40</sup> This reality presents significant challenges and opportunities for ensuring sustainability in a densely populated region.

Due to the potential impact of local executive and legislative decisions on energy use and environmental policy, cities are finally finding more autonomy to meet the challenge on both a local and international scale.<sup>41</sup> Likewise, the concept of urban sustainability is receiving special attention in contemporary dialogues on land use and environmental quality. As European Union Regional Policy Commissioner Danuta Hübner said, “[t]he battle for sustainable development will almost certainly be decided in cities . . . . We need cities in good shape, wisely using their resources in an innovative and sustainable way, cities for all, for us today and for future generations.”<sup>42</sup> Eventually, the framework of sustainability must find its

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38. Making the Modern World Online, [http://www.makingthemodernworld.org.uk/learning\\_modules/geography/04.TU.01/](http://www.makingthemodernworld.org.uk/learning_modules/geography/04.TU.01/) (last visited Feb. 27, 2010).

39. *Id.*

40. Alan D. Hecht, *The Next Level of Environmental Protection: Business Strategies and Government Policies Converging on Sustainability*, 8 SUSTAINABLE DEV. L. & POL’Y 19, 20 (2007); see also MIKE DAVIS, PLANET OF SLUMS 1-2 (2006) (“The earth has urbanized even faster than originally predicted by the Club of Rome in its notoriously Malthusian 1972 report *Limits of Growth*. In 1950 there were 86 cities in the world with a population of more than 1 million; today there are 400, and by 2015 there will be at least 550. Cities, indeed, have absorbed nearly two-thirds of the global population explosion since 1950, and are currently growing by a million babies and migrants each week. The world’s urban labor force has more than doubled since 1980, and the present urban population—3.2 billion—is larger than the total population of the world when John F. Kennedy was inaugurated.”).

41. Porras, *supra* note 23, at 539.

42. Euractiv.com, Sustainable Cities, <http://www.euractiv.com/en/sustainability/sustainable-cities/article-175936> (last visited Feb. 27, 2010); see also DAVIS, *supra* note 40, at 134 (“Cities in the abstract are the solution to the global environmental crisis: urban density can translate into great efficiencies in land, energy, and resource use, while democratic public spaces and cultural institutions likewise provide qualitatively higher standards of enjoyment than individualized consumption and commodified leisure.”).

way into the urban area, not merely as a solution to sprawl, but as the site of sustainability experiments designed to achieve greater balance among the often competing economic, environmental, and social goals.

The very notion of sustainability in urban areas raises complex issues of scale, location, and impact, as well as the dilemma of resolving the divide between urban dwellers and resource needs: urban dwellers are users, but not suppliers, of natural resources.<sup>43</sup> As Dan Tarlock notes, "Sustainable urbanism is a much more complex and multi-faceted theory than other urban theories because the focus is much broader than the city's physical form and the social consequences of that form."<sup>44</sup> Nevertheless, sustainable urban development might be captured in general principles, and has been described as follows:

It encompasses subjects as diverse as architectural design, preservation of cultural patrimony, new urbanism and smart growth, green cities, transportation policy, energy efficiency, technology pushing strategies, environmental justice, job creation, economic growth, poverty, renewable resource use, generation and disposal of biodegradable and non-biodegradable wastes, water supply, sanitation, health care, air pollution, migration, affordable housing, secure tenure, green spaces and parks, city ecology, security, and so on. That the list of potential sustainable development concerns of the city is seemingly endless should not be surprising, given that the concept requires attention to the three important dimensions of economy, environment, and equity.<sup>45</sup>

As James Kushner likewise notes, the real problem in urban sustainability assessment is in failing to account for social causes and effects.<sup>46</sup> To

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43. Davis points out that

both environmental efficiency and public affluence require the preservation of a green matrix of intact ecosystems, open spaces, and natural services: cities need an alliance with Nature in order to recycle their waste products into usable inputs for farming, gardening, and energy production. Sustainable urbanism presupposes the preservation of surrounding wetlands and agriculture.

DAVIS, *supra* note 40, at 134.

44. A. Dan Tarlock, *City Versus Countryside: Environmental Equity in Context*, 21 FORDHAM URB. L.J. 461, 493 (1994).

45. Porras, *supra* note 23, at 576-77.

46. See generally Kushner, *supra* note 30, at 849 (arguing that urban areas require a more intensive approach to "social sustainability," integrating analysis of urban revitalization). See also Julian Agyeman & Tom Evans, *Toward Just Sustainability in Urban Communities: Building Equity Rights with Sustainable Solutions*, 590 ANNALS AM. ACAD. POL. & SOC. SCI. 35, 38 (2003) ("As the home for a growing percentage of the world's population, the cultural centers for many minority communities, and the consumer of large portions

find the right way to create sustainable urban areas, we must focus on cities separately from non-urban areas: sustainable urban areas involve considerations that may not be applicable to more narrow resource allocation dilemmas or development in rural or even suburban areas. So, we must ask the following questions: How does sustainability relate to the city, to urban development, and to urban redevelopment? What is urban sustainability? Because urbanization itself is sometimes thought to relieve pressures placed on space and other natural resources (e.g., with potential to reduce sprawl, habitat, transportation impacts, and infrastructure demands), the notion of combining the terms “urban” and “sustainability” might be thought of as repetitive.<sup>47</sup> After that initial distinction, however, the application of sustainability to urban areas calls for a conception of the well-functioning city.

Urban sustainability illustrates that the notion of what is sustainable will be unique to each project, each city, and each community; there is no universal model of a sustainable society. The analysis of sustainability in urban development is multi-dimensional and multi-disciplinary. More importantly, however, as James Kushner notes, “[s]ocial sustainability will differ for each community: in some communities it will reflect the region’s cultural and economic history; other communities will highlight their geographic resources; while still other communities might structure their social sustainability around sports and recreation or arts and entertainment.”<sup>48</sup> Sustainability is “embedded in the cultural and moral values of a [particular] society” and is recognized on a case-by-case basis.<sup>49</sup>

Sustainability thus requires that the decision-making process include each of the “triple-bottom-line” elements, yet, how sustainability is supposed to accomplish this feat is left open to the imagination. Most importantly, for purposes here, there is generally no set course for applying sustainability to the functions and circumstances of an urbanized society.<sup>50</sup>

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of the land’s natural resources, cities represent a critical proving ground for both movements.”).

47. See, e.g., Edward H. Ziegler, *The Case for Megapolitan Growth Management in the 21st Century: Regional Urban Planning and Sustainable Development in the United States*, 41 URB. LAW. 147, 149 (2009) (indicating that urbanism has generally been considered one sustainable answer to sprawl).

48. Kushner, *supra* note 30, at 851-52. See also Patricia Salkin, *Land Use: Blending Smart Growth with Social Equity and Climate Change Mitigation*, in AGENDA FOR A SUSTAINABLE AMERICA 349, 350 (John C. Dernbach ed., 2009) [hereinafter AGENDA FOR A SUSTAINABLE AMERICA] (“[N]o single approach works best for every region and community, so each locality must take its own approach to designing and implementing new land use systems that produce more favorable sustainability patterns.”).

49. Maragia, *supra* note 24, at 204.

50. Porras, *supra* note 23, at 569.

Yet the process of sustainability must involve a relationship between urban development and local needs, including the impacts (adverse and beneficial) on local economy, local environment, and local community.<sup>51</sup> Further, urban sustainability must provide “continuing scrutiny of gentrification, open space, and biodiversity protection programs to make sure that they are not used to foreclose low and moderate housing opportunities.”<sup>52</sup>

What is perhaps special about sustainable development is that its principles cannot be accomplished by old ways of thinking about land, land use, and development. Sustainability aggregates perspectives and principles that have historically been considered distinct, and even at odds: property rights and environmental quality; diversity, housing, and economic advantage; and behavioral politics and technological solution. Imbued with all of this substance, sustainability is essentially a process of reconciling the application of these substantive goals—a process of integration, collaboration, and, often times, concession. Sustainable land use, jobs, housing, education, and government are all necessary component parts of a sustainable future, and in the sustainability process, they complement (rather than compete with) one another. Moreover, because sustainability is so wed to its process-oriented approach of pluralism, and because sustainable development requires such a departure from old ways of thinking about land use, the best basis for assessing sustainability lies in the degree to which particular projects, relative to their purpose and location, are able to balance competing principles of sustainability.

## II. THE SUSTAINABILITY ROLES OF THE INSTITUTION OF HIGHER LEARNING

Although the role and design of university education seem constantly in flux, the idea of sustainable education and the sustainable institution are not new subjects.<sup>53</sup> The first Earth Day in 1970 was the result of a student-based movement,<sup>54</sup> and sustainability in education gained substantial trac-

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51. *Id.* at 540 (identifying a trend in the “localization of sustainable development—an increasing emphasis on sustainable development as a process that takes root in and through local implementation”).

52. Tarlock, *supra* note 44, at 494.

53. See, e.g., Environmental Education Act of 1970, Pub. L. No. 91-516, 84 Stat. 1312 (1970); see also U.N. Conference on the Human Environment, Action Plan for the Human Environment, Stockholm, Swed., June 5-16, 1972, Recommendation 96, available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1511&l=en>.

54. See Wynn Calder & Richard M. Clugston, *Higher Education*, in STUMBLING TOWARD SUSTAINABILITY 625 (John C. Dernbach ed., 2002) [hereinafter STUMBLING TOWARD SUSTAINABILITY]. In addition, the authors point out that the international Stockholm Decla-

tion in the collaborative and interdisciplinary vision found in the Belgrade Charter<sup>55</sup> and the Tbilisi Declaration during the late 1970s.<sup>56</sup> In 1976, a United Nations conference produced the Belgrade Charter, which established the basic need for environmental education:

The goal of environmental education is: [t]o develop a world population that is aware of, and concerned about, the environment and its associated problems, and which has the knowledge, skills, attitudes, motivations, and commitment to work individually and collectively toward solutions of current problems and the prevention of new ones.<sup>57</sup>

A diverse array of environmental educators soon convened to adopt the Tbilisi Declaration, which grounded the ensuing educational dialogue in three expansive goals for environmental education:

To foster clear awareness of, and concern about, economic, social, political and ecological interdependence in urban and rural areas;

To provide every person with opportunities to acquire the knowledge, values, attitudes, commitment and skills needed to protect and improve the environment;

To create new patterns of behavior of individuals, groups and society as a whole towards the environment.<sup>58</sup>

The basic concepts established in Belgrade and Tbilisi have since been examined, developed, and expanded over the past thirty years in domestic education dialogues.<sup>59</sup> As the contributing authors of the Agenda for a Sustainable America (“the Agenda”) report:

Colleges and universities across the United States are increasingly practicing sustainability across the entire range of their activities. Despite the continuing drive to specialize within traditional academic disciplines, courses that incorporate sustainability concepts are being developed in a variety of disciplines. Sustainability-oriented research is increasingly funded in the sciences, and initiatives are also under way to bring the social sciences and humanities into the research dimension. Initiatives to

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ration of 1972 also linked environmental concerns to education (Principle 19 of the Stockholm Declaration calls for environmental education through adulthood). *Id.*

55. UNESCO-UNEP, The Belgrade Charter, *Connect: UNESCO-UNEP Environmental Education Newsletter*, Vol. 1, No. 1, 1-2 (Jan. 1976) [hereinafter The Belgrade Charter].

56. See UNESCO, Intergovernmental Conference on Environmental Education, Tbilisi, U.S.S.R., Oct. 14-26, 1977, *Final Report* [hereinafter Tbilisi Declaration]

57. The Belgrade Charter, *supra* note 55, at 2.

58. Tbilisi Declaration, *supra* note 56, at 26.

59. See, e.g., Brundtland, *supra* note 1; *Johannesburg Report*, *supra* note 29; International Conference on Environment and Society: Education and Public Awareness for Sustainability, Thessaloniki, Greece, Dec. 8-12, 1997, *Declaration of Thessaloniki*, UNESCO-EPD-97/CONF.401/CLD.2; *Rio Declaration*, *supra* note 28.



make campus operations more sustainable are now standard practice, and some universities and colleges are actively promoting sustainable development in their surrounding communities and beyond.<sup>60</sup>

Through a series of interconnected recommendations running the gamut of curricular development and extra-curricular opportunities, the Agenda's contributing authors suggest a framework for improving the carbon footprint of educational institutions and maximizing the social impacts of producing a more sustainability-literate population.<sup>61</sup> Included in the recommendations are: (1) achieving sustainability literacy through course requirements; (2) focusing capital investments on sustainability research and research centers; (3) improving efficiency in physical operations; (4) creating local and regional partnerships to break the divide "between town and gown"; (5) opening student exposure to sustainable practices through fee programs and green living programs; and (6) adopting strategic sustainability objectives in school administration.<sup>62</sup> The Agenda also recommends that external stakeholders, such as nonprofit organizations, contracting businesses, and regulatory agencies, support institutional efforts through information and product offerings.<sup>63</sup> A number of institutions of higher education have adopted plans and policies that support the sustainability agenda.<sup>64</sup> The real challenge is that many of the universities that claim to embrace and promote sustainability do so in terms of curricular and public education offerings, and have not always firmly implanted these values in their business decisions with respect to campus expansion and related town-gown interactions. The sections that follow draw attention to the extent to which the Columbia University expansion may or may not be meeting higher education sustainability goals.

At the most basic level, it should be recognized that environmental literacy is a necessity to achieve sustainable communities, and that the educational institutions of higher learning are responsible for encouraging, if not

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60. Nathaniel Aden et al., *Progress Toward Sustainability: A Report Card*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 48, at 17-18.

61. See Wynn Calder & Julian Dautremont-Smith, *Higher Education: More and More Laboratories for Inventing a Sustainable Future*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 47, at 93.

62. Interestingly, there is no reference made to the relevance of tuition to sustainable education, although tuition clearly influences (even dictates) access to institutions of higher learning. *Id.* at 102-04.

63. *Id.* at 103-05.

64. For example, the Trustees of Northland College approved a Sustainability Charter in 1998 and the University of Florida established an Office of Sustainability in 2000. See STUMBLING TOWARD SUSTAINABILITY, *supra* note 54, at 625 (discussing college campuses).

requiring, environmental literacy.<sup>65</sup> Any possible trend toward a sustainability consciousness must involve academic institutions as active participants. Indeed, educational practices have immediate and profound access to the perspectives, biases, and customs that will dominate the future, and as such, educational institutions shoulder a large portion of the duty to direct attention to future resource needs.<sup>66</sup> At least, an integrated education on the principles and goals of sustainable development will help establish sustainability as a model in social and political perspectives, in customs and practices, and into the very vocabularies that we use to discuss natural resources, economy, and society. In addition, for education to meet the demands of sustainability, institutions must consider the variety of ways that their business, curricular, and building models (among others) relate to the needs that the institution intends to satisfy. That is, sustainable education must address both what is being taught *and* the location of the learning environment—the curriculum and the campus.

Sustainability demands that institutions of higher learning consider certain types of social benefits to local communities. At the least, the choices of the sustainable academic institution will reflect on both the investments that the institution makes in the community and the partnerships that can be formed between schools and communities to advance educational, economic, and environmental goals.<sup>67</sup> Columbia's project application (the "Master Plan") recognized this fact, stressing that the plan was intended to physically and functionally integrate the expansion project into its proposed location and would reflect the existing and projected character of the local community. Columbia's plan also recognizes that educational institutions can be a driving force for the local economy in terms of employment, retail markets, local population, consumption, and transportation. To alleviate the potential impacts, Columbia's vision for its expansion project is stated in terms of open access and local fabric: "The Project would create a mod-

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65. See NAT'L COMM'N ON THE ENV'T, CHOOSING A SUSTAINABLE FUTURE 33 (1993) ("Sustainable development depends not only on generating new and environmentally appropriate technologies getting prices right, governmental leadership, and stabilizing human population growth, but also on the evolution of an environmentally literate citizenry."); Carmela Federico & Jaimie Cloud, *Kindergarten Through Twelfth Grade Education: Fragmentary Progress in Equipping Students to Think and Act in a Challenging World*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 48, at 109-10 ("Comprehensively reforming our educational system can redefine business as usual as it shapes the knowledge, attitudes, and values of every student in [the] United States . . .").

66. Anthony D. Cortese, *The Critical Role of Higher Education in Creating a Sustainable Future*, 31 PLAN. FOR HIGHER EDUC. 15, 17 (2003) ("Higher education institutions bear a profound, moral responsibility to increase the awareness, knowledge, skills, and values needed to create a just and sustainable future.").

67. *Id.* at 19 ("Colleges and universities have an obligation to support local and regional communities, making every action lead to community improvement.").



ern, open, integrated, urban campus that would be part of the fabric of the local community and would advance higher learning, while revitalizing the Project Site's streetscape and providing new opportunities for active and passive recreation."<sup>68</sup> Columbia is essentially asking the surrounding community to see that the University's expansion project illustrates a conscious effort to consider context and location in its goals of both changing and stabilizing the local community character, while modernizing the institution in pace with educational needs. Yet, what remains open to question, and certainly what may fuel a lively debate, is whether Columbia's understanding of the terms "modern, open, integrated, urban campus" supports a positive or negative sustainability assessment. Accordingly, the Article now turns to the specific elements of the plan, including the institutional commitments made and occurrences that have come to characterize the impacts of Columbia's Master Plan on the local social, economic, and environmental circumstances.

