Planning for Privately Owned Public Space in the Greater Toronto Area

By

Nicholas Wood

Supervised by:

Dr. Ute Lehrer

A Major Paper submitted to the Faculty of Environmental Studies in partial fulfillment of

the requirements for the degree of Master in Environmental Studies

York University, Toronto, Ontario, Canada

Wednesday, January 17, 2018

FOREWORD

This Major Paper is the final piece needed to satisfy the requirements of the Plan of Study for the Master of Environmental Studies (Planning) Program in York University's Faculty of Environmental Studies. This paper brings together an analysis on Privately Owned Public Spaces (POPS) and interviews conducted with planners to explore the increasing presence of POPS in the Greater Toronto Area. It also utilizes the three components found in my Plan of Study: 1) Public Space and the Public Realm, 2) Privatization of Public Space, and 3) Planning Policy and Urban Design.

In Component 1, 'Public Space and the Public Realm', I endeavoured to understand how public space exists as a physical space as well as a social construction. This component allowed me to explore historical influences as well as current discussions in order to expand what is understood as public space. Additionally, this component has allowed me to understand how POPS exist as a form of public space, both physically, socially and symbolically. Each learning objective has offered opportunities to fulfil this critical aspect of my research. This paper adds to the objectives by examining the various aspects of public space, private space and the areas between.

Component 2, 'Privatization of Public Space', examines the multiple ways in which public space is privatized. Although this includes the presence of POPS, it also involves the addition of restrictions or impediments to other public infrastructure. This component was necessary to begin the examination of the emerging application of POPS in the Greater Toronto Area. The learning objectives serve to understand major themes as

well as the history of POPS through an examination of numerous experiences from around the world. This paper adds to the objectives by examining the privatization of public space from the context of the Greater Toronto Area.

Component 3, 'Planning Policy and Urban Design' serves to explore and deepen my understanding of planning regulations and how they are engineered to encourage or hinder activities and uses, namely within public space. The Learning Objectives associated with this component explored how the intention of planning policy and urban design can be for creating or improving public space but may also achieve opposite results. This was noted particularly through the examination of regulations regarding the use and design of POPS. This paper contributes to this objective by reviewing the formation of new policies and design guidelines developed to implement POPS.

ABSTRACT

Privately Owned Public Spaces (POPS) are public spaces which allow general access but remain under the ownership of the property owner. While popular around the world, they are becoming a visible entity in the landscapes of the Greater Toronto Area (GTA). The presence of POPS in downtown Toronto has been visible for several decades; however, cities located in the periphery of Toronto are beginning to adapt and create policies which allow for the creation of POPS. Although this integration is at its initial stage, with few spaces constructed and minimal policy preparation, there is a conscious intention to add this type of public space into the network of parkland and open space. Through interviews conducted with municipal planners, this research provides insight into the rationale and motivations of these cities to understand what is driving their pursuit of POPS. This research will contribute to the discussion on POPS from the context of an emerging market. As well, this paper offers recommendations which can assist municipalities preparing policies to regulate POPS.

ACKNOWLEDGEMENT

I would like to express my sincere gratitude for several key individuals whose involvement was crucial for the completion of this paper and my overall experience in the MES program. First to my advisor, Ray Rogers, who was a source of constant encouragement and support for my entire time at York. Second, to my supervisor, Ute Lehrer, whose patience, guidance and direction allowed me to complete this Major Paper (see you haven't failed entirely). Third, to the planners interviewed for this research, the information you have shared moved this topic from general interest to a worthwhile research focus. Fourth, to my parents, this paper is a direct result of your many sacrifices, you both have given so much for me to reach this goal. And most importantly, to my fiancée, Caitlin, without your love, support and care, I would not have been able to achieve this dream. Thank you all.

TABLE OF CONTENTS

FIGURES

CHAPTER 1: INTRODUCTION

In August 2016, the restaurant La Carnita, located in downtown Toronto, completed

renovations to expand a patio area with a fence separating the restaurant area from the

adjacent sidewalk (Vendeville, 2016). Although seemingly innocuous, this expansion

was problematic as the land that the new patio was built over was a Privately Owned

Public Space (POPS). These types of spaces allow public access but remain privately

owned. With the newly expanded patio area, non-customers were now prohibited from

the space and therefore the POPS became inaccessible and unusable. Although the

space eventually returned to its original form, the owner contended that they did receive

a building permit from the city to expand the outdoor patio. Through this story, several

common issues with POPS are highlighted.

Figure 1 - La Carnita Restaurant - Source: Marcus Oleniuk / Toronto Star (2016)

The first issue is that like many other cities in the world, Toronto is in the midst of a dramatic increase in population. This has resulted in rapidly rising land prices as well as and a lack of vacant land supply. This has also impacted the ability to create new public space, as land has become too costly or is simply unavailable. This has motivated the city to look to other means to create accessible space. One such method has been the utilization of POPS. Through this, private land owners make portions of their lands accessible to the public but retain ownership over them. Problems arise as cities risk losing control of the accessible lands, as was the case with the La Carnita restaurant, where the expanded patio resulted in a loss of publicly accessible space.

The second issue relates to the issuance of the building permit. Through the planning process, POPS can be created by the City and the property owner, who together establish that a portion of a development will allow public access. This agreement is then registered on title, binding both parties to the approved plans and the specific requirements for the space. The restaurant owner identified that the City permitted the construction of the patio area which suggests that the City had no knowledge or care that the space was to be publicly accessible. Had it not been for an engaged public, the area would have continued to operate as a patio. The implications of this are that if the City relies further on POPS for providing accessible space and does not possess a sufficient system of oversight then the future of publicly accessible space is in jeopardy.

This case is important and serves as an example of the issues which arise through involvement of private interests in public space. What adds to these challenges is the

increasing use of POPS in emerging cities. POPS are increasing in popularity due to their appeal as they seem to provide solutions to governments, challenged with increasing populations and rising demands for new parks and open spaces. However, the reliance on POPS for the creation of public space requires further investigation. As such, more analysis is needed to understand the impetus for the application of POPS in these new locations as well as the motivations of the private sector. Further studies need to understand how the spaces are to be structured and then enforced. The answers to these questions are essential, as the impacts could transcend the topic of POPS and spill into the greater public realm.

Case Studies and Research Context

This research will attempt to answer the above through the examination of several municipalities located in the Greater Toronto Area. The below sections will build upon a research already conducted on POPS (Kayden, 2000; Loukaitou-Sideris,1993; Low, 2006b; Nemeth, 2009). The existing literature has focussed on assessing spaces according to physical attributes including size, design and materials as well as critiquing POPS according to themes of access, exclusion, security, safety and management style. Within each of these themes, attention has largely been focused in the context of larger cities such as New York, San Francisco and London. However, little analysis has been conducted on the implementation of POPS in smaller cities. This research will contribute to the discussion on POPS by examining many of the above noted topics from the context of several GTA municipalities.

It is important to note that the selected cities only represent a limited number of municipalities and to develop a comprehensive understanding of POPS would require additional cities to be further examined. Additionally, the examined cities were selected through their willingness to participate by affiliated planners. The goal of this work is to inform the work already underway by many of these cities who are creating policies to regulate the future use of POPS as well as are fielding new proposals which are proposing POPS. By examining the current directions of these cities, analysis can be made to assist them on preparing policies which best address future challenges. The examined cities are as follows:

Mississauga

The City of Mississauga has limited experience with the creation of POPS. The first and only example was built following the 2016 expansion of the Square One Shopping Centre. What makes this space unique is the historical and planning context of Mississauga's downtown. As part of the provincial government's intention to regulate and restrict urban sprawl, the Places to Grow Growth Plan (2006) designated areas of cites, called Growth Centres, to accommodate the highest levels of residential and employment intensification. In Mississauga, this was located within the new downtown of the City, along Hurontario Street, from Highway 403 to the Queen Elizabeth Parkway (QEW). Since this designation, the City has witnessed the addition of an influx of residents and jobs leading to an increased demand on city infrastructure, such as parks. Since this growth area is largely privately owned, the City is challenged in the creation

of publicly owned parkland. As a result, Mississauga has been forced to rely on programs such as POPS to provide parks in its Growth Centre.

Markham

Markham is witnessing a transformation from suburban commuter town to an urban centre complete with a vibrant and multi-cultural community. In the midst of this evolution are also changes to resident lifestyles and preferences. To meet the new pastimes of Markham residents, all aspects of the City must evolve to accommodate new and different activities, including parks. To ensure planning policy meets these emerging needs, Markham is undergoing a Parks and Open Space Master Plan. This city-wide document is intended to update policies relating to parkland and to provide direction on where and how it is accommodated. A central aspect of the Plan will involve deepening the policy regarding POPS, largely in response to an increasing interest from the private sector. In the meantime, planning staff are forced to review development proposals without the benefit of appropriate planning policies.

Newmarket

Within the municipal boundaries of Newmarket, little undeveloped land remains available. This means that future development must occur as infill and intensification and be focused on underutilized parcels. In addition, the Newmarket Official Plan (2016), identifies within the next five to ten years the Town will need to grow vertically, rather than horizontally (Town of Newmarket, 2016). However, even though it is understood that Newmarket must evolve differently than in the past, the Town has yet to

witness the change occur. Although non-low density development will likely arrive, staff are currently looking to identify solutions to move the process ahead. One such opportunity includes the implementation of POPS as a tool to attract development.

Richmond Hill

Like many other municipalities in the GTA, Richmond Hill has and continues to devote a considerable amount of land to parks. There are multiple reasons for this including a large supply of undeveloped land as well as resident preference for grassy parks. This demand has been facilitated through many single-detached residential developments, which designed parks accordingly. However, following a seminal OMB case and decision, POPS are now permitted to count towards a developments parkland requirement, which allows developers to create accessible spaces but retain ownership. This will have future impacts on the provision of parks and open spaces in terms of access and management. As such, Richmond Hill provides useful insight into the ways POPS are becoming a common practice.

Oakville

POPS in Oakville are a relatively new experience but one which is increasingly becoming prevalent. Existing POPS spaces have been designed to serve purposes other than recreation or congregation including heritage preservation or for parking. However, this form is changing as well. Recent proposals include large, block developments which utilize POPS across the development boundary. This evolution is one which has yet to be critically explored and therefore helpful to this discussion.

Methodology

To retrieve data from the above cities, qualitative techniques were used. This included the examination of policy documents as well as interviews and field observation. Policy documents were used to provide background information on current regulations. These documents ranged from the Provincial level such as the Planning Act (2016) and the Growth Plan for the Greater Golden Horseshoe (2017), to site-specific documents such as the City of Mississauga Downtown Growth Area Park Provision Strategy (2014). In this research, the examination of regulations was necessary to understand the directions prioritized by the City or Town being analyzed.

Interviews were conducted with several planners, from multiple cities across the GTA, who have become involved directly or indirectly in the creation of POPS. As well, due to the infancy of their experience with POPS, the interviews provided insight into the early stages of their work. Although the planners are not identified by name, their comments are provided in quotations and are used to emphasize themes, rationale and motivations. By outlining the priorities of the municipalities, this research can begin to illustrate how future spaces will be created and the manners in which the policies will be structured. In some of the municipalities, several POPS already exist. In these cases, the discussions with the planners also reflected on the design and management. In the existing spaces, field observation was also utilized to understand the design, use, materials and features. It is important to note that the interviews were conducted with only municipal planners. Their perspective was relied upon due to their proximity to the POPS policy work. Although a private sector response may have offered valuable

insight, the creation of policies addressing or relating to POPS is only just occurring and would be best understood through conversation with municipal planners.

Structure of the Paper

This Major Paper has been organized into several sections, each of which builds upon the previous. The first involves the exploration of public space through various explanations. This is intended to introduce public space as well as provide a background to readers. The second section examines existing literature relating to themes of POPS which serves to inform readers on what POPS are as well as where they come from. The third section moves into discussing how POPS are used around the world. It is hoped that the compilation of these examples will shed light on common practices and concerns, so as to inform future applications. The fourth dives further into the application of POPS from the perspective of cities in the GTA which highlights key preferences from municipalities starting to integrate POPS into their planning framework. The concluding sections detail an analysis of the results gathered to identify commonalities or trends existing between the municipalities as well as provide important recommendations. Ultimately, the research aims to not only explore the use of POPS, but to also provide context and possible caution on the reliance of this method of public space creation.

CHAPTER 2: PUBLIC SPACE

POPS is a form of public space, as it allows the public to gain entry to areas which are privately owned. Access and ownership therefore are critical components within the literature of both POPS and public space. However, these concepts are only one of the ways in which public space can be explained. Ute Lehrer offers a useful categorization of public space, which groups the discussion into three points of reference, 1) physical space; addressing the material experience, 2) social space which speaks to the social practices and relations, and 3) symbolic space; pertaining to the 'remembrance' or imagery surrounding space (1998, p.203).These ways of thinking are helpful, as the literature on public space can exhibit biases or can prioritize certain elements over others. For the purposes of this research, this structuring of public space will be relied upon to dig deeper into understanding this topic.

Physical Space

The first mode of public space addresses the tangible and visible aspects. This often includes reference to the physical spaces such as streets, sidewalks, parks, boardwalks and trails. Explanation of the physical often includes reflections on urban design and use, whereby public spaces are described by the objects found within or by their arrangement. Definitions referencing the physical elements of public space have even been used to examine larger, societal components such as diversity or even the relationship amongst community members (Koutrolikou, 2012). Although these are significant aspects of the second method of explaining public space, they also underline the impacts that the physical components can have on a community.

The material aspects of public space can also reflect its ownership (Lehrer, 1998). Public space, in title, implies a parcel of land which is owned or operated by a larger agency or body. This collective administers the design and use of the space which is intended to serve all people and their various actions and activities. Similarly, POPS can be designed to illustrate its private ownership, through the activities it advertises as well as the signage within the space. POPS can often have a manicured appearance, particularly if the space is associated with other purposes such as to attract customers to adjacent retail or commercial businesses. The physical appearance of POPS therefore impacts how and who uses the space. It is important to note that although publicly owned spaces are intended to allow access and use by the entire public, many are often noted to feature materials and designs which create impediments to use (i.e. fences, benches, surveillance) (Lehrer, 1998).

The discussion on physical public space must also involve the impact of policy. As such, the regulatory regime can have an incredible influence on potential benefits or impacts to neighbourhoods. As well, it can also determine if the space is to act as a marketing tool or if it is intended to illustrate a certain level of safety and security (Koutrolikou, 2012). Cities design these policies in a way which also defines what is allowed and what is not (Palumbo, 2013, p.129). However, these changes largely normalize and legitimize both uses and users as a form of 'entry selection' (Palumbo, 2013, p.129). Through this preferential treatment to space, the policies enable the restriction of activities as well as access times, but more importantly they can overtly allow for the exclusion of certain

groups. In many instances, cities have developed polices which permit the legal

removal of certain groups or people on the basis that they are infringing on the

freedoms of others (Button, 2003). McCann argues that race is a vital category in the

production of space, where public spaces can be created with the intention of reducing

'uncomfortable' experiences between whites and people of colour but still attempt to

maintain an illusion of unity and homogeneity (1999, p.179). For the homeless, public

space is a critical aspect of their lives as it is where they sleep, eat and interact. Yet,

many cities have passed by-laws which are articulated to prevent loitering or to ensure

safety by allowing surveillance (Doherty et al., 2008). This has specific impact on how

the homeless are able to live out their lives as they are restricted from accessing public

spaces and are subject to different rules and regulations.

Cities are also utilizing measures and techniques to develop public spaces which

benefit the community. This includes the intentional removal of barriers such as steps or

the installation of better lighting (Schmidt et. al, 2011; Day, 1999). Spaces can also be

created to serve as linkages or to break-up large distances between green spaces. The

addition of seating is widely noted as a simple tool to increase the use of a public space

as well as achieve a positive quality of life, a general sense of conviviality and improve

human relationships (Project for Public Spaces, 2009; Gehl, 1987). Each of these

examples offers solutions through the use of design materials or features. When public

space is designed in a meaningful way, it can enhance socialization (Madanipour, 2003;

Mazzoleni, 1990; Whyte, 1980).

Social Space

The second method of explaining public space involves understanding how they are used. Matthew Carmona (2010) contributes to this conversation by offering that public space is for the encountering, exchanging and playfulness of individuals. These interactions represent the social elements of society where public space plays host to connections between the public. This also extends the setting of public space to a wider public arena such as library's, city halls as well as well as newspapers and the internet, as they too can facilitate interaction.

The evolution of how people interact in public space dates to ancient Greece, where the central market place, the Agora, was used for socializing and democratic activities (Madanipour, 2003). It was a meeting place for strangers, citizens, buyers or sellers which came to this location to converse on topics of politics, commerce or entertainment (Mitchell, 1995, p.116). However, to participate required one to be a male and own property. This meant that the *public* did not consist of women and workers, as they were unable to possess property (Crawford, 1995). Specific codes and rules have continued to be a central requirement for defining conduct or relations in these spaces. The Agora also highlights that public space can be defined as *social locations*. In this regard, Low and Smith recognize the existence of physical and material components, yet place a greater importance on the fluidity. It is believed that public space can exist wherever behaviours, practices or rules can occur, even if the space is found within the *spacelessness* (Low & Smith, 2006). It can therefore be an assortment of settings

including the park, the media, Internet, the shopping mall, the United Nations, national governments, and local neighbourhoods (2006, p.3).

The interactions which occur within public space can be impacted by governmental decisions. Meaning, how a space is used is determined through the objectives of the administrating body. For example, if safety in public space is prioritized, then activities which may be perceived as dangerous may be banned or surveillance may be desired. If improving the community's economy is preferred, then public spaces can be defined by controlling socialization in a manner which is conducive to the surrounding businesses. Through this type of strategy, public space becomes an integral part of a neighbourhood's 'consumer citizenship' (Fyfe, 2006).