### A. Columbia as a Sustainable Educational Institution

As designed, Columbia University's expansion plan intends to provide some of the more popular sustainability tools in the academic setting. In response to a perceived need, the Master Plan champions opportunities for interdisciplinary research and departmental collaboration, and seeks to meet these needs by the space and design offered in the planned construction.<sup>69</sup> The Master Plan identifies scientific research as a primary goal and driving force for the expansion.<sup>70</sup> It also considers Columbia's educational goals of leading its students by example and offering opportunities to learn by engaging in sustainable projects, for which the physical portion of the plan boasts open meeting spaces and open access grounds, green buildings, and outreach programs.<sup>71</sup>

#### 1. Sustainability Curriculum

Although environmental literacy is central to sustainable education, a curriculum that implements sustainability principles is not merely one that focuses on ecological information; it must also "transform academic programs and create centers that foster interdisciplinary thinking, a hallmark of

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68. N.Y. STATE URBAN DEV. CORP., COLUMBIA UNIVERSITY EDUCATIONAL MIXED-USE DEVELOPMENT: LAND USE IMPROVEMENT & CIVIC PROJECT GENERAL PROJECT PLAN 26 (2008) [hereinafter MASTER PLAN].

69. *See id.* at 7-8.

70. *See id.* at 4.

71. *See id.* at 5.

education for sustainability.”<sup>72</sup> A sustainability curriculum offers opportunities to expand and diversify our *field* of knowledge, at least to understand the interrelated projects of environment, economy, and community. As Jonathan Lash argued, “[e]ducation for sustainability is about learning to connect academic disciplines with each other, including geographic and cultural relationships.”<sup>73</sup> Therefore, in line with the “triple-bottom-line” approach to sustainability, scholars have called on universities to institute (or increase) the ability of distinct academic departments to engage in interdisciplinary research, scholarship, and teaching.<sup>74</sup>

To take the point further, some attention must also be given to the design of campuses to encourage interdisciplinary research, collaboration, and learning. That is, where the design of buildings and campuses tends to isolate disciplinary departments from one another, the likelihood of interdepartmental collaboration decreases substantially.<sup>75</sup> Accordingly, universities are encouraged to consider interdisciplinary functionality in building and campus design and to adopt spatial dimensions that enable and encourage interdisciplinary research and collaboration.

Columbia’s curriculum contains significant components of environmental literacy, research, and outreach, all of which have been developed in response to demands made by the present generation of students.<sup>76</sup> Among the more notable curricular efforts is the establishment of the Office of En-

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72. Wynn Calder & Julian Dautremont-Smith, *Higher Education: More and More Laboratories for Inventing a Sustainable Future*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 48, at 94; *see also* Cortese, *supra* note 66, at 18 (“To achieve [sustainability in education], the *content of learning* will require interdisciplinary systems thinking, dynamics, and analysis for all majors, disciplines, and professional degrees.”); KONRAD OSTERWALDER, THE ROLE OF HIGHER EDUCATION INSTITUTIONS IN PROMOTING SUSTAINABLE DEVELOPMENT, *available at* [http://www.ias.unu.edu/sub\\_page.aspx?catID=705&ddlID=887](http://www.ias.unu.edu/sub_page.aspx?catID=705&ddlID=887) (last visited Mar. 6, 2010) (“Systematically thinking about justice and ethics, peace and good governance, not only about ecology, but also about economy might contribute in a substantial way to the establishment of a sustainable way of life.”).

73. Jonathan Lash, *Toward a Sustainable Future*, 12 NAT. RESOURCES & ENV’T 83, 85 (1997) (discussing Dartmouth College’s required international leadership course, the Kellogg School at Northwestern University’s elective trip to Costa Rica to research ecotourism and paper production from banana waste, and the integration of environmental courses in the curriculum at the Crouse School of Management at Syracuse University).

74. *See id.* (“[T]he scope of environmental education in schools and colleges needs to be broadened from discrete courses or subject areas, such as natural resources conservation and ecology, to an approach that emphasizes the underlying relationships between environmental quality, economic prosperity and social equity.”).

75. Of course, the place need not be on campus to result in increased collaboration. *See, e.g.,* Cortese, *supra* note 66, at 21 (describing interdisciplinary discovery projects at Unity College in Unity, Maine, in which students cooperate with the community while using Lake Winnecock as a model for studying and addressing environmental sustainability).

76. Steve Cohen, *Global Sustainability and the Class of 2009*, N.Y. OBSERVER, May 11, 2009, *available at* <http://observer.com/2009/global-sustainability-and-class-2009>.

vironmental Stewardship. Located within the University's Office of the Senior Executive Vice President, the Office of Environmental Stewardship employs four full-time staff and is responsible for reducing the University's environmental footprint through on-campus education and action programs. The Office coordinates interdisciplinary and interdepartmental working groups and projects with students, faculty, administration, and local environmental and community organizations.<sup>77</sup> Additionally, Columbia University offers a number of environment-specific majors and concentrations, including an undergraduate special concentration in Sustainable Development; concentrations in Environmental Policy Studies and International Energy Management and Policy; and a doctoral program in Sustainable Development.<sup>78</sup> In the Department of Earth and Environmental Sciences,<sup>79</sup> students observe local and global systems and prepare for the process of making the difficult social and economic choices necessary to establishing a sustainable society.

One thing that the expansion project adds to Columbia's curricular efforts is an opportunity to prioritize interdisciplinary and multi-disciplinary research. The floor plan is designed to facilitate interaction among disciplines, which can be encouraged by simple physical proximity and shared space.<sup>80</sup> Furthermore, consistent with the Tbilisi Declaration, the interdisciplinary nature of a campus that is spread throughout the community, with learning outside of the formal educational setting, can be an important component of environmental citizenship.

## 2. *Green Campus: Learning in a Sustainable Environment*

Seeking sustainability throughout the learning environment capitalizes on the notion that the campus "is a microcosm of the larger community."<sup>81</sup>

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77. See Columbia University, Environmental Stewardship, [http://www.environment.columbia.edu/docs/about\\_us/index.html](http://www.environment.columbia.edu/docs/about_us/index.html) (last visited Mar. 6, 2010).

78. Mark Levy's seminar, "Environmental Sustainability: Perspectives on the World" touches on a variety of environmental systems such as human impacts on the Arctic environment and El Niño and the Peruvian fishing community. See Columbia University, Interactive E-Seminars, [http://ci.columbia.edu/ci/eseminars/1401\\_detail.html](http://ci.columbia.edu/ci/eseminars/1401_detail.html) (last visited Mar. 6, 2010). Further information regarding similar course offerings and degree programs can be found at: [http://www.earthinstitute.columbia.edu/sitefiles/file/education/documents/2009\\_Education\\_Guide\\_09-25.doc](http://www.earthinstitute.columbia.edu/sitefiles/file/education/documents/2009_Education_Guide_09-25.doc).

79. Columbia University, Department of Environmental Sciences, <http://eesc.columbia.edu/> (last visited Mar. 6, 2010).

80. See MASTER PLAN, *supra* note 68, at 7 ("Today, multi-disciplinary academic research and teaching facilities need large, open floor plates which can be easily adapted to changes in technology, interdisciplinary programs and educational requirements. Large, regularly-shaped (generally rectangular) floor plates with a minimum of obstructions are particularly important because they facilitate interaction of different scientific disciplines.").

81. Cortese, *supra* note 66, at 19.

The lessons that the university might impart on campus by engaging students in day-to-day sustainable living will reflect what is achievable and necessary outside of campus walls. As such, “the manner in which [the university] carries out its daily activities is an important demonstration of ways to achieve environmentally responsible living and to reinforce desired values and behaviors in the whole community.”<sup>82</sup> This idea has been gathering support from all areas of education into a “green campus movement,” “dedicated to transforming our campuses into living laboratories for the demonstration and practice of environmental sustainability.”<sup>83</sup> The lesson from sustainable campuses—both an educational and illustrative one—is that universities can lead by example, both by operating in a sustainable manner and by providing opportunities to explore, debate, and experience a sustainable lifestyle.

Columbia has made strides in implementing patterns of sustainable living and education on campus, claiming environmental stewardship as “a cornerstone of [the school’s] commitment to being a responsible member of the community.”<sup>84</sup> Columbia holds that it is “[a] longtime practitioner of environmental sustainability, [and that] the University works actively to maintain a safe environment for staff, students, and neighbors.”<sup>85</sup> In 2009, Columbia was recognized by the Sustainable Endowments Institute among the “Overall College Sustainability Leaders.”<sup>86</sup> From some three hundred schools across the nation, Columbia was among the top, earning an A- in the category of overall sustainability.<sup>87</sup> This year, however, Columbia was downgraded to a B in the same category.<sup>88</sup> Despite this apparent lapse, Columbia’s campus efforts are notable.

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82. *Id.*

83. Leith Sharp, Editorial, *Higher Education: The Quest for the Sustainable Campus*, SUSTAINABILITY: SCI. PRAC. & POL’Y, Spring/Summer 2009, at 1, available at <http://ejournal.nbii.org/archives/vol5iss1/SSPP-v5.1.pdf>.

84. Columbia University, Manhattanville in West Harlem: Planning, Design & Construction, *supra* note 14.

85. *Id.*

86. See The College Sustainability Report Card, Awards, <http://www.greenreportcard.org/report-card-2009/awards> (last visited Mar. 10, 2010).

87. See The College Sustainability Report Card, Schools: Columbia University, 2009, <http://www.greenreportcard.org/report-card-2009/schools/columbia-university> (last visited Mar. 10, 2010).

88. According to the surveyors, Columbia asked that its answers to the survey questions remain confidential, and as such, the basis for Columbia’s declining performance could be caused by a variety of factors, including the increased efforts and performance at other schools. See The College Sustainability Report Card, Schools: Columbia University, Campus Survey, <http://www.greenreportcard.org/report-card-2010/schools/columbia-university/surveys/campus-survey> (last visited Mar. 10, 2010).

As discussed above, the University plans sustainability initiatives through its dedicated Office of Environmental Stewardship, which is focused on both the study of the environment and practice of sustainability.<sup>89</sup> The Office coordinates practical programs to reduce the University's environmental footprint and to promote a culture that values the environment. Through a variety of interdisciplinary and interdepartmental working groups and joint projects with academic departments, the Environmental Stewardship office has undertaken a variety of initiatives.<sup>90</sup> "The office works closely with students, administrators and faculty to achieve the University's goals. It also works with locally-based environmental and community organizations."<sup>91</sup> In addition, the University supports student opportunities to implement doctrinal and interdisciplinary lessons through on- and off-campus outreach, social organizations, and activities. Columbia Law School students can participate in the Environmental Law Clinic, in which law students experience client representation "on a broad array of issues including clean water, wetlands preservation, endangered species, environmental justice, 'smart growth' and clean air."<sup>92</sup> In addition, the Center for Climate Change Law at Columbia Law School was established in 2008 to, among other things, "launch interdisciplinary efforts within the University, to provide the framework in which environmental regulations are examined and shaped, and future leaders in climate change law are trained."<sup>93</sup>

### 3. *The Expansion Project: Modernization of Construction*

Columbia's Master Plan showcases the Manhattanville expansion as an environmentally sustainable project and suggests serious consideration of environmental stewardship. Columbia notes that the plan's green features

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89. See Sharp, *supra* note 83, at 3 ("One way our educational institutions can greatly advance their campus sustainability efforts is to better comprehend the emerging role of the campus sustainability professional.").

90. For a list of the types of projects coordinated through this office, see Columbia University, Environmental Stewardship: About Us, [http://www.environment.columbia.edu/docs/about\\_us/index.html](http://www.environment.columbia.edu/docs/about_us/index.html) (last visited Mar. 6, 2010).

91. The College Sustainability Report Card, *supra* note 88. Student groups at Columbia have thrived both with and without help from the Environmental Stewardship Office. Student sustainability organizations include, without limitation: Columbia University Food Sustainability Project; Community Impact at Columbia University; Earth Coalition; Earth Institute Student Organizations Listing; Eco-Reps; Engineers Without Borders; Green Umbrella; Students for Environmental and Economic Justice.

92. Columbia Law School, Environmental Law Clinic, <http://www.law.columbia.edu/focusareas/clinics/environment> (last visited Mar. 6, 2010).

93. Press Release, Columbia Law School, Center for Climate Change Law Launched at Columbia (Dec. 11, 2008), available at [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2008/december2008/climate\\_change](http://www.law.columbia.edu/media_inquiries/news_events/2008/december2008/climate_change).



are not isolated examples, but rather are systemic sustainability practices in the institution: Columbia has committed to incorporating the environmental sustainability ideas illustrated in smart growth, new urbanism and “green” building. The Manhattanville expansion plan has been included in the Leadership in Energy and Environmental Design (“LEED”) Neighborhood Design pilot program.<sup>94</sup> In addition, Columbia has sought LEED certification for several buildings under construction on existing campuses, has proposed the University’s first green dorm,<sup>95</sup> and has recently installed its first green roof on campus.<sup>96</sup>

In the expansion project, Columbia has committed to “design, build and operate the Project’s residential and academic buildings to achieve a minimum Leadership in Energy and Environmental Design (“LEED”) v. 2.2 Silver Certification (or its equivalent) from the United States Green Building Council (“USGBC”).”<sup>97</sup> LEED has not yet proposed green building standards that are directly applicable to research laboratories or, according to Columbia, “large scale developments taking place over many years.”<sup>98</sup> In the absence of applicable LEED (or equivalent) sustainability standards, Columbia has committed to installing Energy Star appliances and “appropriate technologies to mitigate heat island effects and reduce storm water runoff” and to “undertake good faith efforts to apply multi-building development criteria and . . . , where practicable, incorporate any relevant new standards into current and future stages of the Project’s development.”<sup>99</sup>

To ensure that the laboratories are not seen as an exception to its commitment to sustainability, the Master Plan also identifies Columbia’s participation in “Laboratories for the 21st Century” (“Labs21”), a program coor-

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94. LEED is a creation of the collaborative group known as the U.S. Green Building Council (“USGBC”). The Green Report Card notes that there are currently fourteen LEED-certified buildings on campus. *See* The College Sustainability Report Card, *supra* note 88.

95. The Green Report Card reports that Columbia has committed to a variety of environmental measures, including reducing carbon emissions to 30% below 2005 levels by 2017, completing energy audits of existing on- and off-campus buildings, and replacing inefficient fixtures and equipment. *See* Columbia University, Manhattanville in West Harlem: Planning, Design & Construction, *supra* note 14.

96. *See id.* Green roofs are becoming a popular green-building tool and entail planting areas on roofs to reduce the heat island effect, control the quantity and quality of storm water runoff, and create urban habitats (among other things). Green Roofs for Healthy Cities, About Green Roofs, <http://www.greenroofs.org/index.php/about-green-roofs> (last visited Mar. 13, 2010).

97. MASTER PLAN, *supra* note 68, at 23. The LEED program is a point-based rating system used to evaluate green building projects and renovations. More information about the rating system can be found at U.S. Green Building Council, <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19> (last visited Mar. 6, 2010).

98. MASTER PLAN, *supra* note 68, at 23.

99. *Id.*

dinated in conjunction with the U.S. Environmental Protection Agency and the U.S. Department of Energy. The purpose of Labs21 is to improve the performance of laboratories in environmental and energy efficiency.

Columbia has also identified a short list of other sustainability tools. Although the items may be largely duplicative of construction techniques needed to meet the proposed LEED requirements, they appear to further a mission of environmental sustainability. The Master Plan provides that, in addition to its commitment to make “reasonable efforts to reduce its greenhouse gas emissions by 2017,” Columbia will:

- (1) commission all newly constructed buildings to ensure optimal system performance in accordance with applicable LEED certifications;
- (2) establish a \$10 million revolving fund to encourage use of energy efficiency measures relating to building components and operations on the Project Site different from or which exceed the LEED commitments made by Columbia in connection with this GPP;
- (3) reduce energy consumption in all new construction and major renovations as compared with the requirements in the New York State Energy Conservation Construction Code;
- (4) adopt measures to reduce air emissions during the construction period that would surpass those specified in New York City Local Law No. 77 of 2003, including the use of ultra-low-sulphur fuel in nonroad vehicles and nonroad engines;
- (5) use the best available technology to control emissions of particulate matter during construction; and
- (6) monitor the use of such measures and technologies by all contractors and subcontractors.<sup>100</sup>

To ensure both good faith and enforceability, the Plan reiterates the proposed environmental initiatives as conditions, as follows:

Environmental Sustainability. The design, construction and operation of the Project would comport with the environmental sustainability measures set forth in Section F.6. To ensure that design and construction would achieve LEED certification when the buildings are completed, Columbia has retained a LEED consultant who serves as a member of the Project’s design team. Columbia would also retain an independent, third-party monitor to oversee, on behalf of ESDC and the City, the design of buildings to achieve the requisite LEED design measures. The independent monitor would also oversee Columbia’s compliance with Project components relating to the environment and mitigation measures (all as set forth in the EIS), as well as other commitments set forth in this GPP. The in-

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100. *Id.* at 23-24.



dependent monitor would be an entity that is jointly acceptable to ESDC and the City, with all associated monitoring costs to be borne by Columbia.<sup>101</sup>

Columbia proposed to set these commitments into restrictive covenants, enforceable by the City of New York.<sup>102</sup>

Given the foregoing, Columbia maintains that the proposed expansion site will be used more efficiently and economically under its plans than by its present uses. By removing existing buildings and replacing them with LEED-certified and otherwise energy-efficient structures, or by updating and retrofitting existing buildings to meet green-building standards, Columbia calculates an overall benefit to the City and region.