This is also representative of how cities are now behaving more akin to private corporations (Madanipour et. al, 2013, p.3). Public space is one of the ways in which this occurs directly as developers understand that new public space can increase the number people visiting their development. This brings in even greater foot traffic to their shops and stores. Municipalities share this sentiment and will often anchor a neighbourhood redevelopment with a new public space. Additionally, municipalities will frequently utilize a public space to advertise the creation of an inclusive community but may fail to also identify that a central strategy of the space is to also attract sales (Loukaitou-Sideris, 1993; Zukin, 1998).

The increasing marketability of public spaces is also contributing to imbalances and differential treatment. In some areas, new plazas are built with artisan fountains and comfortable seating, while others contain nothing more than grass. This can be representative of the unequal delivery of public resources, where the profitability of some neighbourhoods may be more prioritized than others and argued to require better investment. This in turn impacts the appeal that some spaces have and therefore affect the types of interactions which are likely to occur.

It is also important to note, that many cities have planned communities around public spaces such as parks and squares, however many of these spaces have been designed according to a larger prescribed image. However, this desired aesthetic may only be representative of the emerging community and thereby eliminating past uses and previous groups. This perceived improvement may also come at the expense of already stigmatized and suffering residents, who may not be able to 'consume' the space as the marketing intends. This contributes to them being pushed out of the area, as they are unable to participate or believe they belong (Madanipour, 1999).

Although public space can be created in a manner which is unequal to all resident or can arrive at the expense of some residents, there is also a significant amount of research which has been completed which identifies that public spaces, particularly parks, can also benefit the economy. Research has been conducted which demonstrates that public space can lead to increased property value. This research identified that proximity to parks and open spaces would factor into the value of of

property (Lin, Wu & De Sousa, 2013; Jim & Chen, 2010). This and similar research has incentivized many cities to create parks and open spaces with the purpose of increasing the value of the surrounding properties (Zukin, 2009). To ensure that the properties continue to capture that value, Business Improvement Districts (BIDs) or local development corporations are formed to take over the maintenance and management of public spaces. Often, these organizations will then implement policies and regulations to control uses and restrict behaviours (Zukin, 2009). This limits how spaces are used to activities which promote competiveness or increase property value.

Symbolic Space

The third type of public space exists as both real and imagined and wades into the conceptual (Lehrer, 1998). This means that public space can include both the tangible, such as a park, and also the intangible, such as the internet. Additionally, public space as symbolic illustrates the meanings that can be attached to physical space. This means that public space can serve as more than a place to sit but also as emblematic, as memories and emotions can be tied to it.

Examples of this classification of public space are best described following protests or riots which occur in parks or squares. Through the events and actions which result from the protest, certain emotions or sentiments can become attached to the space. This can add new meanings or change previous ones through the events which have unfolded in the space. This is a common occurrence and has been witnessed time and time again. A notable example is found in Zuccotti Park in New York City during the time of the

2011 Occupy Wall Street movement. The park, prior to the protests, represented the control and order of the financial industry. Following the occupations, it took on a physical manifestation of resistance to economic inequality. Zuccotti Park therefore illustrates that parks and public spaces can be subject to redefinition. This occurs when the interpretation of the space changes from its past conception. As interactions force new definitions of the space, how it is viewed is transformed.

The application of the three categories of explaining public space helps to better articulate public space by distinguishing practices, regulations and memories (Lehrer, 1998). However, to understand public space further dialogue on private space is also needed.

Private Space

Private space can be understood as lands not under the ownership of a government or a collective group (Mitchell & Staeheli, 2006). In many ways the definition of private space is also explained through its relationship with public space, as each cannot exist without the other. This is observed in numerous locations including where sidewalks or streets are located adjacent to private property or where large redevelopments propose new public spaces within a private community (Mitchell & Staeheli, 2006). This relationship has been constantly reinforced and contains considerable historical context which has influenced how public and private space is currently understood.

In the nineteenth century, the rise of capitalism and secularism led to the notion of the

family as a refuge (Sennett, 1976). This contributed to a decline in public life as the

perception of the home gradually became an area of safety away from the dangers

found in urban centres. More and more of the population withdrew into the home, which

saw less investment given to the public aspects of life, such as parks. The streets and

squares were replaced with larger homes and became places to move through, not to

be in (Sennett, 1976, p.14). This led to a deteriorating public realm, which compounded

the role of private interests in public space as it was believed that it could best ensure

order.

The 1950's saw the popularization of suburban developments across North America.

This timing was aligned with the mentality that that the downtown was dangerous and

resulted in less investment being provided to the area, causing even further blight

(Hayden, 2006). The development of strip malls, which accompanied the suburbs, were

built on the outskirts of the city and were largely accessible by the automobile. They

effectively replaced the public street and sidewalks of the downtown centre with

walkways and aisles of an enclosed mall. The impact of this is still seen today where the

public continues to use shopping malls to perform many public actions and activities

(Kohn, 2004). Ultimately, this period of city building had dramatic impact on how public

space and private space is interpreted.

In the 1970s and 1980's, disinvestment from public services like public space became

commonplace amongst North American cities. At this time, governments acted under

the pretense that the individual right was more valued then the collective good. Therefore, disassembling public space became a central strategy to ensure that the individual rights were protected and private space flourished (Low & Smith, 2006). Even today, uneven development is commonplace and can occur when some areas receive less attention or less investment by both private developers as well as city governments. This has also brought a rise in the privatization of public space where it is believed that the maintenance and ownership of parks and open spaces is most aptly serviced by private companies or private owners. The outcome of this saw greater restrictions of use, installation of security cameras, transference of public air rights as well as easements restricting access to public lands (Low, 2006a).

The events of September 11th, 2001 are linked to an increase in fear in public space (Kayden, 2000; Nemeth, 2010). In response to the attacks in New York, arrived an even greater appetite for ensuring the safety of citizens, as public space was seen as the most likely setting for further danger (Low & Smith, 2006). This had direct impacts on the management and use of public space which became privately controlled and highly restricted. The justification was that it allowed authorities to have a physical presence as well as a symbolic presence to demonstrate that the public did not need to live in fear. The methods in which the spaces were secured varied but included restrictions to access, installation of design features such as bollards and fences as well as restrictions to behaviours and activities (Nemeth, 2010).

Many of these events have influenced how private space defines rules of access,

permitted behaviours, methods of entry, and the demarcation between public and

private spaces (Low & Smith, 2006b). As indicated above, public space possesses

varying levels of *publicness*, where even some publicly owned spaces can exhibit

aspects of *privateness*. For example, many public spaces can be publicly owned but are

restricted with limits to access during certain times or possess barriers which impede

people with physical limitations.

Much has been written on distinguishing public space from private space. Feminist

geography maintains that a gendered division between public and private spheres

exists (Bondi, 1998). Although this line of thought dates back to the 19th century, where

the intentional separation of the spheres led to the exclusion of women from the *polity,* it

is also evident in the distinction between the city and the suburb (Bondi, 1998). The

public domain of the urban center was conceived as masculine while the suburb came

to be associated with middle-class domesticity and femininity (Bondi, 1998, p.161). The

separation of the spheres has had lasting impacts on the behaviours and level of

access for women, and is argued to still exist as a major influence in urban planning

(Bondi, 1998).

In isolating the differences between public and private, some attempts to do so can

unconsciously highlight certain elements over others or mean several things at once

(Sheller & Urry, 2003). To avoid this, Weintraub (1997) summarizes the differences

between public and private to four fields. The first is the liberal-economist model, which

focuses on the distinction between the state administration and the market economy. In this field the state is presumed to act on behalf of the public, while economic actors support their own interests (Sheller & Urry, 2003, p.109). Inclusion and exclusion are determined by the state for both private and public, through laws and contracts. The second is the civic perspective, which sees the public as the arena of political community and citizenship, as distinct from the both the state and the market. The private sphere is thereby viewed as the individual private citizens who participate in the greater civil society (Sheller & Urry, 2003). The third identifies the public life perspective, which focuses on the fluid and polymorphous sphere of sociability. Here, the private is understood as more situated in private life and demarcated by private space where inclusion and exclusion are determined through social relations and the divisions between different spaces (Sheller & Urry, 2003). Each of these methods are important because they help visualize that public space is fluid. It changes according to applicable regulations, organizational ties, uses and perception. In the context of this research, this helps understand how POPS exists within public space.

The difference between public and private also highlight areas where they appear to blur. This *greying* of public and private space can occur in multiple ways including within the home as it is often perceived as a private space for private actions but can also exhibit traits of public space, such as by accessing the internet. As well, religious or cultural centres can exist in both the public and private as they often operate with an open-door policy but also can restrict access to those who have differences in belief. As well, some of these centres can receive forms of public funding but only allow select

28

participation (Koutrolikou, 2012). Shopping malls are privately owned, yet much of public life frequently occurs inside its walls (Kohn, 2005). Everyday actions such as conversing and congregating can occur in shopping malls. Public institutions such as libraries and community centres often operate inside (Kohn, 2004).

Privacy

An integral element of private space is the concept of privacy. While discussions surrounding this vary, privacy often refers to the 'intrusion upon an individual's seclusion, solitude or private affairs (Wacks, 1993: xv). This includes the understanding of the right to be left alone and the protection against the misuse of individual information. However, this element is crucial to differentiating between private and public space.

Privacy is historically linked to property and land and highlights issues with trespassing and nuisance (Madanipour, 2003). Particularly in North America, the mindset of private property ownership has perpetuated the importance of maintaining ownership as a human right. The roots of this originate in medieval times, where the rich possessed property and the poor lived in decrepit conditions. Within the bourgeois house, privacy was therefore seen as an achievement of status and associated with family and comfort (Madanipour, 2003).

However, in the context of this research the discussion of privacy transcends property ownership and into the level of intrusion which many experience in both private and

public space. This can include the monitoring of internet use or the installation of CCTV cameras in parks. Yet, because some are able to benefit from property ownership, there is room for protection against further intrusion by controlling ones personal environment. For those who are homeless or live in poverty, there are fewer opportunities to escape this realm of constant monitoring either with surveillance cameras or in their use of government-supported housing (Madanipour, 2003).

Ultimately, public space is more than a physical space. It is also the location of where social interactions have and continue to occur. Through events both influential and not, public spaces become perceived as something more and can represent elements of society. Yet, public space is also delineated by private space, as they are not mutually exclusive. Here, elements of privacy and individualism can be seen. Each of these components is critical in understanding how POPS are developed.

CHAPTER 3: PRIVATELY OWNED PUBLIC SPACE

In the previous sections, public space was examined to understand its various

components and relationship with private space. Through this we can understand that

public space exists on a spectrum with multiple levels of ownership and types of access.

As such, the following looks to explore major discussions for one aspect of publicly

accessible space, Privately Owned Public Spaces (POPS).

POPS

Jerold Kayden (2000), in *Privately Owned Public Space: the New York City Experience,*

defines POPS as the following:

> "Privately Owned" refers to the legal status of the land and/or building on or in
>
> which the public space is located. Owners would continue to control overall
>
> access and use of their private property and the public as a whole could not
>
> secure rights of access and use without the owner's express permission. Thus, it
>
> is a "Public Space" rather than public property in this case since it is not owned
>
> by the city." (Kayden p.1, 2000)

> "Public Space" means a physical place located on private property to which the
>
> owner has granted legally binding rights of access and use to members of the
>
> public. Ownership continues to reside with the private owner. Public space may
>
> be thought of as an easement held by the public on the owner's property."
>
> (Kayden p.1, 2000)

By separating these two elements of POPS, Kayden highlights the importance of both as equal. This is necessary because each are crucial to grasping that although the spaces are legally required to permit access, they still remain under the ownership of the private property owner. The definition also highlights the distinction from publicly owned public space. Meaning, the configuration, materials, as well as the regulations which govern the use, are introduced and maintained by the private property owner and not a public organization or agency (Nemeth, 2009). Furthermore, publicly owned accessible space is public property which can be accessible by the public and is administered through city-wide policies.

The level of management and type of access can also differ between various types of POPS, which can arrive in numerous forms. The spaces can be entrance squares, corporate plazas, atriums, connections or parkettes as well as others. The spaces can be either internal or external and can also be enclosed or open to the outside. POPS can be created as part of residential, office, or retail developments or as part of shopping malls and museums. As the private landowner maintains ownership of the lands, each individual POPS can offer varying levels of management and access, including allowing use at different times or allowing entry to select groups (Nemeth and Schmidt, 2011).

What is the Intent?

POPS are created as extensions of redevelopment projects, typically during the negotiation aspect of the planning process. They are often found within dense urban

centres, where land prices can be too high for the creation of public space. Additionally, these areas often have limited supplies of the land available for the creation or expansion of public parks. For both of these reasons, POPS can be utilized as a tool to generate new accessible spaces without the need to purchase land. Generally, a city will offer an incentive for the provision of accessible space, often calculated through a Floor Area Ratio (FAR) or other bonusing calculations. However, the motivations for the space can range from project to project as well as from city to city.

Often, POPS are created in response to the urban environments inability to provide space for the public to sit, congregate or move (Nemeth, 2009). In most cases, cities will allow developers to provide the spaces in exchange for increased density or floor area as the presence of unavailable land, high cost of property, or an increased demand for public amenities is too great (Moore, 2013). As well, many applications of POPS are intended to augment the existing public space network. The rationale of this is that POPS are believed to be able to complement other public spaces by acting as entry points or gateways to other publicly owned parks and open spaces. POPS can also link parks and open spaces together to create a greater network. As they can arrive in the form of pedestrian connections which encourage movement between blocks or sections of the city. In the City of Toronto, these connections as well as other types of POPS serve to connect users to other public spaces such as parks (City of Toronto, 2014b). In this use of POPS, planners stress that they are not to replace other public spaces but instead are a means to provide additional land for residents, workers and shoppers to access.

Finally, and confirmed through this research, POPS can serve as tools for intensification. Cities, including several featured below, can be directed by overarching policies to mandate the increase of residential and employment populations. To ensure that the established densities are met, planners frequently look to new ways to incentivize development to achieve these standards. POPS can accomplish these objectives as they act as tools to attract higher density developments through their ability to reduce costs as well as satisfy other development related requirements such as parkland dedication.

Other forms

For this research, POPS refer to parks and other similar spaces. It is important to recognize this because there are other types of private public spaces. One such type is Strata Parks which are also publicly accessible but typically are built over other private facilities such as parking garages or mechanical rooms. The land that these spaces occupy can be conveyed to the city but the surrounding lands as well as underneath the space remains privately owned. In many cases, where the land becomes public is strictly defined through legal agreements registered on title. As well, any repairs or redevelopments of the structure below often come at the expense of the park above. For example, once the parking garage or mechanical room reaches the end of its life period or requires replacement, the publicly accessible space will have to be removed either partially or completely. The removal of the facility also means the replacement of the park features above, including trees which may have reached maturity.

Another form of private public space is the grade-separated, enclosed tunnels or skyways which exist within many major cities in North America. These connections link large areas of the city, typically in the downtown, and allow for pedestrian navigation uninterrupted by weather patterns or seasonal changes (Byers, 1998). Although these spaces allow access and use by the public, they remain under private ownership and are negotiated during the approvals of a redevelopment. These spaces can be found in Toronto, Calgary, New York and Houston and sometimes operate as large-scale shopping malls due to the rules and regulations. Like POPS, the skyways are administered by the building owner or the surrounding commercial businesses. Although they offer benefits to cities with variable weather patterns, these quasi-public spaces are also criticized as they can remove pedestrians from walking past street-front retail as well as push unconstrained levels of goods in spaces intended for public use (Byers, 1998; Whyte, 1977).

Regulatory Regime in Ontario

POPS in Ontario are subject to several levels of policy documents, ranging in scale from Provincial-wide plans to neighbourhood specific guidelines. The provincial level documents are high-level and exist to administer general practices. These include The Planning Act (2016) and the Provincial Policy Statement (2015). Next in the hierarchy, POPS receive specific direction at the local context, through Official Plans and Urban Design Guidelines which can provide direction on size, location and type. To illustrate

the various documents which prescribe policy relevant to POPS in Ontario, the following summarizes many of the central documents to highlight their relevance.

The Planning Act (2016)

The Planning Act was established in 1946 and was one of the first provincial statutes in Canada to regulate land use on private and municipal lands (Penfold, 1998). Since that time the Planning Act has witnessed numerous reviews and amendments. The Act serves to provide the primary land use planning policy within Ontario. It also prescribes the tools and actions available to municipalities for controlling development, including the administration of parkland and public space. In the current iteration of the Act, the policies of relevance to POPS are found in Section 37 and 42, which address bonusing and the conveyance of land for parks, respectively.

Section 37

Within the Planning Act (2016), Section 37 provides the required polices for regulating the exchange of provisions for additional height and density. The policies allow municipalities to approve increases in height or density to development proposals in exchange for the provision of 'facilities, services or matters' or cash contributions (Ministry of Municipal Affairs, 2016). The Act allows municipalities to determine what 'facilities, services or matters' including whether that pertains to the provision of POPS. The aim of Section 37 is for the municipality to receive community benefits to the local area where the development is located. This means that if POPS are provided, they

must have an appropriate geographic relationship with area that the increase in height or density is proposed in (City of Toronto, 2007).

To incorporate such policies, municipalities must first pass by-laws which amend the Official Plan and outline how the bonusing is to proceed. As well, the policies require that to permit the additional height or density, the City and property owner must enter into a Section 37 'agreement'. This arrangement secures the terms of the exchange and is registered on title (Ministry of Municipal Affairs, 2016). Although the Planning Act identifies that exchanges can occur for the provision of 'facilities, services or matters', it does not define what these are. As mentioned, the Province leaves that to the individual municipalities to identify what they wish to permit. This can include a variety of items such as community centres, day cares or POPS.