### B. A Modern Campus—Bigger is Better?

As noted above, sustainability is not just about being green. Yet, notwithstanding Columbia's stated goals, the expansion project has been controversial for its environmental impacts. In addition to the development's likely effects on stormwater management, waterfront access, and urban ecology, Columbia's expansion will introduce biohazard materials for research into the neighborhood and result in the emission of significant construction and operational air pollutants. The construction plans show little consideration for implementing principles of green infrastructure, and little effort to reduce or discourage automobile use. Columbia does not strive for carbon neutrality in the proposed buildings or operations, a goal that "relies heavily on lifestyle factors, not merely efficient buildings."<sup>103</sup>

Concerns have resulted from the apparent and controversial lack of detail presented in the expansion plan.<sup>104</sup> Even Columbia's commitment to green building and sustainability curriculum suffer where plans are vague: the differences between the expansion project as built and the one represented in the Master Plan could be extensive, as many of the difficulties in sustainable construction occur during the building phase, not the planning phase (e.g., material reuse, lighting and energy decisions, waste generation).<sup>105</sup> Moreover, it will be at the implementation stage that other

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101. *Id.* at 25.

102. *Id.* at 25-26.

103. DOUGLAS FARR, SUSTAINABLE URBANISM: URBAN DESIGN WITH NATURE 214 (2008).

104. WE ACT, *supra* note 16, at 2.

105. At such an early stage in the process, it is difficult to glean the ultimate success of particular green projects, and more importantly, difficult to see beyond the sustainability rhetoric that typically occupies the early application submittals in land-use applications. *But see* Matthew J. Parlow, *Greenwashed?: Developers, Environmental Consciousness, and the Case of Playa Vista*, 35 B.C. ENVTL. AFF. L. REV. 513, 523 (2008) (arguing that, although many developments may be "greenwashed" to further profit motives, "some real estate de-

sustainable practices might be incorporated, including not only renewable energy strategies, but also water conservation practices and mitigations for vehicular traffic impacts, and many of these issues will be resolved (or left unresolved) in the LEED certification process.<sup>106</sup> Under these circumstances, Douglas Farr's charge seems applicable:

It is no longer acceptable to build a high-performance building in a green-field, automobile-dependent context and have it certified as "green." It is no longer good enough to develop a responsible location and build an admirable, walkable, mixed-use neighborhood while ignoring the level of resources required to build and maintain the buildings there. The time for half measures has passed.<sup>107</sup>

As suggested by Farr, we have reached a point in the sustainability dialogue where the term can be applied throughout a project, rather than to individual "green" pieces that together may not constitute a sustainable project. As such, when we consider whether Columbia's plan is filled with responsible development or half-measures, sustainability requires a rigorous, whole-systems analysis of the value of the project. In this pursuit, the decision-making process can be examined and particular choices may be traced to priorities.

For our purposes, it is important to recognize that the size of the expansion project and associated buildings was tested against various alternatives in the Final Environmental Impact Statement ("FEIS"). In the Master Plan, Columbia explains why it feels that "[n]one of [the proposed] alternatives would provide the public benefits of the Project or meet Columbia's educational needs for an open, integrated campus possessing large floor plates for modern academic and academic research buildings . . . ."<sup>108</sup> Some of the alternatives would have reduced building size, others would have reduced or eliminated the underground component, and others would have reduced the area available for usable open space. For the most part, of course, the University's projected needs for space to house its academic programs and support services must be taken at face value: Columbia is in the business of providing an Ivy League educational experience, and the programs that it decides to offer to its students illustrate the reason for its success. The issue that should be subjected to scrutiny, however, is *how*

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velopment corporations have inculcated a culture of environmental consciousness in their businesses and developments").

106. As suggested below, adequate parking is a major concern voiced by Columbia in its Master Plan and was relied upon as a factor in distinguishing proposed alternatives from its proposal when considering the achievement of the University's expansion goals. *See infra* note 114 and accompanying text.

107. FARR, *supra* note 103, at 41.

108. MASTER PLAN, *supra* note 68, at 13.

Columbia chooses to house these programs: a sustainability analysis here is important precisely because the manner in which Columbia seeks to further its institutional goals intersects with other uses and needs that are also vital to the community. That is, urban expansion projects demand scrutiny under urban sustainability circumstances and goals.

The Master Plan reports that building design in the expansion plan is largely the product of Columbia's interpretation of laboratory research facility guidelines offered by the National Science Foundation and the National Institutes of Health.<sup>109</sup> These organizations have provided the principles of flexibility and adaptability in building design to account for evolving disciplines and needs, which may be implemented by buildings designed for "multiple-purpose occupancy with shared support, amenities and core facilities over traditional, single-discipline, stand-alone research facilities."<sup>110</sup> With these goals in mind, the expansion project identifies a clear agenda of a sustainable academic campus by avoiding the wasteful practice of duplicating support services; opening the campus with intersecting pedestrian thoroughways to integrate the "town and gown"; and providing effective space for interdisciplinary collaboration in scientific research.

As mentioned above, the Columbia expansion project includes a significant below-grade component, which is repeatedly touted as "critical" to the success of the project.<sup>111</sup> Nicknamed the "bathtub" by some,<sup>112</sup> the underground portion of the campus would vary in depth by up to eighty feet, containing several levels and housing a wide variety of uses. The Master Plan contemplates below-grade uses to include on-site energy plants, mechanical facilities, and other support services (e.g., parking, storage, delivery space), as well as recreational space, food service, instructional areas, research support, and perhaps even public transportation services.<sup>113</sup> Against alternatives that would substantially eliminate the below-grade facilities, Columbia asserts that:

The lack of the full Below-Grade Facility would reduce the functionality of the Project, preclude the provision of full program space, and limit the ability to create a campus environment. For example, each building would need its own parking, truck delivery docks, curb cuts, and ramps for any below-grade parking. These features—many of which would be

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109. *Id.* at 8.

110. *Id.*

111. *Id.* at 16.

112. See, e.g., Posting of Duncan Meisel, *Lawsuit: Columbia Expansion Poses 'Biohazard' Risk*, [http://blogs.villagevoice.com/runninscared/archives/2008/03/columbia\\_expans\\_1.php](http://blogs.villagevoice.com/runninscared/archives/2008/03/columbia_expans_1.php) (Mar. 27, 2008, 16:28 EST); Bathtub Talk: Columbia's Expansion Plan, [http://bathtubtalk.typepad.com/my\\_weblog/](http://bathtubtalk.typepad.com/my_weblog/) (last visited Mar. 6, 2010).

113. MASTER PLAN, *supra* note 68, at 16.

above-grade—would be incompatible with the campus atmosphere sought by Columbia. Support services would not only need to be duplicated but the limits on below-grade space would require support services for academic research, as well as utilities, to be placed in buildings. These and similar consequences would constrain Columbia's ability to achieve its program goals[] . . . [and] the integrity of the overall Project would be jeopardized.<sup>114</sup>

The primary basis for Columbia's proposed expansion into Manhattanville has been that a physical expansion will serve the University's long-term institutional need of competing with other top-tier academic institutions in attracting cutting-edge academic researchers and world-class students. On this point there is little contention. Columbia notes that it currently has significantly less space per student than other top-ranking universities—boasting only half the space of Harvard and a third the space of Princeton and Yale. These institutions, moreover, have recently expanded or are in the process of expanding their space-per-student.<sup>115</sup>

The dilemma raised in the proposed expansion is how (and not whether) to expand. The clear suggestion here is that bigger is better, a familiar tone that rings throughout the cultural strife concerning big box retailers and economically competitive municipalities alike. "Bigger" presumably fosters competitiveness because bulk in products allows for bulk in sales. The typical criticism of such an approach is that it encourages the sacrifice of quality for quantity.

Of course, Columbia's expansion goals are not so simple. The Master Plan ultimately offers two justifications for the sheer size of the project. First, it takes for granted that Columbia's past growth rate is a measure of its future needs, noting that, "Columbia has grown at an average rate of approximately 200,000 square feet per year over the past decade," and that, "[b]ased on this rate of growth . . . Columbia estimates that over the next 25 years it must expand its program space by 5 to 6 million square feet, exclusive of support facilities such as parking and utilities."<sup>116</sup> Second, Columbia fears falling behind its peer academic institutions and fears that its ability to perform in this sense of competitiveness will be outpaced by other schools.<sup>117</sup> To support this second assertion, Columbia suggests that the expansion project is negligible due to its size. The Master Plan reports that other institutions are building on much larger parcels:

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114. *Id.* at 14.

115. Emily Schwartz, Op-Ed, *University Expansion and Eminent Domain*, PLANETIZEN, May 16, 2005, <http://www.planetizen.com/node/144>.

116. MASTER PLAN, *supra* note 68, at 10.

117. *Id.*

Large facility expansions are planned or underway at other leading higher education institutions throughout the nation. Harvard is developing its Allston campus, envisioned as “Harvard’s 21st Century Campus,” on approximately 130 acres across the Charles River from its main campus. The first stage of this expansion includes the construction of a new 1 million square foot scientific and educational research building. The University of Pennsylvania is expanding onto a 24 acre site along the Schuylkill River near its West Philadelphia campus, where preliminary planning has identified interdisciplinary research space and health sciences as key components. Yale University recently purchased a 136-acre tract west of New Haven and has launched a \$1 billion construction program for new science and research buildings. The new facilities would include several new buildings for Yale’s medical school and would accommodate both graduate and undergraduate science programs.<sup>118</sup>

Moreover, even at Columbia’s historical growth rate of 200,000 square feet per year for the past decade, Columbia falls behind all of its “peer institutions.”<sup>119</sup> “Everyone else is doing it,” it seems, and so Columbia must too. Hence, “bigger” in this context means being more competitive in the marketplace for high-caliber students and faculty, which in turn provides a quality educational product.

Two sustainability concerns are immediately implicated. First, if sustainability has any meaning, it is related to the importance of reevaluating the past business models for academic institutions. As originally conceived, sustainable development was largely launched on the platform that “business as usual” was a cause, rather than a solution to the environmental crisis.<sup>120</sup> Specifically, the shift to sustainability may require us to rethink, modify, and even abandon past business models, including the manner in which we attribute value: “Moving toward sustainability requires a fundamental shift of values.”<sup>121</sup> Here, Columbia’s argument that competitiveness requires physical expansion illustrates, rather than challenges, the old ways of thinking. For instance, the need-based analysis offered, which ex-

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118. *Id.* at 9-10. These statements are called into question, given that the current economic circumstances have also affected educational institutions. See, e.g., John Lauerman, *Harvard’s Faust Plots Course for “Unified” School in Crisis*, BLOOMBERG, Sept. 25, 2009, [http://www.bloomberg.com/apps/news?pid=email\\_en&sid=atJso6UM1xzc](http://www.bloomberg.com/apps/news?pid=email_en&sid=atJso6UM1xzc) (indicating that construction at Harvard University has slowed) (last visited Mar. 21, 2010).

119. MASTER PLAN, *supra* note 68, at 10; N.Y. CITY DEP’T OF CITY PLANNING, MANHATTANVILLE FINAL ENVIRONMENTAL IMPACT STATEMENT 1-13 to 1-14 [hereinafter FEIS].

120. Porras, *supra* note 23, at 567.

121. Steve Kelton, *Practicing What You Preach: Creating a Sustainable Law Practice*, in JONATHAN E. FURR ET AL., GREEN BUILDING AND SUSTAINABLE DEVELOPMENT: THE PRACTICAL LEGAL GUIDE 260 (2009) (discussing the sustainability practices and pitfalls in the law firm).



plicitly relies on Columbia's past growth trends,<sup>122</sup> may illustrate a missed opportunity to question the importance of past practices. Columbia's comparison of space-per-student offered at other schools<sup>123</sup> likewise illustrates a missed opportunity to seek the influence of sustainable practices, in which the question is not how much more space is needed, but how well space can be used. Moreover, the idea that bigger is better has been challenged from social, economic, and environmental perspectives. As exemplified (but not exclusively so) in green building, fuel-efficient vehicles, new urbanism, and other building models, sustainability will often mean switching to more efficient uses of resources—accomplishing more with less.<sup>124</sup> We are finding that using fewer resources can constitute an addition of value, rather than (as Columbia's Master Plan suggests) a circumstance which must be suffered or avoided. A rigorous sustainability analysis would take Columbia to task for explaining why its focus on "shared space" means only that more than one department would be located on the same floor,<sup>125</sup> instead of meaning that effective space-saving techniques have been implemented. The sole answer provided by Columbia may be insufficient from a sustainability framework: the Master Plan and FEIS assert, without reflection, that the larger size and layout of the proposed buildings is required to be eligible for overhead cost reimbursement from the National Science Foundation and the National Institutes of Health.<sup>126</sup>

Second, as an offshoot of the first point, it is also arguable that Columbia's failure to overcome the convenience of relying on size as a business model operates as a toll on progress in sustainability: "The big box marketing strategy is . . . effective from the point of view of the firm, though not from the point of view of either society as a whole or . . . sustainability."<sup>127</sup> The choice to attract students and scholars through bigger buildings, more spacious offices, more available parking, and so on, conveys the notion that these entrenched notions of value are intentional. Moreover, the choice represents a slightly skewed portrayal of the economics from a viewpoint of sustainability. The necessity for considering economic needs in a sustainability analysis relates to the causal effect of economic circumstances on the viability of legal and social change: "[i]f economic activity is deeply 'embedded' in the beliefs, practices, and assumptions of our culture, then

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122. MASTER PLAN, *supra* note 68, at 10.

123. FEIS, *supra* note 119, at 1-7.

124. See, e.g., Lauerman, *supra* note 118 (discussing the "curious practices" that previously prevailed that posed "obstacles to coordination" among the various libraries at Harvard).

125. MASTER PLAN, *supra* note 68, at 7-8.

126. See *id.* at 8-9; FEIS, *supra* note 119, at 1-11.

127. Paehlke, *supra* note 25, at 71.

any attempt to move in the direction of sustainability should incorporate theories about how cultures change and what techniques can be used to facilitate desired changes.”<sup>128</sup> Yet the economic position of sustainability is contextual, rather than essentialist: economic factors, even long term economic viability, do not operate to trump the sustainability process of pluralism and inclusiveness.<sup>129</sup>

Although the Master Plan repeatedly insists that the expansion project will meet the environmental challenges of urban and academic sustainability, it arguably demonstrates that the challenges of the transition to sustainability include both confusion in its appropriate use and its accidental or naive misuse. Sustainability is not coextensive with environmental management, pollution prevention, or minimizing toxic exposures. Sustainability should not be equated with biodiversity, open space, or natural landscapes. These issues may be centrally important to a sustainable agenda, but the common practice of focusing on such subjects to the exclusion of others is counterproductive to sustainability and, perhaps worse, illustrates the failure to make the transition.<sup>130</sup> For instance, improving the building stock through retrofits and new construction can greatly increase energy efficiency, but extensive rebuilding may run counter to the adage that “the greenest building is the one that’s already built.”<sup>131</sup> More important, per-

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128. Barry B. Boyer, *Building Legal and Institutional Frameworks for Sustainability*, 1 BUFF. ENVTL. L.J. 63, 67 (1993).

129. Hence, in the context of water projects, “[s]ustainability suggests a broader view of water resources. Human uses are essential and generally valuable, but wealth generation must be balanced against losses that might be imposed on future generations. Economic values are to be balanced with ecological and other natural system values, and perhaps even social or cultural values. Individual gain is to be tempered with consideration of social cost and benefits.” MacDonnell, *supra* note 2, at 98.

130. See Ira R. Feldman, *Business and Industry: Transitioning to Sustainability*, in AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 48, at 74. Likewise, as Lash argued, “[t]he perplexing question is not why people fail to understand the implications of the dreadful environmental trends and reduce their expectations accordingly. It is rather why the immense power of human ingenuity is not better applied to alleviate misery, avert waste, prevent destruction, and provide opportunity.” Lash, *supra* note 73, at 85.