Cities who have adopted Section 37 policies are able to establish rates which outline the size of the additional height and/or density as well as the size of the POPS. For example, the formula could grant an additional 30% of floor area if an arcade or plaza is built to a minimum size of 500 square metres. However, the implementation of such a standard is optional. In the City of Toronto, there is no such formula; instead the exchange is calculated on a site by site basis, through direct discussion between Planning staff, the proponent and the local Councillor.

This section in the Planning Act is also important because this is a central way in which POPS can be generated. In Toronto, the City has allowed the creation of capital

facilities or the cash contribution for parkland and/or park improvements, in exchange

for additional height and/or density (City of Toronto, 2015). If it can be determined that

there is demonstrable need for additional public space, a Section 37 bonus can be

awarded. To do this the City must outline where and how much accessible space is

needed for that immediate community (Gladki Planning Associates, 2014).

Section 42

In the Planning Act (2016), Section 42 provides direction on how municipalities can

acquire parkland. Cities are authorized to accept the conveyance of land or cash-in-lieu

for parks or other public recreational purposes through development applications

(Ministry of Municipal Affairs, 2016). This section stipulates that municipalities can

acquire a maximum of 2% of the land total from commercial or industrial proposals as

well as a maximum of 5% from all other developments (Ministry of Municipal Affairs,

2016). As well, cities can also receive cash-in-lieu, instead of the conveyance of land.

This is determined through an appraisal which identifies the appropriate amount of

funds in accordance with the size and type of development. The monies are then

distributed to the ward or used to create new or improve existing parks or public

recreational facilities (Ministry of Municipal Affairs, 2016).

In December 2015, the Province implemented Bill 73, titled *Smart Growth for Our*

Communities Act, 2015. This amended both the Planning Act as well as the

Development Charges Act and added provisions outlining a new, 'alternative' parkland

dedication rate (amongst others changes). The revisions allowed municipalities to

acquire parkland from residential developments at a rate of 1 hectare per 300 dwelling

units. As well, municipalities were now required to complete a 'parks study', in order to quantify existing and future parkland needs (Ministry of Municipal Affairs, 2016).

Provincial Policy Statement (2015)

The Province further directs the use of land in Ontario through the Provincial Policy Statement (PPS). The intention of this document is to provide the directions and priorities of the government as they relate to land use and 'matters of provincial interest' (Ministry of Municipal Affairs, 2015). Within the PPS, a framework is established which ensures that all cities adhere to a common approach of orderly growth and development (Ministry of Municipal Affairs, 2015). All planning policies, documents and decisions must 'conform to' the provisions of the PPS or, at the very least, 'not conflict with' the PPS (Ministry of Municipal Affairs, 2015). To ensure this, municipalities must carry out the mandates provided within the PPS to ensure the creation of healthy, liveable and sustainable communities (Ministry of Municipal Affairs, 2015). Through this, cities are to provide spaces which are safe, meet the needs of pedestrians and foster social interaction and community connectivity (Policy 1.5.1a) (Ministry of Municipal Affairs, 2015). Cities are also responsible for providing and distributing publicly-accessible facilities like parklands, public spaces, open space areas, trails and linkages (Policy 1.5.1b) (Ministry of Municipal Affairs, 2015).

Growth Plan for the Greater Golden Horseshoe (2006)

The Province has implemented the Growth Plan for the Greater Golden Horseshoe (Growth Plan) to advance the development of complete communities in areas of Ontario

largely located around Lake Ontario (Ministry of Municipal Affairs, 2013). This Growth Plan was adopted to assist municipalities facing increasing demands in creating 'stronger, prosperous, communities' as well as to prevent urban sprawl (Ministry of Municipal Affairs, 2013). This is to be achieved through the management of appropriate development and the creation of collaborative decision-making processes. Additionally, the Growth Plan highlights the geographic locations which are to support the highest levels of population and employment as well as provide policies on other land-uses, transportation, infrastructure, urban form and housing (Ministry of Municipal Affairs, 2013)..

The Growth Plan designates specific areas as 'Urban Growth Centres' (Ministry of Municipal Affairs, 2013). These are anticipated to possess the highest level of intensification while still ensuring the strategic delivery of population and employment alongside institutional, cultural and transit advancements (Ministry of Municipal Affairs, 2013). Most relevant to this research is that these areas are also anticipated to provide high quality, public open spaces. Furthermore, the Growth Plan directs cities to create spaces according to high-quality design and to create attractive and vibrant neighbourhoods (Ministry of Municipal Affairs, 2013).

In May 2017, the Province released an update to the Growth Plan which included several key changes to density requirements which are aimed at furthering the goal of directing growth within urban boundaries and preventing unnecessary sprawl. Some of the new policies include:

- Increasing intensification targets with 60 percent of residential development

  directed to built-up areas;

- Increasing density targets for designated Greenfield Areas to 80 residents and

  jobs per hectare;

- Requiring minimum density targets for major transit station areas ranging from

  200 residents and jobs per hectare for areas served by subways to 150 residents

  and jobs per hectare for areas served by the GO Transit rail network;

- Requiring all conversions from employment uses to be approved by the Province;

  and,

- Introduction of the 'prime employment area' designation to protect areas for

  employment that require high amounts of land or have low employment densities.

These changes are identified to update the provincial plan in order to support

intensification and increase environmental protections (Ministry of Municipal Affairs,

2017b).

Ontario Municipal Board

Although not a document or plan, the Ontario Municipal Board (OMB) serves as critical

determinant on the use of POPS. The OMB is an independent tribunal which makes

decisions on issues of land use and others. This means that the OMB reviews decisions

made by Municipal Councils on planning applications and examines supporting

evidence, then issues decisions. The OMB also administers the roles and

responsibilities for decision-makers, applicants and the public as well as establishes

opportunities for dispute resolution (Government of Ontario, 2017). Often, when

mediating a land use decision, the OMB will enable the use of tools to assist with arriving at a resolution. Recently, POPS have been utilized for this purpose, especially during cases relating to parkland dedication.

In May 2017, the Province outlined several critical revisions to the role and function of the OMB. One of the central changes included its replacement with a different body, known as the Local Planning Approval Tribunal (TPAT). This new resolution system will operate with reduced powers, as greater support has been given to local and provincial decisions during appealed applications. This is intended to bestow increased control to elected officials by exempting a broader range of municipal land use decisions from appeal, and supporting a clearer and timelier decision making process (Government of Ontario, 2017).

A central reason for the change revolves around the ability for the OMB to review each application as *de novo*, meaning starting anew (Donnelly, 2017). Through this, the OMB can conduct hearings with limited consideration to the decisions made by municipal councils. Although, the Planning Act requires that Board Members 'have regard' to the decision of councils, the OMB operates independently and issues decisions based upon presented evidence (Donelly, 2017). These powers are largely criticized for providing unfair advantages to developers, as their access to resources can exceed the abilities of many municipalities, neighbourhood groups or civil society. Most notably, a case regarding new parkland policies in the Town of Richmond Hill, resulted in the permission to use POPS towards parkland dedication requirements.

In 2013, the Town of Richmond Hill established a Parks Plan identifying existing levels of parkland as well as future needs. As well, the Town adopted a new requirement of 1 hectare of land for every 300 residential units or 1 hectare for every 730 new residents, as permitted by the Planning Act. This decision was subsequently appealed to the OMB, which concluded that the rate was too high and acted as a 'disincentive' to high-density development (Tang, 2016). Furthermore, the OMB imposed a cap on the maximum amount of parkland dedication that the Town could require. In response, the decision was brought to the Ontario Court of Appeal which determined that the OMB had overstepped their authority and that the Town should be able to determine the amount of parkland required to satisfy the needs of the current and future population, as outlined in the Planning Act (Tang, 2016). However, all of the OMB decisions were not overturned. One that was maintained was that POPS could count towards parkland dedication requirements. This meant that if a proposal was to be brought forward with a POPS, it could be calculated as part of the land to be conveyed to the City for parkland or act as a credit to funds needed for cash-in-lieu (Tang, 2016). This is important as it set a precedent for other municipalities in Ontario.

Official Plan

The central guiding document that illustrates how a municipality will evolve its land use structure is the Official Plan. Within an Official Plan, sections can often be found which regulate land use, density allowance, urban boundary as well as outlines strategies for transportation, infrastructure and the creation of parkland such as POPS. The Official

Plan can direct the use of POPS through regulations directing types, designs, hours of operation and permitted locations. For example, the City of Toronto Official Plan regulates POPS in two sections, the Green Space System (Sec. 2.3.2) and Parks and Open Spaces (Sec. 3.2.3) (City of Toronto, 2015). Within these parts the Official Plan provides only general direction on the application POPS and offers few policies which directly address the use of POPS. In Markham, the Official Plan policies directs the use of POPS through policies found in the Parkland Dedication section (Sec. 4.3) as well as within sections on Urban Design (Sec. 6.1) (City of Markham, 2014).

Urban Design Guidelines

Often, policies which direct the creation and design of POPS are included within Urban Design Guidelines. Although not every municipality possesses such documents, they work to implement the directions of the Official Plan and can establish a framework or outline a specific vision. Within these documents, cities will address urban design issues by including objectives or development standards for a specific neighbourhood or section of the City. Alternatively, the guidelines can also be designed to be applied city-wide, as is the case for the City of Toronto. In Toronto, the *Urban Design Guidelines for Privately Owned Publicly-Accessible Spaces* provides the approach and directions for POPS across the city. The guidelines assist developers during the design stage and address several aspects including recommendations for layout, linkages, materials and signage (City of Toronto, 2014b). The City of Vaughan has also developed Urban Design Guidelines for the Secondary Plan area of the Vaughan Metropolitan Centre, which is intended to accommodate the highest levels of density and growth (City of

Vaughan, 2016b). The policies within these guidelines are specific to only a portion of the City and future guidelines for others areas may be developed similarly.

Site Plan Agreements

The final aspect of the planning process which affects the implementation of POPS is the Site Plan Agreement. In all development projects, before construction can occur a Site Plan Agreement is created to bind the owner to the proposed development. This agreement outlines the approved design as well as construction methods and securities, which protect the interests of the City. Within this agreement, the specific terms, designs and even security measures of a POPS can be included. When approved, the agreement becomes legally binding to the owner and property. However, numerous reports have detailed experiences where landowners or property managers have removed features or reduced access to POPS, despite being required by registered Site Plan Agreements. As noted in the case above, a POPS located in downtown Toronto was converted into a patio by the adjacent restaurant owner (Vendeville, 2016). Although the restaurant eventually removed the patio and fence, the public was restricted from accessing the space for a period of time, thus questioning the protection that Site Plan Agreements are thought to provide.

In many cases, the agreements signed between the City and the development proponent include provisions detailing the activities that can and cannot occur as well as the hours of operation that the space is accessible. While this is largely argued to ensure the safety of users, it can also translate into the exclusion of certain groups (White, 1996; Doherty

et al., 2008). Additionally, it is very common for spaces to include signage which serves as a reminder of the uses not permitted. The prohibited uses can range from loitering to skateboarding, but can also include panhandling, running or even sitting (White, 1996).

As conveyed above, there is a considerable amount of direction which regulate POPS. This begins at the provincial level where policy is established to highlight how public space is created as a whole. The importance of public space to all communities becomes evident in the regulations found in the PPS and the Growth Plan. Yet these documents also show that it is at the local and neighbourhood context that POPS are truly regulated. From the Official Plan, Urban Design Guidelines and Site Plan Agreements, POPS are clearly a manifestation of community planning policy. As such, it is important that the rules affecting POPS are clear and consistent, so as to prevent any future challenges.

CHAPTER 4: LITERATURE REVIEW

In the previous chapter, public space was deconstructed to develop a more comprehensive understanding and to highlight how POPS exists as a form of public space. It is understood that like parks, POPS can elicit particular social interactions or act as physical manifestations of past important events. However, to further expand on POPS we can look to an exhaustive list of research already undertaken and which includes perspectives from a variety of disciplines, including urban design, public policy, architecture, sociology and economics. Existing research ranges in topic, from exploring the impacts of POPS, assessing management approaches and acknowledging their contributions, to name a few. The following will outline several key themes, intrinsic to the examination of POPS.

Privatization

POPS are but one example in which public space has become privatized. As discussed in the previous sections, privatization can occur through the sale of public lands to private interests or even by the redesign of public lands that limits access or use (Low, 2006). These actions can become formalized through legal and economic actions including the registration of easements or agreements that specifically dictate certain activities may no longer be permitted. However, there are also normative ways in which public space becomes privatized. These include policy or regulatory changes which bestow a greater role to private entities such as the employment of security officials in community centres, the privatization of garbage removal or beautification projects, all of which are common and have historical precedent.

The privatization of public space is evident, particularly through the implementation of Business Improvement Districts (BIDs). These bodies are often put in place by neighbourhood organizations for the purpose of making capital improvements or enhancements to an area. Often, BIDs are directed to maintain a high standard of maintenance in public spaces. To address this type of direction, BID's have been noted to restrict the use of public space under the guise of preservation or beautification (Low, 2006).

The argument supporting the privatization of public space often follows a discourse where private involvement can improve the area and return the space to an attractive or orderly state. The rationale behind this is that many public spaces are perceived to be in need of greater investment and management, which necessitates the involvement of private interests. Public management is believed to be unable to handle the upkeep of parks, as it was under that guidance that the space became disregarded. The need for repair also stems from the belief that some or all public spaces are dangerous and host the activities of criminals. Private involvement is again argued to thereby ensure the space becomes safe, particularly for white, upper and middle classes (Mitchell & Staeheli, 2006).

Management

In most discussions, the exploration of POPS includes discussion on management, as the prescribed nature of these spaces often involves some level of administration. Analysis in this realm usually falls into two jurisdictions: over-management and under-management. The over-management perspective generally contends that public space is becoming over-controlled and that POPS, the privatization of civic functions, the use of security and surveillance in the public realm as well as changes to consumption patterns, are all symptomatic of today's parks and open spaces (Carmona, 2010). The focus here is that POPS are just one example of an increasing desire to privatize many public facilities and services.

Conversely, proponents of the under-management mindset believe that public spaces are increasingly becoming poorly maintained and require intervention. To address this failing, improved management techniques and design guidelines are recommended to ensure public spaces are appropriately administered, which will allow the public to better use and value the space (Carmona, 2010). In this view, it is generally believed that private intervention will improve the quality and upkeep of publicly accessible spaces. Proponents of under-management often believe that POPS can improve the surrounding aesthetic, property values and act as focal points for retail and tourists in a manner which possesses a clean and orderly image (Carr, 1992; Garvin, 2002).

Security

The conversation on the management of POPS often highlights the use of security as a common theme. POPS frequently employ the use of security and surveillance to monitor the space (Carmona, 2010). This involves the installation of CCTV cameras or the presence of security guards to observe and maintain the rules and restrictions. However, issues can emerge according to how officials conduct their enforcement. Research has shown that this can be problematic as some officers can become confused and misunderstand their roles and responsibilities (Button, 2003). Research has identified that in several cases, guards have demonstrated a lack of understanding that the space is intended to be accessed by the public and will over-extend their powers to restrict use of the space unnecessarily (Button, 2003).

The use of surveillance and cameras is a regular occurrence across the world in both public and private spaces. These cameras are installed under the pretext of establishing safety and security. However, as a result of the monitoring, the spaces become sites of exclusion, particularly to youth, racialized groups or the homeless (Jackson, 1998). Surveillance is applied to prevent certain activities thought to be disruptive by restricting them or enabling the removal of users. The apparent dangers stem from the 1970's where the public felt a general sense of fear in public spaces, as it was thought that they were vulnerable to attacks, kidnapping, sexual assault or physical abuse (Katz, 2006). The threat of danger was responded with the installation of various forms of security in order to provide a sense of safety, at the expense of other users.

September 11th, 2001 further deepened the belief that employing security officials and 'safety measures' were necessary to protect the public. Following these terrorist attacks, public space was seen as the venue for where dangerous activities could originate. Although this perception did not start with the attacks, it gained significant momentum as there was now a visible threat to the livelihood of the public and protection against further threats could begin by designing public spaces to be explicitly safe. These changes provided the support needed to increase the ability to monitor surroundings. As the scrutiny of public spaces were largely government sanctioned, the permission of wide-spread surveillance limited many civic liberties such as freedom of speech, mobilization and others (Nemeth, 2009). The monitoring of public spaces also contributed to increased racial discrimination, as white property owners, would utilize these security measures to 'protect' themselves against black, Latino and non-white groups (Day, 1999). As well, non-white members of the public are frequently viewed as threats and barred from accessing public spaces, due to the danger that has become attached to them.

In addition to security cameras, public spaces often include signage advertising the existence of CCTV cameras. In North America and Europe these are used to remind users that they are in a monitored space and that certain actions will not be tolerated (Koskela, 2000). In addition, they can also function as crowd control. Many POPS are intentionally designed and built with signage to reinforce that removal from the premises will occur if unsanctioned activities are to occur. This can act as a barrier to impede the congregation of large crowds and ensure the space is used for circulation. As Davis

(1992) suggests, the usage of design and features can be used to direct users to consume certain products or materials as well as to restrict 'undesirables'.

Civic Life

Public space is deeply connected to the civic actions of society. Influential research by Davis (1992), Sorkin (1992), Smith (1996) and Mitchell (1995) has extended that discussion to examine the impacts of privatization through evaluation of the politics of public space. Davis (1992) highlights the impacts of privatization on democratic spaces in the context of Los Angeles. This research documents how POPS and similar spaces act as a form of spatial confinement and as a means to prevent the organization of those deemed undesirable (Davis, 1992). "The goals of this strategy may be summarized as a double repression: to raze all association with the Downtown's past and to prevent any articulation with the non-anglo urbanity of its future" (Davis, 1992, p.229). In many cases, these types of spaces offer examples of elitist planning practices as they can be found within affluent areas, enclosed with guard points, can include private and public policing and located off of privatized roadways. Furthermore, they facilitate the criminalization of any attempt by the poor to congregate, as these actions can be deemed to be 'non-legitimate businesses' from the perspective of the ownership, and can be subsquently banned (Davis, 1992).