131. Michele Lamprakos, Guest Comment, *The Greenest Building is One Already Built*, WASH. BUS. J., Apr. 10, 2009, available at <http://washington.bizjournals.com/washington/stories/2009/04/13/editorial4.html> (quoting Carl Elefante); see also Donovan D. Rypkema, Principal, PlaceEconomics, Keynote Address at the Historic Districts Council, Preserving the Past, Planning for the Future Preservation Conference 2007 (Mar. 10, 2007), available at <http://www.hdc.org/keynote.htm> (“Razing historic buildings results in a triple hit on scarce resources. First, we throwing [sic] away thousands of dollars of embodied energy. Second, we are replacing it with materials vastly more consumptive of energy. . . . Third, recurring embodied energy savings increase dramatically as a building life stretches over fifty years.”). It has been suggested that rehabilitation plays a more important role in providing social sustainability benefits than new construction because:



haps, is the observation made by Ron Shiffman: "To build a sustainable city, we need to think and plan on a small scale, not just the mega-project scale. We need to engage more New Yorkers in the process of building neighborhoods, not just the politically connected or wealthy."<sup>132</sup> In other words, in the old way of thinking, economic advantage is primarily a conception of the board room. However, sustainability in urban contexts is primarily a conception of the community: "The place where everything comes together, where we all meet and interact, and where sustainable planning must begin, is the street."<sup>133</sup>

As an educational institution, Columbia has arguably maintained the pace (and in some cases, set the pace) on its obligations toward environmental literacy and modeling sustainable behaviors. Its initiatives in greening its campus and outreach offer tangible opportunities for students and stakeholders to participate in a cultural transition to sustainable community. Nevertheless, from another perspective, a vulnerability in Columbia's approach to its expansion project may be in thinking about the educational institution as its own independent virtue. Such a perspective is problematic for a sustainability analysis, as "the demands of sustainability are system-wide and involve changing organizational culture, behaviors and the entire institutional context."<sup>134</sup> For purposes of a sustainability analysis, it is typically the case that no one social, environmental or economic element can claim such a status. Rather, as we approach sustainability, we seek "steady progress in *reducing disparities in education*," but also in "opportunity, and environmental risk within society [as] essential to economic growth, environmental health, and social justice."<sup>135</sup>

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[m]ost of the money in preservation goes into labor and into the pockets of the contractors rather than materials . . . . In new construction the labor is less expensive, and the money is in materials and in the walls. Preservation keeps materials out of landfills, and it has spawned a lucrative local salvage market.

Roberta Brandeis Gratz, *Urban Virtues: The Values of Historic Preservation Go Far Beyond the Cliched Notions of Nostalgia and NIMBYism*, METROPOLISMAG, Mar. 19, 2008, <http://www.metropolismag.com/story/20080319/urban-virtues>.

132. Ron Shiffman, *In Third Term, Bloomberg Must Align All Agencies With PlaNYC*, STREETS BLOG.ORG, Nov. 19, 2009, <http://www.streetsblog.org/2009/11/19/in-third-term-bloomberg-must-align-all-agencies-with-planyc/>.

133. *Id.* As Julie Davidson states: "An essential precondition for this transition [to sustainability] will be to overcome the structural rigidities of capitalist market economies, namely to replace the imperative of ever-increasing quantitative growth and individual consumption with an imperative that furnishes qualitative social development and improved communal and ecological well-being." Julie Davidson, *Sustainable Development: Business as Usual or a New Way of Living?*, 22 ENVTL. ETHICS 25, 42 (2000).

134. Sharp, *supra* note 83, at 3.

135. THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEV., *supra* note 25, at v (emphasis added).

### III. LOCALIZING SUSTAINABILITY: IDENTITY IN SUSTAINABLE COMMUNITIES AND THE DILEMMA OF URBAN EXPANSIONS

Although the narrow purpose of the educational institution is to educate its students and to benefit the public and policy through research, the idea of sustainable universities cannot be understood through such a simplistic focus. Institutions of higher education can influence transportation patterns, employment opportunities, entertainment, and social welfare programs. They affect local housing, the economy, and even public safety. Institutions can contribute to identity, sense of place, and community character. They also can operate as a force towards segregation, both inside and outside of campus walls. The notion that the sustainable academic institution can (and should) contribute to the identity, sense of place, and character of the local community revolves around the contribution that education makes to community well-being: at the most basic level, the institution is entrusted by the community to receive and shape its pupils; then the institution places them back into the world, prepared to investigate and discover, build and deconstruct, and advocate or adjudicate the challenges faced by the community. The community shares its place based on the promise of this relationship. As Julie Davidson notes:

The notion that the well-being of a community is constituted by the well-being and virtue of its citizens is recognized in the concepts of person-community, which acknowledge the symbiotic balance between individual and community needs. Sustainable economic order would support the relationships of community recognizing their significance for social and ecological integrity.<sup>136</sup>

Throughout the Master Plan and other public statements advanced by the University, it is clear that Columbia seeks to satisfy its role in the City of New York as a major purchaser and employer, and as a conduit for general community development. To achieve success in this arena, any university expansion must involve meaningful public participation from the outset of project design and redesign. This necessarily involves transparency in data gathering, analysis, and information sharing, and a process that is both inviting for public comment and critique as well as appropriately and respectfully responsive to the input received. The next section discusses public participation in the context of sustainable development.

#### A. Public Participation and Sustainability

At the base of the sustainability struggle, one which seems always applicable in the context of urban development, is the claim that the local com-

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136. Davidson, *supra* note 133, at 41.

munity should “be afforded greater participation in the decisionmaking processes of capitalist industry and the state (at all levels), as well as the environmental movement itself . . . .”<sup>137</sup> Although sustainability and environmental justice have always had an uncertain relationship, the participatory demands of sustainability tie the concept to environmental equity and justice.<sup>138</sup>

Sustainability requires that all members of the local community should have an opportunity to participate in decision-making processes that will impact their neighborhoods. As stated in Principle 10 of the United Nations Rio Declaration on Environment and Development:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>139</sup>

The participatory demands of sustainability are closely related to the environmental justice movement,<sup>140</sup> which requires that

(1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's [sic] contribution can influence the regulatory agency's decision; (3) their concerns will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.<sup>141</sup>

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137. DANIEL FABER, *THE STRUGGLE FOR ECOLOGICAL DEMOCRACY: ENVIRONMENTAL JUSTICE MOVEMENTS IN THE UNITED STATES* 1 (1998).

138. See generally J. B. Ruhl, *The Co-Evolution of Sustainable Development and Environmental Justice: Cooperation, then Competition, then Conflict*, 9 DUKE ENVTL. L. & POL'Y F. 161 (1999); see also Robin Morris Collin & Robert William Collin, *Where Did All the Blue Skies Go? Sustainability and Equity: The New Paradigm*, 9 J. ENVTL. L. & LITIG. 399, 445 (1994) (arguing that urban sustainability requires an environmental justice component); Kent E. Portney, *Environmental Justice and Sustainability: Is There a Critical Nexus in the Case of Waste Disposal or Treatment Facility Siting?*, 21 FORDHAM URB. L.J. 827, 827 (1994) (“[T]he pursuit of environmental justice may, at least conceptually, undermine goals of sustainability.”).

139. *Rio Declaration*, *supra* note 28; see also FABER, *supra* note 137, at 1.

140. See generally Ruhl, *supra* note 138; see also Collin & Collin, *supra* note 138, at 445-49.

141. U.S. Environmental Protection Agency, *Environmental Justice: Basic Information*, <http://www.epa.gov/compliance/basics/ejbackground.html> (last visited Mar. 5, 2010).

Increased community participation in the planning process has also been encouraged in the more general field of urban planning, outside of the sustainability and environmental justice frameworks. Progressive planners have come to view community-based planning as more democratic and equitable than “top-down” planning.<sup>142</sup> As the American Planning Association (“APA”) explains:

Neighborhoods should be recognized as building blocks of overall community development. Local officials and planners must heed opinions and suggestions of people and groups within the neighborhood to create a framework that will enable plans to have a greater chance of being supported and implemented, not at just the neighborhood level, but at the municipal, regional and even state levels.<sup>143</sup>

Although the APA recommends that planning decisions should be consistent with neighborhood planning efforts, it also recognizes that “planning decisions that affect the community as a whole should not be overly influenced by a single neighborhood’s needs or interests.”<sup>144</sup> The Columbia expansion, a project that undoubtedly has city-wide implications, but that will also have significant consequences for existing residents and businesses, spans this ambiguous space.

Columbia has meanwhile maintained that “community engagement is an important part of Columbia’s mission of education and service.”<sup>145</sup> Not surprisingly, many members of the community welcomed the news of Columbia’s desire to expand into Manhattanville, and community representatives worked to develop strategies to ensure that Columbia’s expansion would proceed equitably and benefit not only the institution, but existing residents and businesses as well. At times and to various degrees, Columbia worked cooperatively with City officials, planning and architectural professionals, environmental consultants, and community groups. Columbia also voluntarily participated in the development of a community bene-

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142. See generally Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”: Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37 (2006); Alejandro Esteban Camacho, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions, Installment Two*, 24 STAN. ENVTL. L.J. 269 (2005); James Jennings, *Race, Politics, and Community Development in U.S. Cities: Urban Planning, Community Participation, and the Roxbury Master Plan in Boston*, 594 ANNALS AM. ACAD. POL. & SOC. SCI. 12 (2004).

143. AM. PLANNING ASS’N, POLICY GUIDE ON NEIGHBORHOOD COLLABORATIVE PLANNING (1998), available at <http://planning.org/policy/guides/pdf/neighborhoodcollaborative.pdf>.

144. *Id.*

145. See Columbia University, *Manhattanville in West Harlem: Community Engagement*, <http://neighbors.columbia.edu/pages/manplanning/community/index.html> (last visited Mar. 5, 2010).

fits agreement (“CBA”), which commits Columbia to providing neighborhood amenities and mitigations at a value of \$150 million.<sup>146</sup>

On its face, then, the manner in which Columbia approached this project appears to mirror the demands of sustainable development, and model the manner in which an urban educational institution should resolve its growing facilities needs with the context of its location. The development process is built upon foundations of inclusiveness, participation, and community, while recognizing the economic demands of both the city and the educational institution. Beyond this appearance, however, are the questions that relate to sustainable urban development and the sustainable educational institution, the nature of the political power wielded by the institution, and the manner in which the institution grows on, rather than among, an urban area.<sup>147</sup>

*1. Do Universities, and Columbia in Particular, Have a Special Obligation to Pursue Meaningful Community Relationships?*

The land use patterns of universities and other corporations are often similar, but the fundamental nature of universities creates unique expecta-

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146. See Timothy Williams & Ray Rivera, *Columbia Expansion Gets Green Light*, N.Y. TIMES, Dec. 20, 2007, at A1, available at [http://www.nytimes.com/2007/12/20/nyregion/20columbia.html?\\_r=1](http://www.nytimes.com/2007/12/20/nyregion/20columbia.html?_r=1).

147. See, e.g., Miriam Axel-Lute, *Will Columbia Take Manhattanville?*, SHELTERFORCE, Spring 2008, [http://www.shelterforce.org/article/213/will\\_columbia\\_take\\_manhattanville](http://www.shelterforce.org/article/213/will_columbia_take_manhattanville) (“In comments to the planning commission’s report, CB 9 representatives note that while the community’s larger plan was approved, the section concerning Manhattanville was turned down on the basis of not providing as much space as the university said it needed; when the commission chose to reduce the amount of academic and research space based on their own ‘aesthetic values,’ Columbia accepted the change without a peep. This, in their opinion, shows that Columbia never negotiated in good faith with the community board and that the planning commission relied too heavily on Columbia’s assessment of the 197a plan.”); Pratt Center eNews – Winter 2008, <http://prattcenter.net/enews/pratt-center-enews-winter-2008> (last visited Mar. 5, 2010) (“In backing the Columbia expansion plan the City declined to adopt the community recommendations for Manhattanville, which centered on preserving space for light industry alongside Columbia’s institutional buildings. The City’s action was a deep disappointment for CB9, which had worked intensively on the community plan for four years and felt that the community’s point of view should have had far more weight in determining the future of the neighborhood. However, some recommendations in the community plan are now influencing Columbia’s and the City’s actions.”). Columbia was the second largest spender on lobbying in the state of New York in 2007, much of its resources likely being used to encourage support for the expansion. BLAIR HORNER, MASTERS OF INFLUENCE (WNYC.org Apr. 10, 2008), available at <http://www.wnyc.org/shows/bl/episodes/2008/04/10/segments/96639> (relevant portion of audio at 5:40-8:13); see also Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, 2026 (“[T]heir combined resources and capacity were miniscule in comparison to those of the University.”).



tions among their neighbors.<sup>148</sup> Judith Rodin, who led the University of Pennsylvania in its West Philadelphia expansion,<sup>149</sup> has called for universities to increase their focus on community involvement. “The kind of civic engagement I have in mind,” she says, “is neither easy nor accidental. It is strategic, comprehensive, intense, and purposeful.”<sup>150</sup> Rodin has emphasized the importance of engaging with community members with “patience, transparency, [and] continuing collaboration,” although she admits that “no university can ever satisfy all its neighbors.”<sup>151</sup> Accordingly, even though Columbia may not have any heightened legal obligations to engage community stakeholders in its land use planning process, it is fair to say that it may owe some degree of extra duties to its students, the neighborhood, and the public at large.<sup>152</sup>

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148. See Daphne Eviatar, *The Manhattanville Project*, N.Y. TIMES MAG., May 21, 2006, at 32, available at <http://www.nytimes.com/2006/05/21/magazine/21wwln.essay.html> (“‘If Columbia were like another private developer, most would say it has no responsibility,’ says Peter Marcuse, a professor of urban planning at Columbia. ‘Developers are private-sector entities whose purpose is to make money. But Columbia is a nonprofit institution. It gets substantial public benefits and thus has substantial public obligations as a property owner.’ Of course, those public obligations are hard to define. If a development creates thousands of worthwhile new jobs, mostly for outsiders, while eliminating hundreds of local jobs, has it served the public good?”).

149. The Penn expansion has received more positive attention than other recent university expansion projects, including not only Columbia’s, but developments related to Harvard, Fordham, and New York University. Everything must be placed in context, of course, and several factors distinguish the Penn expansion from Columbia’s Manhattanville project. In particular, Penn expanded onto vacant land and did not displace any residents or businesses. Penn also began its developments in response to serious crime problems in neighborhoods surrounding the main campus. See generally JUDITH RODIN, *THE UNIVERSITY & URBAN REVIVAL: OUT OF THE IVORY TOWER AND INTO THE STREETS* (2007); see also Jen Chung, *Columbia May Take Some Expansion Cues From Penn*, GOTHAMIST, Aug. 1, 2007, [http://gothamist.com/2007/08/01/columbia\\_may\\_ta.php](http://gothamist.com/2007/08/01/columbia_may_ta.php); Tracy Jan, *Ivy’s Growth Transforms a City: Penn’s \$500m Expansion Could Be Harvard’s Model*, BOSTON GLOBE, May 3, 2009, at B1, available at [http://www.boston.com/news/local/massachusetts/articles/2009/05/03/ivys\\_growth\\_transforms\\_a\\_city/](http://www.boston.com/news/local/massachusetts/articles/2009/05/03/ivys_growth_transforms_a_city/); Emily Schwarz, *Perspectives on Expansion: Part Two in a Five Part Series on Campus Planning*, COLUM. SPECTATOR, Mar. 22, 2005, <http://www.columbiaspectator.com/2005/03/22/perspectives-expansion-part-two-five-part-series-campus-planning>.

150. Gila Reinstein, *Serving Society Must Be a Central Goal for Universities, Says Rodin*, YALE BULL. & CALENDAR, Oct. 18-25, 1999, <http://www.yale.edu/opa/arc-ybc/v28.n9/story6.html> (internal quotation marks omitted).

151. Posting of Sewell Chan to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2007/11/16/when-the-gown-devours-the-town/> (Nov. 16, 2007, 10:33 EST).

152. See Walter South, Remarks at the Public Hearing on the Community Board 9 – Manhattan Columbia University’s 197-C Plan 11 (Aug. 15, 2007) [hereinafter Public Hearing Transcript], available at <http://www.cb9m.org/docs/8-15%20PUBLIC%20HEARING.rtf> (“An institution of higher learning of this country has a responsibility to provide this society with a moral compass.”); see also RODIN, *supra* note 149, at 18 (“We came to believe that we could better educate and exhort talented students to contribute to society and become leaders if we offered them an institutional example of

Columbia, in particular, has long been aware of how important it is to ensure that its development projects are harmonious and inclusive, not only for their use as teaching moments but also to prevent disturbances in operations. The institution has not forgotten the riots of 1968, which were caused in part by Columbia's plans to build a new gymnasium in Morningside Park with one door for the predominantly white student body and a separate door for the predominantly black Harlem community.<sup>153</sup> (The project was derisively referred to as "gym crow.") Although student unrest was largely attributable to anger concerning the Vietnam War and national civil rights conflicts, "campus radicals seized upon the gym as a 'symbolic' issue of racism and administrative high-handedness."<sup>154</sup> Leftist students and faculty were joined by Harlem residents and their supporters, and together they occupied several campus buildings and sparked violent and disruptive protests. Ultimately, the plans to build the gym were abandoned,<sup>155</sup> but the university's relationship with the Morningside Heights and Harlem communities remained strained throughout the 1970s and 1980s.<sup>156</sup> When a group of students went on a hunger strike in 2007 to protest the Manhattanville plans, Columbia acted quickly to quell the demonstration. The administration agreed to all of the strikers' demands, except for their insistence that Columbia modify the expansion plans to better accommodate the community's vision for Manhattanville.<sup>157</sup>

The events of 1968 figure prominently in discussions about Manhattanville,<sup>158</sup> and not only because they serve as a comparator for the 2007 hun-

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positive civic engagement. . . . The willingness of universities and their neighbors to participate in the conversations of democracy—something that is rarely smooth and rarely easy—is the only way to gain the long-term benefits of mutual trust and understanding. How a university performs this civic role serves as an example to its students.”).

153. See Margot Adler, *1968 Columbia Protests Still Stir Passion*, NPR, Apr. 23, 2008, <http://www.npr.org/templates/story/story.php?storyId=89884026>.

154. George Keller, *Six Weeks that Shook Morningside*, COLUM. C. TODAY, Spring 1968, at 32.

155. Axel-Lute, *supra* note 147. For a detailed account of the riots, also see Keller, *supra* note 154.

156. See Betsy Morais, *Strained Relationship with Community over Manhattanville Expansion Reminds Some of 1968 Controversies*, COLUM. SPECTATOR, Jan. 22, 2008, <http://www.columbiaspectator.com/2008/01/22/strained-relationship-community-over-manhattanville-expansion-reminds-some-1968-controversies>.

157. Brandon Wallace, *Columbia Hunger Strike Begins and Ends, Questions Remain*, CITY ON A HILL PRESS, Dec. 6, 2007, <http://www.cityonahillpress.com/2007/12/06/columbia-hunger-strike-begins-and-ends-questions-remain/>.

158. See, e.g., Axel-Lute, *supra* note 147 (comparing the 1968 protests to a hunger strike mounted against the expansion in 2007); Foster & Glick, *supra* note 147, at 2049; Morais, *supra* note 156; Alix Pianin, *Community Leaders, Alumni March Against Manhattanville*, COLUM. SPECTATOR, Nov. 30, 2008, <http://www.columbiaspectator.com/2008/04/27/community-leaders-alumni-march-against-manhattanville> (“Forty years after rallying

ger strike. The riots have predisposed Harlem residents to be wary of the university, and they set a precedent against which community relations during the current expansion will be judged. Columbia maintains that its present approach to development has fundamentally changed,<sup>159</sup> and it points to the open design of the new campus as evidence of its good faith. Many community members, however, still view Columbia with suspicion, contending that community relations will not be improved by a project that will displace residents and businesses, destroy affordable housing and manufacturing jobs, and that will be exclusively controlled by an institution that has other communities' interests at heart.<sup>160</sup> These predictions can be debated, but the university's history of community relations suggests that at least from a sustainability perspective, Columbia would do well to seek out increased community participation in its planning efforts, to be candid, and to operate under a presumption of transparency with community members.

The onus to improve community relationships should not be placed entirely on Columbia, however. As Jordi Reyes-Montblanc, then the chairman of Community Board 9, stated at a public hearing, the obligation is bilateral: "The community must get over its suspicion and dread of the Colombia [sic] expansion and Columbia must overcome the feelings that they know better what is good for West Harlem and our people."<sup>161</sup> A framework that focuses on securing the maximum and most meaningful public participation could facilitate this type of compromise. Unfortunately, Columbia's efforts were perceived as ill-motivated and exclusionary to a community that may not have exercised sufficient political leverage to influence those aspects of the plan that threatened the greatest neighborhood change on West Harlem's residents and businesses.

## 2. Two Plans for Columbia's Expansion

Community Board 9 ("CB 9"), which covers the areas occupied by Manhattanville and other sections of West Harlem, was already working on

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against the proposed construction of the Morningside gym, alumni of the 1968 demonstrations returned to protest something else: the Manhattanville expansion.").

159. See *The Brian Lehrer Show: Growing Pains* (WNYC radio broadcast Mar. 8, 2007), available at <http://www.wnyc.org/shows/bl/episodes/2007/03/08/segments/74971> (click "listen" and the relevant portion starts on the audio at about 5:45).

160. See, e.g., Morais, *supra* note 156; Timothy Williams, *In West Harlem Land Dispute, It's Columbia vs. Residents*, N.Y. TIMES, Nov. 20, 2006, at B1, available at <http://www.nytimes.com/2006/11/20/nyregion/20columbia.html> ("On a scale of 1 to 10, Columbia is a minus 5 in terms of trust," said Jordi Reyes-Montblanc, chairman of the local community board. "I honestly believe that Columbia has made a tremendous effort to overcome its history, but in the process, they've made so many snafus that it hasn't really helped them.").

161. Public Hearing Transcript, *supra* note 152, at 6.

a 197-a plan when Columbia announced its plans for the Manhattanville campus in 2003. Referred to as “197-a plans” to reflect the New York City Charter section that authorizes them, 197-a plans are non-mandatory community-based plans that offer the potential to facilitate increased public participation in the planning process and help alleviate concerns of top-down approaches to urban planning that have troubled community groups in the past.<sup>162</sup> After learning of Columbia’s proposal, CB 9 refocused its plan with the goal of developing strategies to allow Columbia to expand “while preserving the district’s physical and demographic character without displacement of existing residents.”<sup>163</sup> Dozens of public meetings were held over a twenty-month period as part of the planning process, and public comments were solicited at three community-wide forums.<sup>164</sup> Concurrently, Columbia was in the process of formulating its own land use application for Manhattanville.

While CB 9 and Columbia were each cognizant of the others’ plans, and although the two attempted to reconcile their differences, their respective plans diverged on several significant points. First, CB 9 wanted Columbia to commit to proceeding without resorting to eminent domain and allowing the expansion site to develop through mixed ownership. Second, Columbia wanted to pursue the proposed contiguous below-grade development, expanding throughout the entire parcel, for which CB 9 unsuccessfully sought more detailed environmental analysis. Third, the community board sought retention of industrial uses in the area, while Columbia wanted more retail, commercial, and academic uses. Finally, CB 9 sought mandatory development requirements to ensure retention or creation of affordable and inclusionary housing. The different positions found supporters throughout the diverse assortment of community stakeholders, politicians, and businesses. Some voiced their support for the 197-a plan,<sup>165</sup> emphasizing the

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162. See Amy Widman, *Replacing Politics with Democracy: A Proposal for Community Planning in New York City and Beyond*, 11 J.L. & POL’Y 135, 146-47 (2002) (“The revised Section 197-a took an important step towards facilitating meaningful public participation by making planning available to communities through their Community Boards and Borough Presidents.”).

163. CMTY. BD. 9 MANHATTAN, 197-A PLAN 2 (2007), available at [http://prattcenter.net/sites/default/files/users/images/CB9M\\_Final\\_24-Sep-07.pdf](http://prattcenter.net/sites/default/files/users/images/CB9M_Final_24-Sep-07.pdf). The 197-a planning process was actually begun in 1991, but the community board started a new 197-a plan in 2003, working with the Pratt Center for Community Development. *Id.* at 5.

164. *Id.* app. I-II at I-1 to II-23 (listing the log of meetings and a table of community feedback).

165. As the City Planning Commission reported:

In addition to the plan’s sponsor [Community Board 9], those who spoke in favor of the 197-a Plan included representatives of the West Harlem Environmental Action Coalition (WEACT), the Society for the Architecture of the City, the Coalition to Preserve Community, tenants from NYCHA’s Manhattanville Houses and



amount of public participation that went into it and urging Columbia and the city “to respect the community planning process . . . .”<sup>166</sup> Others saw an underutilized neighborhood that needed Columbia’s investment and urged approval of Columbia’s more ambitious campus design.<sup>167</sup>

The Planning Commission considered the two plans simultaneously and modified each as it considered appropriate.<sup>168</sup> Both CB 9 and Columbia made last minute efforts to shore up their plans: the 197-a plan was modified to increase some density limits and to permit expanded ground floor uses,<sup>169</sup> and Columbia made a deal with the Manhattan borough president to offer a suite of benefits to the community (the same benefits that would later become part of the CBA).<sup>170</sup> A compromise plan to submit to the planning commission in place of the parallel proposals was not achieved.

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Grant Houses, the Harlem Tenant’s Council, the Regional Plan Association, the City-wide Housing Development Fund Corporation Council (HDFC), the Pratt Center for Community Development, and the Municipal Art Society; an attorney representing several business owners in the 197-a Plan’s proposed special district; the State Senator for the 30th District; Columbia University students and recent graduates; members of Community Board 9; local clergy and social service professionals; and residents of the area.

CITY PLANNING COMM’N, REPORT N 060047 NPM 11 (2007), *available at* <http://www.nyc.gov/html/dcp/pdf/cpc/060047.pdf?searchfor=columbia%20university/Special%20Manhattanville%20District>; *see also* Charles V. Bagli, *City Panel Approves Columbia’s Plan for Expansion in Harlem*, N.Y. TIMES, Nov. 27, 2007, at B3, *available at* <http://www.nytimes.com/2007/11/27/nyregion/27columbia.html> (“Members of Community Board 9, local property owners, some community groups and residents of the affected neighborhood oppose the university’s proposal.”); Public Hearing Transcript, *supra* note 152.

166. CITY PLANNING COMM’N, *supra* note 165, at 11.

167. *See, e.g., The Brian Lehrer Show: Growing Pains*, *supra* note 159; Public Hearing Transcript, *supra* note 152.

168. As Axel-Lute notes:

The commission’s decision to consider the plans together had plusses and minuses. The community had to wait a year and a half after the plan was completed for it to be considered, which, according to Mercedes Narciso, a senior planner from Pratt, was unfair. She believes it could have been approved, and then Columbia’s plan evaluated in light of those guidelines. On the other hand, historically 197a plans have been ignored in the face of large attractive proposals like Columbia’s, notes Ron Shiffman, another Pratt consultant. This time, the community’s vision was on the table at the same time as Columbia’s version.

Axel-Lute, *supra* note 147.

169. CITY PLANNING COMM’N, *supra* note 165, at 5.

170. Colin Moynihan, *Columbia Announces Deal on Its 17-Acre Expansion Plan*, N.Y. TIMES, Sept. 27, 2007, at B3, *available at* <http://www.nytimes.com/2007/09/27/nyregion/27columbia.html?scp=6&sq=columbia+expansion&st=nyt>. Among the benefits that Columbia pledged prior to the planning commission’s review of its plans were \$20 million for an affordable housing fund, additional money for parks, a commitment to use green building techniques, and a promise to build a community resource center to facilitate local hiring.



Columbia enjoyed approval of the majority of its plan, although the planning commission scaled back some of the height limits, replaced two research buildings with university housing, and established a light manufacturing zone along the river. However, the Planning Commission determined that the 197-a plan “[did] not set forth a comprehensive plan that would integrate Columbia’s long-term growth into the urban fabric in a manner consistent with City objectives.”<sup>171</sup> The Commission rejected the mandatory inclusionary housing requirement in the 197-a plan as inconsistent with the city’s policy of providing voluntary affordable housing incentives,<sup>172</sup> and refused to prohibit the use of eminent domain.<sup>173</sup>

The Commission sought to avoid placing limitations on the size of the project, including limitations on the below-grade portion of the project.<sup>174</sup>

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171. CITY PLANNING COMM’N, *supra* note 165, at 22; see also *The Brian Lehrer Show: Growing Pains*, *supra* note 159 (Lee Bollinger agrees with Brian Lehrer that a crucial part of Columbia’s argument has been that “what’s good for Columbia is good for the city.” The relevant portion starts on the audio at about 3:20).

172. CITY PLANNING COMM’N, *supra* note 165, at 17; see also N.Y. CITY DEP’T OF CITY PLANNING, ZONING REFERENCE, RESIDENTIAL DISTRICTS: INCLUSIONARY HOUSING (2009), available at [http://www.nyc.gov/html/dcp/html/zone/zh\\_inclu\\_housing.shtml](http://www.nyc.gov/html/dcp/html/zone/zh_inclu_housing.shtml) (discussing the city’s voluntary affordable housing incentive program).

173. The Commission reasoned that the New York Empire State Development Corporation (“ESDC”), a state agency, should not be foreclosed from pursuing future condemnations in order to serve legitimate public purposes. CITY PLANNING COMM’N, *supra* note 165, at 16 (“The Commission therefore expresses its hope that Columbia and the remaining private property owners in the area will reach agreement concerning these matters. At the same time, the Commission believes that, should the ESDC determine at a later date to exercise eminent domain, doing so would serve a public purpose insofar as it would allow for realization of the public benefits of the Columbia proposal. It should be noted that there will be not be condemnation of residential units and that any relocation of tenants would be pursuant to agreement.”). On December 3, 2009, the New York Supreme Court, Appellate Division, disagreed with the principle behind this reasoning and determined that the ESDC’s action in eminent domain to acquire properties for Columbia’s expansion project was unlawful. The Court opened its opinion by stating that “[t]he process employed by ESDC predetermined the unconstitutional outcome, was bereft of facts which established that the neighborhood in question was blighted, and ultimately precluded the petitioners from presenting a full record before either the ESDC or, ultimately, this Court.” *Kaur v. N.Y. State Urban Dev. Corp.*, 892 N.Y.S.2d 8, 11 (App. Div. 2009).

174. The below-grade component of the project has been very controversial, with opponents, including a disaster planning expert who teaches at Columbia, claiming that it will be a flood and earthquake hazard. See Elizabeth Dwoskin, *Columbia Ignores Peril*, THE VILLAGE VOICE, Oct. 1, 2008, <http://www.villagevoice.com/2008-10-01/news/everyone-listens-to-columbia-s-disaster-expert-mdash-except-columbia-itself>. As the Municipal Art Society pointed out in testimony submitted to the planning commission,

while the proposed “bathtub” may have positive attributes, the community has not been provided any of the details necessary to understand the myriad of environmental impacts of such a substantial underground structure. In order to ensure that those details are brought to the public, we recommend that Columbia release the details, when known, and provide a forum in which the public can comment on the construction of the “bathtub.”

Indeed, the 197-a plan may have required Columbia to eliminate almost half the project, including “major shared academic research support space, central loading facility and centralized parking, centralized mechanical/HVAC systems, and . . . classroom and other program space below grade,” and it would have resulted in more curb cuts, a reduction in the plan’s open space, and reduced active ground floor uses.<sup>175</sup> Ultimately, however, it appears that the Planning Commission’s rejection of the 197-a plan was based on the manner in which it perceived the relationship between the needs of Columbia University and the needs of the city as a whole:

The Commission recognizes that Columbia is an institution of major importance to the City . . . that attracts intellectual, technical and scientific capital from around the world. The Columbia plan, as modified by the Commission, allows Columbia to address its space shortages and to provide the kinds of research, academic, and teaching facilities that are needed to respond to a changing and dynamic world. With this plan, the City will exercise a critical opportunity to address Columbia’s long-term growth in a manner that is in the best interests of the City, and that will provide for new investment, jobs, and open space and other amenities for the Manhattanville neighborhood of West Harlem.<sup>176</sup>

Of course, as a world-renowned institution and major local employer, Columbia’s growth is an important consideration for the city’s planners.

The serious concerns raised in the 197-a plan went largely unaddressed, including displacement, residential and industrial gentrification, historic preservation, environmental planning, and public participation, calling into question whether the university’s plan qualifies as “socially, economically and environmentally sustainable.”<sup>177</sup> In rejecting the CB 9 plan, the con-

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Lisa Kersavage, *Testimony of the Municipal Art Society Before the City Planning Commission*, Oct. 4, 2007, at 3, available at <http://mas.org/images/media/original/Manhattanville%20CPC%20Draft.pdf>.

175. CITY PLANNING COMM’N, REPORT N 070496 ZRM 49 (2007), available at <http://www.nyc.gov/html/dcp/pdf/cpc/070496.pdf>.

176. *Id.* at 68.

177. See CMTY. BD. 9 MANHATTAN, *supra* note 163, at 81 (“As a result of the expiration of public subsidy contracts for affordable housing, and of rapid private development, long-term residents of public and rent-regulated and subsidized housing face the threat of displacement. This gentrification is likely to change the fundamental cultural and demographic fabric of the community.”); *id.* at 74 (“Special attention should be placed on the impact of rezoning actions citywide on manufacturing and industrial jobs at how they impact the local level, since a significant percentage of the labor force in Community District 9 (29-35% in upper Manhattan) are employed in manufacturing and industrial jobs.”). These concerns were echoed by attendees of the public meeting on Columbia’s plans and by the borough president, who recommended approval of the expansion plan on the condition that it be modified to comply with the goals and principles included in the 197-a plan. See CITY PLANNING COMM’N, *supra* note 175, at 34-35 (“There were 105 speakers at the public hear-

clusion of the planning process conveyed a message of ambivalence towards the community's self-identified needs<sup>178</sup> and may have underscored how little effective leverage the community wielded against Columbia, a well-funded but "outsider" institution that was not vested with the same type of stake as the existing community.<sup>179</sup> Accordingly, although the substance of Columbia's plan may indeed have been the superior choice for Columbia and the New York economy, it is important to recognize that the 197-a planning process may have been less successful than was hoped in implementing a successful, participatory process. In the urban environment, the sustainability framework requires that the needs of no single institution can be equated with the needs of the community in its entirety. Stated otherwise, sustainability is not about choosing between two competing views; it is about choosing a path that we all can walk.