Similar to Davis, Mitchell (1995) values public space because of its importance on exercising the democratic rights of the public. However, Mitchell also recognizes that while the intention of public space is largely for civic activities, in actuality, it too can be

highly restricted and may allow for only select behaviours. This was the case with the

People's Park in Berkeley, California, a park created for the use of the public. Following

concerns over the presence of homeless people, restrictions where implemented which

banned activities such as loitering or congregation, lifestyles necessary to vulnerable

groups like the homeless. Subsequent rally's and protests occurred which sought to

resist the prioritization of some users over others. "People's Park [in Berkeley]

represents therefore an important instance in the on-going struggles over the nature of

public space in America (and elsewhere). The riots that occurred there invite us to focus

attention on appropriate uses of public space, the definitions of legitimate publics, and

the nature of democratic discourse and political action" (Mitchell, 1995, p.125).

Staeheli (1997) focuses the conversation into linking public space to a struggle for

recognition and citizenship. She identifies that public spaces are integral to democracy

as it is the most visible location of a neighbourhood's diversity and can act as a

consensus for establishing citizenship (Staeheli, 1997). Staeheli's analysis sheds light

on how access to spaces can be unequal and defined by those who have and those

who have not been granted membership. Specifically, her discussion shows that

business associations can privatize public spaces by tightening their control and

regulate who is afforded the privilege of sitting outside of their establishments and who

cannot (Staeheli, 1997, p.33). It is important to note that while the idealized version of

citizenship intends for unequivocal access to public space, through the increasing

desire to encourage POPS or other forms of the private control, research generally

highlights subsequent restrictions.

The loss of civic life as a result of privatization of public space is documented around the world. In Budapest, open air markets are increasingly being re-adapted to attract tourists to areas in blight (Patti & Polyak, 2017). Douglas, Ho & Ling (2002) have examined the impact to civic life as a result of increased privatization in both Western and Pacific Asian cities, where many civic and other accessible spaces have become sites of social conflict from the resulting privatization of public services and spaces (Douglas, Ho & Ling, 2002). In Hong Kong, traditional open spaces, or Kai Fong, are increasingly being replaced with private spaces or shopping malls (Xang & Siu, 2013). This has had an effect of forcing residents to conduct public activities in private locations while being subject to the interests and decisions of the private land owner.

Exclusion

Another central concept within privately owned accessible spaces, like POPS, is exclusion. It has been frequently documented that with the rise of the private shopping malls and other similar spaces, the reliance on private spaces for civic functions has increased (Kohn, 2004). In her book, *Brave New Neighbourhoods,* Margaret Kohn discusses the impacts of the increasing commodification and privatization of public spaces (2004). Here, she offers numerous examples of how vulnerable groups are overtly prevented from using spaces intended to serve the entire public. In addition, she notes that the frequent use of commercial locations for the purposes of civic life are now having lasting effects including restrictions to free speech (Kohn, 2004).Youth groups have been noted to be particularly affected by the exclusion from private accessible

spaces (Gray & Gray, 1999; Jackson, 1998; White, 1996). For example, a legal case in Wellingborough, Britain found that shopping mall management would repeatedly block the 'equitable' and 'irrevocable' rights to public entry of pedestrian malls and 'quasi-public spaces' (Gray & Gray, 1999). Security was also found to extend their powers for the purpose of blocking racialized groups as their presence was thought to impact sales.

The exclusion of groups may be compounded if society continues to rely on POPS. As well, public perception of who can and cannot access spaces could become normalized or even receptive to the forced removal of select groups. This is frequently observed with large scale redevelopments which include POPS. In these projects, the spaces which are legally required to provide public access become key battlegrounds between the homeless and the developer (Mitchell & Staeheli, 2006). The property owners will seek the removal of the homeless because of the detriment they are thought to represent (Mitchell & Staeheli, 2006, p.145). The perception is that the presence of 'street dwellers' detracts from both the economic and aesthetic value of an area. This mentality can be further indoctrinated by those wishing to see the redevelopment extend to other neighbourhoods under the pretense of revitalization.

Yet, it is also important to recognize that the common critiques of POPS, such as exclusion, have been noted to be fallible. Nemeth and Schmidt (2011) suggest that the common practice of many detractors is that they tend to delineate 'publicness' through ownership only. As well, exclusion occurs in both publicly owned public spaces as well

as privately owned public spaces, through applications of similar design principles and materials (Nemeth, 20016). This implies that the criticisms of POPS are also found in other public spaces and therefore should not be used to prevent their use. Additionally, the research which is generally critical of the application of POPS (Banerjee, 2001; Carmona, 2010; Gray & Gray, 1999; Fyfe & Bannister, 1996; Loukaitou-Sideris, 1993; Luk, 2009; Madanipour, 1999 ;) has been noted to lack empirical analysis on the occurrence of exclusion (Nemeth & Schmidt, 2011).

Design

The final component in this literature review is the concept of design. This references the specific features and materials used to demarcate the space, attract users or restrict activities. This topic has received considerable attention, both negatively and positively. Several academics have identified that the impacts of the design of POPS can contribute to exclusion and segregation. Jeremy Nemeth (2009) identifies that through a combination of techniques, including specific features, managers are able to control the behavior of users or block access to spaces. POPS have also been observed to utilize seemingly negligible design features such as corporate images to control the space. These tactics ranged from signs and logos which 'coded' a space as restricted or exclusive (Nemeth 2009). Managers also employed the use of visible and 'larger' features such as stairs, blocks to prevent skateboarding, the removal of seating as well as spikes on benches all to control who and how the space is accessed (Nemeth, 2009).

POPS have also been described as serving as extensions of the owner's public image. This has been done through the use of advertisements or the expansion of commercial operations onto lands intended for public access (Schmidt, 2004; Nemeth & Schmidt, 2011). Actions such as 'cafe creep' are common to some cities and involve the infringing of patio areas into publicly accessible space. In this regard, the owners prioritize profits and cleanliness and in turn structure the design and layout of the how the space is used to promote commercial activities (Nemeth & Schmidt, 2011). As well , private owners will strategically use the space to assist with the sales of adjacent retailers or to filter out unfavourable clientele (Nemeth, 2009, p.2472). The spaces can be designed very similarly to the adjacent stores, to remind users that the accepted behaviours of the shopping area extend to these areas.

Some of these features are even permitted as per the implemented regulatory policies and measures. These include varying policing measures, design guidelines or even social interventions, usually under the guise of creating a safer space. The use of such policies extends beyond physical spaces and has been documented in the wider public realm. Jane Jacobs (1961) discussed 'eyes on the street' in order to advocate for a safer street, where neighbours could look out for one another. Yet, this has had direct ramifications on how we police and interact with public spaces. Through the cannons of safety, theories such as 'broken windows' and 'defensible space' have become engrained into urban design and urban planning (Madanipour, 2013, p.108). It is because of these policies that the primary qualifier (and quantifier) of POPS (and public space for that matter) policy is based upon design. It is believed that properly structured

reports and guidelines, based upon sizes and rates, can best evaluate POPS. To achieve this, the evaluation of POPS often gravitates to design, rather than political or social impacts as it is easier to assess (Litscher, 2013). This is even further strained by the reliance on legal agreements which bind POPS to the property as they are written in legal language, which offers little opportunity to outline how civic liberties can be protected.

However, the discussion on design needs to also highlight the many positive contributions. Most notably, is the creation of an accessible space where one previously did not exist. As well, the addition of new seating or space for congregating in areas underserved can result from the creation of POPS. As well, the signage and design features can occur as public art which can assist with deconstructing and replacing certain connotations of an area or acknowledge history. (Viosin-Bormuth, 2013). In Dresden, Germany, the application of public art has aided the erasure of the political, ideological and symbolic imagery from the former Nazi regime (Viosin-Bormuth, 2013, p.82). Many of these pieces have been made possible through the financial donations of the private property owners. However, it is also important to note that the perception of public art can be positive to some while others may view it negatively. Furthermore, although public art can be a tool for communities to're-write' histories and allow for closure, it can also assist in the gentrification of a neighbourhood. It is important to recognize this as POPS can be used to increase recreational lands or serve as an impetus for the 'revitalization' of a community.

All of these themes have been well documented. POPS has received significant attention because of the numerous concerns and benefits that have been identified. POPS are also subject to recent research because of the growth in their popularity around the world. Cities from countries in Europe to Asia are escalating their use of POPS as they are viewed to achieve several goals including the addition of new public space and the need for less municipal resources. As such, POPS programs are being created to maximize the ability to realize these and other goals. The following section includes a brief review on how POPS are operating around the world.

CHAPTER 5: BEST PRACTICES (INTERNATIONAL)

In the previous sections, this Major Paper has examined what public and private spaces are and how POPS exist both theoretically and in the context of Ontario planning policy. Before examining POPS from the context of the Greater Toronto Area, the following section provides a broad examination of how POPS are utilized outside of Ontario and around the world. The following is intended to introduce the various applications of POPS and identify themes which have been observed. This discussion is a summarization of the authors work (see Appendix A) which has examined multiple case studies of cities from around the world which employ POPS. .