### 3. *Public Participation Through a Community Benefits Agreement*

After the Planning Commission recommended the City Council's approval of the Manhattanville plans, Columbia turned its attention to negotiating a CBA. Generally, a CBA is a bilateral contract that binds a developer to provide various community amenities in exchange for public support of its project.<sup>180</sup> Although CBAs are typically initiated by gras-

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ing. Of this group, 22 speakers testified in favor of [Columbia's] application and the related zoning map amendment application; 46 speakers opposed the application; 14 speakers conditionally opposed the application; and 11 speakers did not state a specific position on the application."); *see also* Public Hearing Transcript, *supra* note 152.

178. Axel-Lute, *supra* note 147 ("In comments to the planning commission's report, CB 9 representatives note that while the community's larger plan was approved, the section concerning Manhattanville was turned down on the basis of not providing as much space as the university said it needed; when the commission chose to reduce the amount of academic and research space based on their own 'aesthetic values,' Columbia accepted the change without a peep. This, in their opinion, shows that Columbia never negotiated in good faith with the community board and that the planning commission relied too heavily on Columbia's assessment of the 197a plan."); *see also* Posting of Jennifer Lee to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2007/11/13/a-week-into-the-columbia-hunger-strike/> (Nov. 13, 2007, 17:35 EST) (discussing the hunger strike in November 2007).

179. *See, e.g.,* Scott Levi, *Money, Words Fly in Heated Public Relations Battle*, COLUM. SPECTATOR, Jan. 22, 2008, <http://www.columbiaspectator.com/2008/01/22/money-words-fly-heated-public-relations-battle>; Student Coalition on Expansion and Gentrification, <http://www.columbia.edu/cu/cssn/expansion/> ("Columbia's consultant Bill Lynch, a well-paid and influential Democratic lobbyist, and his team formed this 'coalition' as a PR stunt to create the illusion of community support for the plan. The group was comprised mainly of recovering drug abusers who were essentially bribed with hours for their Church-run rehabilitation program in return for their support of Columbia. The Columbia Spectator reported that 'Few of them knew why they were there or what they were doing.'").

180. For more information on CBAs, *see* Patricia Salkin & Amy Lavine, *Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power*, J.L. & POL'Y (forthcoming 2010) [hereinafter *CBAs and Comprehen-*

roots community coalitions,<sup>181</sup> CB 9 in this case formed a local development corporation (“LDC”) to bargain with Columbia.<sup>182</sup> This may have resulted from fragmentation in the local community among racial and class lines or the lack of an existing community organization with sufficient organizational capacity to negotiate a CBA.<sup>183</sup> The LDC board was initially intended to be representative of a wide variety of community stakeholder interests, such as tenants, business owners, environmental advocates, and faith-based organizations. CB 9 envisioned that the CBA would cover non-land use issues, such as local hiring, living wages, funding for job training programs, and an affordable housing trust fund. Land use issues, such as concerns about density, environmental impacts, and the preservation of industrial space, were to be addressed as part of the formal planning process.<sup>184</sup>

Given the LDC structure, negotiations for the Columbia expansion CBA never quite resembled the California grassroots campaigns that defined the community benefits movement in the early 2000s. Furthermore, as the di-

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*sive Planning*]; Patricia Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefit Agreements: Case Studies of Current and Developing Agreements*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 113, 114 (2008); Patricia Salkin & Amy Lavine, *Understanding Community Benefit Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENVTL. L. & POL’Y 291, 293 (2008).

181. See JULIAN GROSS ET AL., COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE (2005), available at <http://www.communitybenefits.org/downloads/CBA%20Handbook%202005%20final.pdf>.

182. Jimmy Vielkind, *How to Mediate Manhattanville: A New Negotiating Partner is Born*, CITY LIMITS, Dec. 4, 2006, [http://www.citylimits.org/content/articles/viewarticle.cfm?article\\_id=3223](http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=3223) (“‘At one level you want some officially designated body with the blessing of government, but if you have that, then you don’t have a grassroots organization that’s likely to do organizing and apply pressure,’ [Brad Lander, director of the Pratt Center] said. Given the role that CB9 and local elected officials play in the city’s land use review process—which Columbia must undergo to gain the rezoning necessary for the proposed campus—the LDC model seemed logical for negotiating a community benefits agreement.”); see also Foster & Glick, *supra* note 147, at 2050 (discussing a grassroots drive that was effectively prevented by the city and by CB 9).

183. Telephone Interview by Amy Lavine with Brian Glick, Clinical Assoc. Professor of Law, Fordham Univ. Sch. of Law (Nov. 24, 2009) [hereinafter Glick Interview]; see also Foster & Glick, *supra* note 147, at 2049-51. But cf. Los Angeles Alliance for a New Economy, <http://www.laane.org/> (last visited Mar. 7, 2010) [hereinafter LAANE]; The Northwest Bronx Community and Clergy Coalition, Kingsbridge Armory Redevelopment Alliance, <http://www.northwestbronx.org/redevelopkingsbridge.html> (last visited Mar. 7, 2010) [hereinafter KARA]; Strategic Actions for a Just Economy, <http://www.saje.net> (last visited Mar. 7, 2010) [hereinafter SAJE].

184. Telephone Interview by Amy Lavine with Ron Shiffman, Former Dir., Pratt Ctr. for Community Dev. (Nov. 5, 2009) [hereinafter Shiffman Interview]. See Student Coalition on Expansion and Gentrification, The Players, <http://www.columbia.edu/cu/cssn/expansion/players.html> (last visited Mar. 9, 2010).



ologue developed and negotiations progressed, the Columbia CBA process appeared to diverge from the CBA model that developed in California.<sup>185</sup> Mayor Bloomberg was instrumental in recruiting a developers' attorney to work for the LDC,<sup>186</sup> and the New York City Economic Development Corporation, a solidly pro-development quasi-public entity, donated \$350,000 to pay for a mediator and other expenses.<sup>187</sup> Several members of the LDC resigned in the weeks between the Planning Commission's approval and the City Council's decision.<sup>188</sup> They cited conflicts of interest among LDC members and a lack of transparency. Additionally, public meetings were rare, with the LDC more often meeting in executive sessions.<sup>189</sup> It was clear that the LDC would not be able to achieve the goals of the 197-a plan through a CBA,<sup>190</sup> but LDC members who had supported the community-based plan continued to negotiate the CBA in order to gain what community benefits they could.<sup>191</sup>

A memorandum of understanding was finalized just before the City Council met to vote on the expansion plans. The agreement, which has been criticized as vague and most likely unenforceable, does offer some significant benefits, including \$30 million for a university-run public school, in-kind services valued at \$20 million, a \$24 million affordable housing fund (the same promise, it should be noted, that Columbia original-

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185. See Foster & Glick, *supra* note 147, at 2051.

186. While the Observer reported that Mr. Masyr was working pro bono, a memo from Mr. Masyr quoted his hourly rate at \$520 and implied that reimbursement would be sought from third parties. Matthew Schuerman, *Mr. Bollinger's Battle*, N.Y. OBSERVER, Feb. 19, 2007, at 48, available at <http://www.observer.com/node/36744>; Memorandum from Jesse Masyr to the West Harlem Local Dev. Corp. 1 (Aug. 30, 2006) (on file with authors). Mr. Masyr worked on the Gateway Center CBA prior to his work with the LDC. That CBA has been criticized for having little community participation and weak enforcement mechanisms. Currently, Mr. Masyr is representing the Related Companies against the Kingsbridge Armory Redevelopment Alliance, which is seeking a CBA with strong labor benefits. It should also be pointed out that Mayor Bloomberg has recently declared himself "violently opposed" to CBAs, possibly indicating that he has finally taken a firm stance on this type of agreement. See, e.g., Mike McLaughlin, *Bloomy Still Wants Gehry—Plus Other Tidbits From the Mayor in Our Endorsement Sit-Down*, BROOK. PAPER, Aug. 25, 2009, available at [http://www.brooklynpaper.com/stories/32/34/32\\_34\\_mm\\_bloomberg\\_in\\_our\\_office.html](http://www.brooklynpaper.com/stories/32/34/32_34_mm_bloomberg_in_our_office.html).

187. Schuerman, *supra* note 186.

188. See Posting of Alyssa Katz to The Eminent Domain, <http://theeminentdomain.org/2007/12/19/council-committees-approve-columbia-plan/> (Dec. 19, 2007).

189. Student Coalition on Expansion and Gentrification, *supra* note 184.

190. Press Release, No Land Grab, Another West Harlem LDC Member Resigns (Dec. 19, 2007), available at [http://www.nolandgrab.org/archives/2007/12/press\\_release\\_a\\_2.html](http://www.nolandgrab.org/archives/2007/12/press_release_a_2.html).

191. Shiffman Interview, *supra* note 184; see also Foster & Glick, *supra* note 147, at 2048-49 ("Given that there is no real possibility of stopping the expansion, and only small hope of modifying it through [the City Charter's Urban Land Use Review Procedure], this process offered the community its main opportunity to protect and advance its interests.").



ly agreed to at the insistence of the borough president), \$4 million for legal services, and \$76 million for then-undetermined community uses.<sup>192</sup>

Although the existence of a CBA is not generally considered to be an appropriate criterion in the land use approval process,<sup>193</sup> public support is often taken into account, and a CBA can be indicative of community sentiments concerning a proposal. But because of the LDC structure and the lack of community leverage, the CBA was only questionably reflective of community support for Columbia's proposal.<sup>194</sup> Nevertheless, Columbia touted the agreement as "a collaboration aimed at enhancing the vitality of both the University's academic mission and the community's quality of life for decades to come."<sup>195</sup> The City Council subsequently voted to approve the expansion plans in December 2007.<sup>196</sup>

The finalized CBA was released in May, 2009, just prior to a vote on the project from the New York State Public Authorities Control Board. Unlike the earlier memorandum of understanding, it is an enforceable agreement with detailed terms. Significantly, the new CBA was not supported by CB 9, which voted unanimously for its members on the LDC to reject it. Ultimately, the CBA was ratified.<sup>197</sup>

Since its completion, the CBA has been criticized by leaders of the community benefits movement, who contend that it was not the product of substantial community involvement. It has also been faulted for not including enough funding for affordable housing and anti-displacement measures

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192. TED KOVALEFF & PATRICIA JONES, MEMORANDUM OF UNDERSTANDING 1 (2008). Shiffman claims that \$150 million is negligible considering that Columbia is getting title to the land under public streets. Shiffman Interview, *supra* note 184. Regardless of the project's direct and indirect subsidies, \$150 million can still be considered negligible given that the expansion is going to cost at least \$6 billion. That works out to 2.5%.

193. See *CBAs and Comprehensive Planning*, *supra* note 180.

194. Shiffman Interview, *supra* note 184 (calling the CBA disingenuous); Posting of Alyssa Katz to The Eminent Domain, <http://theeminentdomain.org/2007/12/19/columbia-and-community-reach-deal/> (Dec. 19, 2007) ("[B]ased on earlier reports, we can be fairly sure of two things: the deal will include substantial funds for housing, and it represents the interests of the elected officials whose staffs negotiated it—not the community in whose name it was executed.").

195. Columbia Public Affairs Office, *Columbia, Local Development Corporation Reach Long-Term Collaboration Agreement on Enhanced Education, Health Care, Jobs, Affordable Housing and Other Civic Programs*, COLUM. NEWS, Dec. 19, 2007, <http://www.columbia.edu/cu/news/07/12/agreement.html>.

196. See Foster & Glick, *supra* note 147, at 2030 ("With West Harlem's council member not even in opposition, there was no indication that the Council would resist Columbia's plan to displace mainly low-end small businesses in order to build world-class research, educational, and cultural facilities.").

197. Maggie Astor & Betsy Morais, *Community Board 9 Opposes Columbia's Community Benefits Agreement*, COLUM. SPECTATOR, May 4, 2009, <http://www.columbiaspectator.com/2009/05/04/community-board-9-opposes-columbias-community-benefits-agreement>.

and for not including enough up-front benefits.<sup>198</sup> Some of the benefits included in the CBA, moreover, were mere iterations of promises already made. For example, the green building provisions included in the CBA largely duplicate those in the Modified General Project Plan,<sup>199</sup> and Columbia's deal with the borough president to provide \$20 million for affordable housing was not increased during CBA negotiations, despite intense community concerns regarding gentrification and displacement.

#### 4. *Public Engagement and the Use of Eminent Domain*

Columbia University was not able to purchase all of the properties in its identified project area because some property owners were simply unwilling to sell. Typically, when this occurs, private project developers may abandon initial plans and devise alternatives based upon the available land for expansion. At times, however, governmental entities will work with private development interests where such proposed projects have a valid public purpose that would justify the exercise of the eminent domain power. In the case of Columbia University, the claimed public purposes were both economic development and blight remediation.<sup>200</sup> This led to controversy and ongoing litigation. The use of a state agency to wield its power of eminent domain for the benefit of an institution of higher education, as in the case of Columbia, is controversial. As Ron Shiffman, a planner who was engaged in the 197-a process explained, "We want Columbia to move into the community, not onto the community. . . . We want mixed use and mixed ownership. Otherwise it will end up being a monolithic, homogenized, boring part of the city."<sup>201</sup> Valuing public participation in sustainable development means opening doors and ears to the perspectives of other affected parties, even when they will be affected in a different way, while committing a meaningful resolve to reconcile different and competing views.

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198. See Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 35, 35 (2008); Glick Interview, *supra* note 183; Telephone Interview by Amy Lavine with Daniel O'Donnell, Assemblymember, New York State Assembly (Nov. 20, 2009); Shiffman Interview, *supra* note 184.

199. MASTER PLAN, *supra* note 68, at 23-24.

200. See *Kaur v. N.Y. State Urban Dev. Corp.*, 892 N.Y.S.2d 8, 14-15 (App. Div. 2009).

201. Posting of Elias E. Lopez to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2007/10/03/columbia-again-defends-its-expansion-plan/> (Oct. 3, 2007, 16:50 EST).

Columbia University pledged not to seek the use of eminent domain to acquire residential properties,<sup>202</sup> and, in fact, it succeeded in negotiating deals for nearly all of the property in the project footprint.<sup>203</sup> Nevertheless, the New York State Empire State Development Corporation (“ESDC”) ultimately invoked its power of eminent domain on behalf of the Columbia expansion project, which has fueled accusations of ignoring public input in the condemnation process.

Eminent domain is arguably necessary for governments precisely to overcome public opposition to public projects,<sup>204</sup> but distinctions can be argued for this case. Opponents in Manhattanville include not only holdout property owners, who are conventionally described as rent seekers,<sup>205</sup> but other community members and neighborhood organizations who may have less economic incentive, but still have a significant stake in the character of the community.<sup>206</sup> These community stakeholders, moreover, do not seek to prevent Columbia from any expansion into Manhattanville altogether; they merely want to prevent what they perceive to be a private party from forcing the acquisition of the property of those private owners with an interest in the existing community. Even the holdouts have suggested that they would be willing to bargain with Columbia were the threat of eminent

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202. See Frank Lombardi, *Columbia: No Evictions in Expansion*, N.Y. DAILY NEWS, Dec. 13, 2007, at 1, available at [http://www.nydailynews.com/ny\\_local/2007/12/13/2007-12-13\\_columbia\\_no\\_evictions\\_in\\_expansion.html](http://www.nydailynews.com/ny_local/2007/12/13/2007-12-13_columbia_no_evictions_in_expansion.html).

203. Columbia University owns or controls approximately 91% of the 17 acres in the project area (61 out of 67 buildings). See Posting of Charles V. Bagli to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2009/12/03/court-rules-against-columbia-university/?hp> (Dec. 3, 2009, 15:09 EST).

204. AM. PLANNING ASS’N, POLICY GUIDE ON PUBLIC REDEVELOPMENT (2004), available at <http://www.planning.org/policy/guides/adopted/redevelopment.htm>.

205. It is arguable whether the holdouts in Manhattanville are engaged in rent seeking. The most vocal of the two remaining property owners, Nick Sprayregen, has spent considerable sums of money defending his property in state court even though he is aware of the fact that the odds are very much against him. This would suggest that financial gain is not his primary motivation in fighting Columbia. In media accounts and in person, his aims seem to be more idealistic in nature, based on his belief that the use of eminent domain to benefit Columbia would violate his constitutional property rights. See, e.g., Eliot Brown, *Columbia Expansion Holdout Sues to Block Eminent Domain*, N.Y. OBSERVER, Jan. 21, 2009, available at <http://www.observer.com/2009/real-estate/columbia-expansion-holdout-sues-block-eminant-domain>; Matthew Schuerman, *Columbia Expansion Foe Faces Ouster*, N.Y. OBSERVER, July 31, 2007, available at <http://www.observer.com/2007/columbia-foe-faces-ouster>.

206. E.g., CMTY. BD. 9 MANHATTAN, *supra* note 163; Coalition to Preserve Community, Stop Columbia, <http://www.stopcolumbia.org/> (last visited Mar. 7, 2010); Student Coalition on Expansion and Gentrification, *supra* note 179.

domain taken off the table.<sup>207</sup> The dilemma, then, is whether use of eminent domain for Columbia's expansion project was appropriate (and ultimately whether it is legal). If opposition to eminent domain was not founded in bare principles, but instead was intended to protect the principles of and attachments to a sense of place, then ESDC's use of eminent domain (at Columbia's request) seems to run counter to the goals of sustainable communities.

Some might argue that the ESDC's use of eminent domain in this project undermines the appearance of opportunities for meaningful public participation. Others, however, may point out that there are opportunities for community members to participate in development decisions by: participating in negotiations with those with whom they disagree; voting in elections (after all, Mayor Bloomberg and many members of the City Council are outspoken proponents of the project and the use of eminent domain to accomplish Columbia's vision); voicing praise and opposition in public hearings; participation merely by staying informed on issues of local importance; organizing and engaging in acts of civil disobedience to publicize their collective point; or, participating by arguing their position in the courts. As discussed below, this is exactly the course of action pursued in this instance.

Following a determination in December 2008 by the ESDC that approved the use of eminent domain for Columbia University, which it referred to as a "Mixed Use Development Land Use Improvement and Civic Project,"<sup>208</sup> and finding that "[t]he project qualifies as both a Land Use Improvement Project and separately and independently as a Civic Project pursuant to the New York State Urban Development Corporation Act,"<sup>209</sup> two petitions were filed in February 2009 by commercial property owners whose lands were to be condemned, challenging the determinations and findings.<sup>210</sup> Almost a year after the authorization to exercise the power of eminent domain for the expansion project, a New York appellate court issued a stern decision finding that "[t]he exercise of eminent domain power by the New York State Urban Development Corporation d/b/a Empire State

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207. See Timothy Williams, *2 Gas Stations, and a Family's Resolve, Confront Columbia Expansion Plans*, N.Y. TIMES, Sept. 21, 2008, at A39, available at <http://www.nytimes.com/2008/09/21/nyregion/21gas.html>.

208. See EMPIRE STATE URBAN DEV. CORP., DETERMINATION AND FINDINGS (2008), available at [http://www.empire.state.ny.us/Subsidiaries\\_Projects/Data/Columbia/AdditionalResources/determination\\_findings.pdf](http://www.empire.state.ny.us/Subsidiaries_Projects/Data/Columbia/AdditionalResources/determination_findings.pdf).

209. *Id.* at 2.

210. See *Kaur v. N.Y. State Urban Dev. Corp.*, 892 N.Y.S.2d 8, 15 (App. Div. 2009); Verified Petition, *In re Tuck-It-Away, Inc. v. N.Y. State Urban Dev. Corp.*, available at [http://www.scribd.com/full/11054880?access\\_key=key-182skk9iuz7ruzzsi6qn](http://www.scribd.com/full/11054880?access_key=key-182skk9iuz7ruzzsi6qn).

Development Corporation . . . to benefit a private elite education institution is violative of the Takings Clause of the U.S. Constitution, article 1, § 7 of the New York Constitution, and the ‘first principles of the social contract.’”<sup>211</sup> While the decision is rich in discussion of various law and policy aspects of eminent domain, for sustainability purposes, the Court relied on Justice Kennedy’s concurring opinion in *Kelo v. City of New London*,<sup>212</sup> finding that the use of eminent domain in the case of Columbia University was exactly the type of pretextual taking that the Court warned about.<sup>213</sup> The Court said that in order to justify the use of eminent domain, the government ultimately engineered a public purpose (e.g., the elimination of blight) for what is, in the Court’s judgment, a private development.<sup>214</sup> The Court characterized the alleged blight conditions as “preposterous,” noted the “idiocy of considering things like unpainted block walls or loose awning supports as evidence of a blighted neighborhood,” and categorically rejected the use of eminent domain supported solely based on underutilization.<sup>215</sup> In a question of first impression in New York, the appellate court also concluded that a private university does not qualify as a “civic project” for purposes of eminent domain.<sup>216</sup> Lastly, addressing a key sustainability principle, the Court commented that “[t]he unbridled use of eminent domain not only disproportionately affects minority communities, but threatens basic principles of property . . . .”<sup>217</sup> The litigation may not be over as ESDC has indicated it plans to appeal to State high court,<sup>218</sup> and in any event, Columbia University still retains ownership or control over most of the needed project property and could continue with its plans despite the

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211. *Kaur*, 892 N.Y.S.2d at 11.

212. 545 U.S. 469, 490-93 (2005). It should, however, be noted that the New York Supreme Court did not reach the position that *Kelo* was wrongly decided; rather, the Court distinguished *Kaur* from *Kelo*, relying in large part on the neutral pre-planning process that was described in *Kelo* and not present in the *Kaur* case.

213. *Kaur*, 892 N.Y.S.2d at 20 (“[T]he ultimate private beneficiary of the scheme for the private annexation of Manhattanville was the progenitor of its own benefit. The record discloses that every document constituting the plan was drafted by the preselected private beneficiary’s attorneys and consultants and architects . . .”).

214. *Id.* at 23-25.

215. *Id.* at 22.

216. *Id.* at 23-25. *But see* *In re Bd. of Educ. v. Pace Coll.*, 276 N.Y.S.2d 162 (App. Div. 1966) (noting that private institutions of higher education serve important public purposes); *Univ. of S. Cal. v. Robbins*, 37 P.2d 163 (Cal. Dist. Ct. App. 1934) (holding that higher education is an important public use).

217. *Kaur*, 892 N.Y.S.2d at 27-28.

218. Charles V. Bagli, *Court Bars New York’s Takeover of Land for Columbia Campus*, N.Y. TIMES, Dec. 4, 2009, at A1, available at <http://www.nytimes.com/2009/12/04/nyregion/04columbia.html>.



opposition.<sup>219</sup> The future relationship between the University and impacted property owners/businesses remains tenuous at best.

## B. Displacement and Gentrification

Whether by voluntary sales and purchases, or by the use of eminent domain, the bottom line is that when sponsors of a large scale development project, such as the Columbia University expansion, begin to amass the land and buildings thereon needed, the people who had resided in those buildings are forced to move elsewhere either temporarily or permanently. It is inconvenient to think of displacement<sup>220</sup> and gentrification<sup>221</sup> as problematic, inequitable, or unjust. After all, new residents of the gentrified, “improved” neighborhood will not feel the pain of displacement or the loss of place suffered by residents of the old neighborhood.<sup>222</sup> It is possible to avoid thinking of such things entirely. As Keith Aoki has explained, the injuries of displacement and gentrification are largely and intentionally removed from view: “[T]he poor become marginalized externalities, ejected

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219. Bagli, *supra* note 203.

220. Displacement might be defined as follows:

Displacement occurs when any household is forced to move from its residence by conditions that effect [sic] the dwelling or its immediate surroundings, and that: 1) are beyond the household's reasonable ability to control or prevent; 2) occur despite the household's having met all previously imposed conditions of occupancy; and 3) make continued occupancy by that household impossible, hazardous or unaffordable.

Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 814 n.325 (1993) (quoting GEORGE GRIER & EUNICE GRIER, *URBAN DISPLACEMENT: A RECONNAISSANCE* 8 (1978)).

221. Gentrification has been defined in the courts:

Gentrification is a term used in land development to describe a trend which previously underdeveloped areas become revitalized as persons of relative affluence invest in homes and begin to upgrade the neighborhood economically. This process often causes the eviction of less affluent residents who can no longer afford the increasingly expensive housing in their neighborhood.

*Id.* at 814 n.324 (quoting *Bus. Ass'n of Univ. City v. Landrieu*, 660 F.2d 867, 874 n.8 (3d Cir. 1981)). Another definition states that “gentrification is a process of class transformation: it is the remaking of working-class space to serve the needs of middle- and upper-class people.” Kathe Newman & Elvin Wyly, *Gentrification and Resistance in New York City*, SHELTERFORCE ONLINE, July-Aug. 2005, <http://www.nhi.org/online/issues/142/gentrification.html>. The first use of the term “gentrification” has been attributed to the British sociologist Ruth Glass, who postulated that “[o]nce this process of ‘gentrification’ starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the whole social character of the district is changed.” Richard Schaffer & Neil Smith, *The Gentrification of Harlem?*, 76 ANNALS ASS'N AM. GEOGRAPHERS 347, 348 (quoting RUTH GLASS, CENTRE FOR URBAN STUDIES, LONDON: ASPECTS OF CHANGE (1964)).

222. See Aoki, *supra* note 220, at 814-15.

from these gentrified neighborhoods into other depressed and prematurely decaying areas, where questions of low-income housing, economic pain, and social equity will not disturb graceful gentrified fantasies of the vitality and charm of urban living.”<sup>223</sup> Without any remnant traces of harm—which might in theory impose a sense of guilt—(re)developers can act out of the hope of finding a special sense of place, one created from the removal of blight and almost simultaneous renewal of urban life, vitality, and prosperity. They may also be driven by the belief that new investments will raise the tide for the community as a whole, including those low income residents who remain in or near the neighborhood, as gentrification is often accompanied by improved government services, increased safety, better transportation options, and a wider selection of retail and service businesses. The increased property taxes attributable to gentrification can also serve as an important revenue source for cash strapped cities.<sup>224</sup>

Other impacts of gentrification are more nuanced and might not appear as clearly positive or negative consequences.<sup>225</sup> Increased policing in public spaces, for example, may improve overall safety, but the possibility of police harassment may also ward off teenagers, immigrants, and black and Hispanic men.<sup>226</sup> Locally-owned corner stores can be replaced by chain groceries, resulting in a better selection of fresh and healthy foods while homogenizing the urban fabric, and the bollards and planters that improve pedestrian safety can simultaneously deter ambulatory vendors that add flare to the streetscape.<sup>227</sup>

Gentrification can have a similarly ambiguous application to sustainability. On one hand, gentrification decreases concentrations of poverty, improves the building stock, and diversifies the socioeconomic makeup of a

223. *Id.* at 818.

224. Rick Hampson, *Studies: Gentrification a Boost for Everyone*, USA TODAY, Apr. 19, 2005, [http://www.usatoday.com/news/nation/2005-04-19-gentrification\\_x.htm](http://www.usatoday.com/news/nation/2005-04-19-gentrification_x.htm); Barbara Kiviat, *Gentrification: Not Ousting the Poor?*, TIME, June 29, 2008, <http://www.time.com/time/business/article/0,8599,1818255,00.html>; C.W. Nevius, *SoMa Gentrification—A Model for New S.F.*, S.F. CHRON., Oct. 3, 2009, at C-1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/10/03/BA2S1A0DPV.DTL>. But see Newman & Wyly, *supra* note 221 (“The unfortunate paradox is that studies showing low mobility rates among the poor are being used to vindicate gentrification and to dismantle precisely those policies that help to cushion its worst impacts.”).

225. See generally Geoff Wagner, *Virtue and Vice: A Reassessment of Gentrification*, 7 J.L. SOC’Y 271 (2006) (criticizing analyses of gentrification that conclude that it is either positive or negative because “they subject an incredibly complex social trend to an overly simplistic analytical framework”).

226. Posting of Sewell Chan to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2007/08/14/is-gentrification-transforming-the-citys-public-spaces/> (Aug. 14, 2007, 12:29 EST).

227. See *id.*

neighborhood; on the other, gentrification may involve the intentional and unintentional displacement of low income residents who cannot afford rising housing costs, dilution of an area's cultural heritage, and removal of cultural artifacts.<sup>228</sup> Likewise, just as nonresidential gentrification may "clean up" neighborhoods by pricing out disfavored businesses such as pawnshops, liquor stores, and adult bookshops, it may also displace the not-so-objectionable small and independent businesses that invested in the neighborhood when larger chains and national businesses would not. Cultural transformation and economic reordering present a particularly difficult challenge for the sustainability calculus, particularly where the displaced jobs, new employment opportunities, transportation patterns, and other changes are not easily comparable. For instance, displaced businesses likely carried their own sustainability benefits by providing jobs particularly suitable to the local workforce,<sup>229</sup> supporting the local economy,<sup>230</sup> or supplying a local market with manufactured goods that would otherwise need to be transported by rail, road, barge, or plane.<sup>231</sup>

Balancing the benefits and risks of urban development and redevelopment has become more important in recent years, following an urban renaissance which has resulted in increased rents and rising popularity of industrial property conversions to higher value uses.<sup>232</sup> As the public has

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228. See, e.g., John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Dwellers of Color*, 46 HOW. L.J. 433, 444-46 (2003).

229. See Williams, *supra*, note 160 ("While Columbia has said the expansion would create 7,000 jobs, Mr. Reyes-Montblanc, the chairman of the community board, said he was skeptical about the sort of employment that would be offered. 'Most of the people in our community do not come close to the requirements for lab jobs,' he said. 'What's left are less desirable types of work, like janitorial jobs.'"); see also Stephen Clowney, *Invisible Businessman: Undermining Black Enterprise with Land Use Rules*, 2009 U. ILL. L. REV. 1061 (arguing that the types of businesses that present the most opportunities for black entrepreneurs, such as barber/beauty shops, bodegas, auto repair businesses, and second hand stores, are generally disfavored by land use decision makers). While Professor Clowney does not discuss the effects of gentrification on such businesses, it can be presumed that disfavored enterprises will face additional barriers to growth when gentrification begins.

230. See generally Institute for Local Self-Reliance, The New Rules Project, <http://www.newrules.org> (last visited Mar. 7, 2010).

231. See, e.g., Gratz, *supra* note 131 (discussing how small businesses skilled in restoration work have been priced out of New York City, with the result that "[o]ther states are now doing New York's work. Distance adds shipping costs, diminishes quality control, makes one less competitive, and is logistically more difficult.' It also increases traffic caused by delivery trucks and creates air pollution.").

232. See MAUREEN KENNEDY & PAUL LEONARD, DEALING WITH NEIGHBORHOOD CHANGE: A PRIMER ON GENTRIFICATION AND POLICY CHOICES 2 (2001), available at <http://www.brookings.edu/es/urban/gentrification/gentrification.pdf> (discussing the reasons for increased gentrification in the late 1990s: "First, the nation's strong economy creates great demand for labor and housing at the regional level, and in some cases this makes the

become more aware of and sensitive to the risks of gentrification, lawmakers and nonprofit organizations have also sought to develop various mitigation strategies. On the local government side, municipalities have adopted such tactics as inclusionary housing incentives and requirements,<sup>233</sup> housing trust funds,<sup>234</sup> chain retail limitations,<sup>235</sup> local and minority contracting goals,<sup>236</sup> and industrial preservation policies.<sup>237</sup> Community-based planning and incorporation of environmental justice principles into policy-making have helped to ensure that existing residents and business owners have the opportunity to participate in shaping the futures of their neighbor-

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housing in central cities and some inner suburbs newly attractive to more higher income newcomers. Second, the federal government, states, cities and non-profit organizations increasingly have the motivation, the resources and the specific policy levers and the overall strategies to direct revitalization efforts in targeted parts of central cities. Under some circumstances, these revitalization efforts can lead to gentrification. Third, in response to the increased concentration of poverty in the urban core of our nation's cities, public officials seek to reduce these concentrations by attracting higher income families into high-poverty neighborhoods or by helping some poor residents to move to other portions of the metropolis where poverty is less concentrated. Either way, these place-based and people-based strategies can result in gentrification."'). The pace of gentrification has also sped up because of the deregulation of thousands of public housing and low income units constructed during the urban renewal era and subject to time-limited affordability restrictions. *See, e.g.,* Roberts v. Tishman Speyer Props., L.P., 874 N.Y.S.2d 97 (App. Div. 2009), *aff'd*, 918 N.E.2d 900 (N.Y. 2009) (discussing the deregulation of rent stabilized units at the massive Stuyvesant Town development in Manhattan); *see also* Newman & Wyly, *supra* note 221 ("Thousands of units formerly controlled by state regulation have been lost to vacancy and luxury decontrol, which enable landlords to remove units from the regulated housing stock under certain conditions."').

233. While the City of New York does support inclusionary zoning programs, the City Council refused to mandate inclusionary housing for the Columbia expansion project. *See generally* Jenny Schuetz et al., *31 Flavors of Inclusionary Zoning: Comparing Policies from San Francisco, Washington, D.C. and Suburban Boston* (Furman Ctr. For Real Estate & Urban Policy, N.Y. Univ., Working Paper No. 08-02, 2008), (2008), available at <http://furmancenter.org/files/publications/31flavorsofIZ9-9-08.pdf>.

234. *See, e.g.,* Kalima Rose, *Beyond Gentrification: Tools for Equitable Development*, SHELTERFORCE ONLINE, May-June 2001, <http://www.nhi.org/online/issues/117/Rose.html> ("Housing trust funds, created by legislation that dedicates ongoing revenue streams to affordable housing, represent one of the most promising financing strategies for combating gentrification, particularly if they are used to provide housing that includes long-term affordability restrictions."').

235. *See, e.g.,* New Rules Staff, *Tackling the Problem of Commercial Gentrification*, NEW RULES PROJECT, Nov. 1, 2002, <http://www.newrules.org/retail/news/tackling-problem-commercial-gentrification>; *see also* Patrick McGeehan, *Now, Big-Name Retail Chains Will Take the Other Boroughs, Too*, N.Y. TIMES, Jan. 14, 2007, at A29, available at <http://www.nytimes.com/2007/01/14/nyregion/14chains.html>.

236. *See, e.g.,* Policy Link, *Minority Contracting—What is it?*, <http://www.policylink.info/EDTK/MinorityContracting/> (last visited Mar. 7, 2010).

237. *See, e.g.,* Margot L. Prado, *Industrial Land Preservation: Key to Green Jobs Growth*, RACE, POVERTY & THE ENV'T, Spring 2008, at 82, available at [http://urbanhabitat.org/files/15.Prado\\_.pdf](http://urbanhabitat.org/files/15.Prado_.pdf).



hoods.<sup>238</sup> At the same time, social justice and progressive development organizations have helped to address gentrification problems by creating community land trusts,<sup>239</sup> advocating for the enactment of inclusionary housing and employment policies,<sup>240</sup> and helping community coalitions to organize and negotiate CBAs.<sup>241</sup>

New York City has been subjected to intense gentrification pressures since the late 1990s.<sup>242</sup> Even in the post-housing bubble recession, a 2008 analysis of the New York City Housing and Vacancy Survey reported that the drop in real estate prices did not measurably improve rental affordability.<sup>243</sup> Harlem, adorned in old brownstones and a long history of disinvestment, has proven to be particularly fertile ground for gentrification.<sup>244</sup> In the process, despite benefitting from reinvestment and the resulting physical improvements “the new Harlem is a target of grievance among activists, small retailers, self-described artists, and others who argue that Harlem’s cultural identity is being wiped out. They contend that rehabilitation and the construction of new housing, combined with commercial development from Old Navy, Magic Johnson’s Theatres, Staples, Marshall’s, and even Bill Clinton’s office, have cost Harlem its unique African-American herit-

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238. See generally, *CBAs and Comprehensive Planning*, *supra* note 180.

239. See, e.g., Rhea Serna, *Tenants Plus Land Trust Beat Gentrification*, RACE, POVERTY & THE ENV’T, Spring 2008, at 36, available at [http://urbanhabitat.org/files/15.Serna\\_.pdf](http://urbanhabitat.org/files/15.Serna_.pdf).

240. See LAANE, *supra* note 183; KARA, *supra* note 183; SAJE, *supra* note 183; The Partnership for Working Families, <http://www.communitybenefits.org> (last visited Mar. 7, 2010).

241. See JULIAN GROSS ET AL., COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE (2005), available at <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>.

242. See Newman & Wyly, *supra* note 221 (“Many of these neighborhoods experienced some gentrification in the 1970s and 1980s, but respondents explained that the reinvestment that occurred towards the end of the 1990s and continues today is of a scale and pace that is unmatched historically. Gentrification since the late 1990s has transformed New York City, pushing into neighborhoods that had been devastated for decades. During this period, gentrification expanded beyond the neighborhoods with appealing housing stock and excellent transportation access, into those with considerably less desirable housing, challenging transportation connections and few amenities.”).

243. FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, KEY FINDINGS ON THE AFFORDABILITY OF RENTAL HOUSING FROM NEW YORK CITY’S HOUSING AND VACANCY SURVEY 2008, at 3 (2009), available at [http://furmancenter.org/files/Key\\_Findings\\_HVS\\_2008.pdf](http://furmancenter.org/files/Key_Findings_HVS_2008.pdf).

244. Then-presidential candidate Barack Obama recognized this change in a 2008 ServiceNation forum held at Columbia, remarking that “the neighborhood has changed. When I came here in 1980, you know, some of the apartments around here didn’t look quite what they look like today. And I could afford them then. I don’t think I can now.” ServiceNation Presidential Forum at Columbia University (Sept. 11, 2008) (transcript available at <http://www.clipsandcomment.com/2008/09/11/transcript-servicenation-presidential-forum-at-columbia-university/>); see also Timothy Williams, *In an Evolving Harlem, Newcomers Try to Fit in*, N.Y. TIMES, Sept. 7, 2008, at A33, available at [http://www.nytimes.com/2008/09/07/nyregion/07newcomers.html?\\_r=1](http://www.nytimes.com/2008/09/07/nyregion/07newcomers.html?_r=1).



age.”<sup>245</sup> Columbia has a history of being blamed for the gentrification of Harlem, particularly in the Morningside Heights neighborhood,<sup>246</sup> which makes Columbia an easy target for the gentrification claim in the expansion project. In response, Columbia has maintained that the expansion project will displace very few residents, and the FEIS estimated that fewer than 300 people living in the project footprint would be directly affected.<sup>247</sup> Opponents, however, have emphasized the impacts of *indirect* displacement, which could by some accounts affect upwards of 5,000 people.<sup>248</sup> Although predictions of displacement effects remain uncertain, and Columbia is not the sole driver of gentrification,<sup>249</sup> rental market changes in and near Manhattanville have already become apparent. Shortly after the expansion plans were announced, the management at 3333 Broadway, a massive apartment complex located adjacent to the footprint, decided that it would opt out of its affordable housing subsidy contract with New York State. Many believe that the move was made in anticipation of a coming

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245. Julia Vitullo-Martin, *Market Rate Housing Comes to Harlem*, THE MANHATTAN INST.'S CTR. FOR RETHINKING DEV., Feb. 2006, [http://www.manhattan-institute.org/email/crd\\_newsletter02-06.html](http://www.manhattan-institute.org/email/crd_newsletter02-06.html).

246. See, e.g., Manhattan Community Board #9, [http://www.cb9m.org/neighborhood\\_des.php](http://www.cb9m.org/neighborhood_des.php) (last visited Mar. 7, 2010) (noting that Morningside Heights is sometimes referred to as “White Harlem” and explaining that “[m]any of the apartment buildings and row houses [in Morningside Heights] were built for New York’s prosperous middle class, but by the mid-20th century the increasing prevalence of Single Room Occupancy (S.R.O.) hotels and their attendant socio-economic problems prompted Columbia to purchase much of the neighborhood’s real estate, leading to accusations of forced eviction and gentrification.”); STUDENT COAL. ON EXPANSION AND GENTRIFICATION, AFFORDABLE HOUSING AND COLUMBIA’S EXPANSION (2007), available at <http://www.columbia.edu/cu/cssn/expansion/infosheets/affordablehousing.pdf> (“Since 1968, Columbia has acquired and converted more than 6000 units of affordable, rent-regulated housing for institutional use.”).

247. See N.Y. CITY DEP’T OF CITY PLANNING, PROPOSED MANHATTANVILLE IN WEST HARLEM REZONING AND ACADEMIC MIXED-USE DEVELOPMENT 4-2 (2007), available at [http://www.nyc.gov/html/dcp/pdf/env\\_review/manhattanville/04.pdf](http://www.nyc.gov/html/dcp/pdf/env_review/manhattanville/04.pdf). Other estimates go up to 425; Victor Zapana & Raymond Carlson, *In a New York Minute, Aid vs. Displacement*, YALE DAILY NEWS, Jan. 25, 2008, <http://www.yaledailynews.com/news/city-news/2008/01/25/in-a-new-york-minute-aid-vs-displacement/>.

248. See, e.g., STUDENT COAL. ON EXPANSION AND GENTRIFICATION, *supra* note 246. Although opponents often cite 5000 as the number of Harlem residents threatened by indirect displacement, the environmental impact statement places that number at 3293. See N.Y. CITY DEP’T OF CITY PLANNING, *supra* note 247, at 4-89.

249. See Eviatar, *supra* note 148 (“Columbia’s arrival is only intensifying those fears. ‘Columbia is an important cog in the wheel that is driving gentrification in Harlem,’ says Nellie Bailey, executive director of the Harlem Tenants’ Council.”); Anna Phillips, *Tenants’ Fear Rises with Rent*, COLUM. SPECTATOR, Nov. 30, 2008, <http://www.columbiaspectator.com/2005/11/16/tenants-fear-rises-rent> (“Columbia’s decision to expand during a period of rapid gentrification makes it difficult to separate the effects of the University’s expansion from the consequences of city-wide redevelopment.”).

wave of higher-income Columbia-affiliated residents.<sup>250</sup> Another nearby apartment complex is also considering converting to market rates.<sup>251</sup> Gentrification pressures are expected to increase even more because of the city's decision in 2008 to up-zone 125th Street.

The gentrification fight in Manhattanville is not just about numbers, however. As in most gentrifying areas,<sup>252</sup> displacement in Manhattanville will disproportionately affect low income and minority households.<sup>253</sup> It may be too easy to say that questions of class and race arise where the space needs of an Ivy League school are being accommodated by displacing the powerless. Yet this is especially true in Harlem, one of the country's most important centers of black culture, even if the project footprint does not affect any famous landmarks of the Harlem Renaissance or the civil rights movement.<sup>254</sup> In this sense, the Columbia expansion reflects one of the most insidious aspects of urban renewal.<sup>255</sup> Furthermore, although Columbia may not intend to create gentrification refugees from an existing black and Latino community, the typical negative consequence of urban development is displacement; the issue must therefore be addressed in the sustainability framework.

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250. Tanveer Ali, *Harlem Building Ends Low Rent Program*, COLUM. SPECTATOR, Nov. 30, 2008, <http://www.columbiaspectator.com/2004/04/28/harlem-building-ends-low-rent-program>. Since then, low income tenants have complained about poor treatment from the landlord, who is hoping to eliminate the building's low income units so that they can be upgraded and rented at market rates. Katherine Meduski, *Residents of 3333 Broadway Face Two Worlds*, COLUM. SPECTATOR, Mar. 31, 2009, <http://www.columbiaspectator.com/2009/03/31/residents-3333-broadway-face-two-worlds>.

251. See Katherine Meduski, *Section 8 Tenants Fight for Affordable Housing*, COLUM. SPECTATOR, Sept. 15, 2009, <http://www.columbiaspectator.com/2009/09/14/section-8-tenants-fight-affordable-housing>.

252. See Powell & Spencer, *supra* note 228, at 436-37.

253. The environmental impact study estimated that the primary study area was composed of 29.4% African Americans and 52.3% Latinos, compared with 15.3% and 27.2%, respectively, for Manhattan, and 24.5% and 27.0%, respectively, for New York City as a whole. N.Y. CITY DEP'T OF CITY PLANNING, *supra* note 247, at 4-56 tbl.4-17.

254. For instance, the Cotton Club is located within the footprint, although it is not the original Cotton Club, which hosted such greats as Duke Ellington and Cab Calloway. See Erik Shilling, *Clubbed to Death: Modern-Day Cotton Club Faces Some Unsettling Developments*, VILLAGE VOICE, Nov. 20, 2007, <http://www.villagevoice.com/2007-11-20/news/clubbed-to-death/>.

255. Corey Kilgannon & Stacey Stowe, *State Officials Approve Expansion by Columbia*, N.Y. TIMES, Dec. 19, 2008, at A40, available at <http://www.nytimes.com/2008/12/19/nyregion/19columbia.html> ("Your boss, David Paterson, has sent a loud and clear message to black, Latino, and working-class people," [the executive director of the Harlem Tenants Council] said, "and that message is, 'Drop dead.'"); Trymaine Lee, *Bracing for the Lion*, N.Y. TIMES, July 22, 2007, at 14.1, available at <http://www.nytimes.com/2007/07/22/nyregion/thecity/22manh.html> ("Mr. Sprayregen, who is white, likened the expansion to a form of 'ethnic cleansing,' an attempt to rid the area of poor minorities to make way for a more affluent crowd.").

Columbia's part in the gentrification of Manhattanville will bring positive investments and improvements to a neighborhood that not so long ago was referred to as Murderville (close to nearby Cracksterdam).<sup>256</sup> Nevertheless, tension has grown from Columbia's claim that the expansion project will illustrate how to integrate the "town and gown."<sup>257</sup> Columbia has sought to assuage gentrification concerns by designing its new campus to incorporate space for ground floor retail, street improvements, tree plantings, and a partially vegetated square that will be centralized in the campus but accessible through pedestrian walkways.<sup>258</sup> Skepticism about the efforts relate to whether the isolation of the open space will connect the school to the community, but also whether the location of the open space is something that the community needs.<sup>259</sup> Likewise, it is argued that the long- and hard-fought battles to open the waterfront park in Manhattanville were futile, as the campus will separate the rest of the West Harlem community from the park.<sup>260</sup>

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256. Lee, *supra* note 255.

257. See, e.g., *id.* ("Ms. Henriquez knows where she stands. 'Columbia should work around us,' she said as she sat by the window that overlooks the factory. 'They say everything is for the students, for the students. What about us?'").

258. Columbia presents the open space concept as follows:

[T]he ground floors of all buildings along Broadway, Twelfth Avenue, and 125th Street will provide space for local businesses bringing needed amenities and jobs to the area.

....

Columbia's development of this area will add approximately 94,000 square feet of open space and will be implemented in consideration of other development projects that will affect the area, such as the new West Harlem Piers waterfront park. New trees planted along all cross streets between Broadway and Twelfth Avenue, as well as along those main thoroughfares, will add greenery to streets where it is currently lacking.

Manhattanville in West Harlem, Planning, Design & Construction – Design Goals, [http://neighbors.columbia.edu/pages/manplanning/proposed\\_plan/designGoals.html](http://neighbors.columbia.edu/pages/manplanning/proposed_plan/designGoals.html) (last visited Mar. 7, 2010).

259. See Eviatar, *supra* note 148 ("Kooperkamp, the Kentucky-born minister of St. Mary's Episcopal Church in West Harlem, was skeptical. 'You're talking about being a 21st-century university,' he recalls telling Piano. 'And this looks like 12th-century Christ Church Oxford. It's a quad. That's not a piazza. That's not open space for a community. If it were, it would be a big lawn on 125th Street or Broadway.'"); Posting of Cristina Maldonado to N.Y. Times City Room Blog, <http://cityroom.blogs.nytimes.com/2007/07/09/columbia-defends-its-proposed-harlem-expansion/> (July 9, 2007, 18:14 EST) (quoting a resident who said, "Will it invite the community? I'm not sure that it will.") (internal quotations omitted).

260. We Act for Environmental Justice, West Harlem Piers Park Project, <http://www.weact.org/Programs/SustainableDevelopment/WestHarlemWaterfrontParkProject/tabid/211/Default.aspx> (last visited Mar. 7, 2010); see also Eviatar, *supra* note 148 ("'Columbia is going to be between the community and the park,' says Peggy Shepard, executive director of We Act for Environmental Justice. 'Will people feel comfortable going over there, or will it be only for Columbia students?'").

The final sustainability analysis must focus on whether Columbia's development choice reflects, in a pluralistic fashion, a serious consideration for, and inclusion of, the people that will face the harshest impacts from the expansion. To this extent, Columbia emphasizes that it has committed to addressing effects of displacement in its proposed mitigation measures.<sup>261</sup> For instance, the removal of the historic Sheffield Farms Stable will be mitigated by creation of an interpretive exhibit somewhere on or near the site.<sup>262</sup> More to the point, it is anticipated that all of the residential tenants who are directly displaced by Columbia will receive relocation assistance as required by law,<sup>263</sup> and Columbia is offering to find equivalent or better units for them.<sup>264</sup> Columbia has proposed the creation of a \$20 million fund to mitigate displacement of housing, although the fund is not expected to fully account for the total impacts.<sup>265</sup> Still, relocation assistance must be judged against the "root shock" and subjective losses associated with forced removal, including the loss of one's community and a sense of powerlessness.<sup>266</sup> Of course, expressing (and even addressing) the needs of the displaced *as mitigation* should be considered a *last* resort in a pluralistic and participatory exercise such as sustainability: mitigation conveys the message that the interests of those bearing the impacts were not valued, that the project was designed without regard for the impacted interests, and that consideration for any remaining injuries is incidental, accidental, or an afterthought to the process. That is, mitigation is not *part* of a project, it is its penalty. Under a sustainability framework, the reliance on mitigation instead of inclusion should be considered a failure.

### CONCLUSION

While the temptation exists to label a project as sustainable or unsustainable, evaluating any major land development project against the wide ranging principles of sustainability is a challenge. Such a characterization demands a balancing of facts and competing perspectives, as well as an

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261. FEIS, *supra* note 119, app. L, at L-5.

262. *Id.* at L-6.

263. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1970).

264. *See, e.g.,* Anna Phillips, *Manhattanville Residents to Be Rehoused*, COLUM. SPECTATOR, Sept. 21, 2007, <http://www.columbiaspectator.com/2007/09/21/manhattanville-residents-be-rehoused>.

265. FEIS, *supra* note 119, app. L, at L-5.

266. *See generally* MINDY FULLILOVE, ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT (2004); *see also* Zapana & Carlson, *supra* note 247 ("I'm used to the area. I like the area," [Zuhair Khan, an eight-year resident of Manhattanville,] said in a phone interview. "But if Columbia takes it, I have no chance. On my own, I'll have no chance."").

analysis of stakeholder consensus on the relationship between the choices made and the meaning of sustainable practices in the particular context. This is never an easy task, as almost no major redevelopment project will satisfy all impacted stakeholders. Moreover, because the notion of sustainability has become so popular and powerful, any claims to have captured its title will be scrutinized. Columbia University's expansion project illustrates the challenges of sustainability. When the expansion is complete, we will need to revisit the questions of urban expansions and university sustainable practices to consider how history reveals the sustainability of both the project process and project outcomes, not just for the University's business interests, but for the larger societal needs and demands associated with equitable development.