Impetus

Many cities have been providing POPS for several decades. Cities like Toronto, London and Hong Kong have been granting additional floor area or height in exchange for the provision of accessible space since the 1980's. However, New York is largely regarded as the first city to develop policy regulating privately owned accessible spaces. The City first began providing concessions for additional accessible space in the early 1900's, as a result of the skyscraper boom which also created conditions of increased shadowing and reduced sunlight. In the 1960's, these exchanges became formally known as *Privately Owned Public Spaces* and included specific ratios according to location and type. Over time, the policies have been subject to amendments revising the calculations as well establishing further requirements from developers (Kayden, 2000). The most recent update involved the implementation of new requirements for enhanced design as well as minimum levels of amenities such as seating, lighting, planting and signage

(Schmidt et. all, 2011). The current internal review system by the City also recently underwent changes to ensure that the spaces were subject to more intensive consideration.

Alongside New York's considerable history with POPS, there has also been an abundance of research highlighting its challenges. In 1975, POPS were reviewed by urbanist, William H. Whyte, where he examined how public spaces, such as POPS, were used. It revealed that many of the POPS were used mainly for circulation and suffered from poor design (Whyte, 1977). Several decades later, research from Schmidt, Nemeth & Botsford (2011) noted that although recent policy changes have included new directions for enforcement, these measures have been largely disregarded. In addition, it has been noted that the lack of inspection or oversight has enabled many POPS in New York to fall into disrepair or allow the construction of fences which partition off sections and restrict access (Schmidt et. al, 2011).

Policies

One of the most common methods of granting additional height or density is the use of Floor Area Ratio's (FAR). FAR's refer to the numerical value of floor area of the building or structure relative to the site upon which it is located (City of Edmonton, 2010). In San Francisco, additional gross floor area is provided to developments located in the downtown district which incorporate publicly accessible lands (City of San Francisco, 2017). These ratios are determined according to their location and can receive up to 50 square feet of additional gross floor area for every 100 square feet of gross floor area

provided as part of a POPS (City of San Francisco, 2017). In Calgary, different rates are assigned to different types of POPS. For public plazas, developers must provide at least ten percent of the sites net area in order to receive a floor to site ratio of two (Block, 2003). Developers are also able to contribute to the skywalk, considered a type of POPS, by receiving an additional 4 square metres of floor space if they contribute 1 square metre of walkway (Block, 2003). In Providencia, Chile, developments can receive an additional 5 square metres of floor space for each square metre of POPS (Fuhrmann, 2013). In Bangkok, developers are awarded an additional 5% of floor area, if they are to provide a POPS which adheres to specific criteria (Anurakpradorn, 2013).

Alongside permitting FAR's according to location, cities will also regulate the type of space. In Auckland, the City will grant additional floor area as long as the type of space aligns with the specific section of the downtown, otherwise the additional floor area is not granted at all or to a reduced amount. For example, in the Financial District of Auckland pedestrian connections receive a higher amount of floor area than squares. In Osaka, Japan, the City has designated only certain areas to allow POPS, through Distinct and Detailed Design Guidelines, which also include specific FAR (Kurose, 2013b). These regulations also detail the types of spaces which are permitted and which are not.

Alongside the application of a FAR, many cities also require that POPS adhere to further conditions. These can often be developed according to a minimum basis and address a variety of aspects from design to lighting. In Bangkok, to receive additional

floor area, developers must also ensure that the space is open to the outdoors, located adjacent to a sidewalk and located in the front of the building (Anurakpradorn, 2013). In Sapporo, Japan, POPS must be accessible in the winter and any accumulated snow must be removed (Kurose, 2013). The spaces in Osaka are also administered through specific design guidelines, which include policy on minimum width, connections to the subway and landscaping (Kurose, 2013b). In San Francisco, the Zoning Code establishes that the provision of additional floor area will only occur, once minimum standards are met regarding design elements, protection from wind, seating, access, enhancement of user experience and the provision of toilet facilities, amongst others (City of San Francisco, 2017).

Criticisms

Several of the examined cities have been criticised because of the inability to provide quality spaces or for a lack of advertisement. In New York, these concerns have arrived as many owners of POPS have allowed their spaces to fall into disrepair or wall off portions of the space and restrict access (Schmidt et. al, 2011). In Toronto, this was a similar concern and ultimately led to the implementation of new design guidelines. It became a significant issue as residents and Council complained that many of the spaces were being replaced or removed. This also exposed a lack of knowledge of the locations of POPS and a general sense of indifference towards the agreements which required their existence. In Auckland, examination of the spaces highlighted that the spaces were largely exclusive, unusable at certain hours, possessed heavy surveillance and contained inadequate signage (Reeves, 2016).

The inability to successfully advertise that POPS as publicly accessible was identified to be a common issue amongst many of the cities. In Seattle, the spaces were noted to appear distinct from other public spaces which resulted in them being accessed less and differently (Seattle City Council, 2016). In Toronto, even after the adoption of the Urban Design Guidelines, complaints that the spaces did not appear publicly accessible or possess inadequate signage continued. In Providencia, this was also an issue stemming from the exclusive nature illustrated by the design of the spaces (Fuhrmann, 2013). Research found that these spaces exemplified a private character resulting in symbolic barriers that occur because of the areas predominance of exclusive shops, pubs and restaurants. Several spaces were even found to require payment to access. The elitist nature of the spaces thereby reduced the ability of passerby's to understand that the space is publicly accessible (Fuhrmann, 2013).

It was also noted that many of the cities reviewing POPS were not critical enough, as they would largely look to the opportunities rather than the flaws. This was observed in Auckland where the discussion in news articles and papers revolved around how the spaces could benefit the community. It was only through outside review that the spaces were more critically examined and noted to be offering less public amenities than previously thought. By not reviewing the spaces according to potential repercussions, cities may be confining future access to recreational space, resulting in future negative outcomes. This was the case with the Bucherplatz, in Aachen, Germany. The City undertook a neighbourhood redevelopment project which included streetscaping, new

walkways and involved the redevelopment of the Bucherplatz as a central component. As the Bucherplatz was privately owned, the City required the participation of the owner, however, the current owner was not engaged by the City nor did they wish to improve the space unless it was paid for by the City (Berding, Havemann & Pagels, 2013). As the City would not fund the redevelopment of the square, the completion of the overall project was not achieved. This case serves as an example for cities that are relying on POPS for public space but do not anticipate the future impacts. Since a cities influence is reduced at the property line, the ability to ensure a POPS is well-designed or maintained is limited, particularly if the owner is unwilling to ensure a high standard of upkeep (Berding, Havemann & Pagels, 2013).

Another critique of several POPS programs was that the spaces were mostly places of movement. In Vancouver, many of the POPS were found to be conducive to circulation, instead of sitting, staying or congregating (Rahi, Martynkiw & Hein, 2012). In Bangkok, research indicated that because of the climate and design of the spaces, the popularity of the spaces was limited to users travelling through (Anurakpradorn, 2013). In Hong Kong, the spaces were criticized because of their small size as well as the narrowness of the design, which was only favourable for passing through (Luk, 2009).

The allocation of staff resources was also a common concern. In San Francisco, few staff resources were devoted to notifying property owners of complaints or infractions. As well, if infractions were to occur, the use of penalties or fines was found to be too minimal to prevent additional violations (City and County of San Francisco, 2016). In

London, the lack of policy and staff devoted to administering POPS has made it difficult to even identify the locations of POPS. This led to an in-depth examination of POPS by the newspaper, The Guardian, which resulted in the preparation of a mapping system to identify the qualities and locations of POPS (Garrett, 2016). This research also shed light on staff deficiencies as well as the cities inability to provide information on POPS, beyond location and ownership (Garrett, 2016).

Recommendations

In response to poor assessments, several of the municipalities conducted reviews of their POPS initiatives. In Seattle, a design commission was undertaken seeking improvements to their policies. Amongst the recommendations were that POPS should adhere to the same standards as other public spaces, that programming be better curated to facilitate activities not related to commerce and that a requirement for the submission of a management plan be adopted as part of the formal review process (Seattle City Council, 2016). In Auckland, many POPS were identified to be largely exclusive, unusable at certain times, possessed heavy surveillance and inadequate signage. The City responded with policies which included reoccurring audits to ensure that POPS complied with design standards, maintained accessibility and continued to advertise the spaces purpose through signage (Reeves, 2016).

In some cities, public intervention brought about changes to the POPS system. This was the case in New York where an organization was created to oversee POPS. The *Advocates for Privately Owned Public Space (APOPS)* was formed to monitor and

promote stewardship by actively engaging property owners, city employees, public

members and civic activists to ensure spaces remain accessible (Advocates for

Privately Owned Public Space, 2015). A significant aspect of the organizations work

also involved providing information on POPS, offering crowd-sourcing opportunities to

create new or improve existing POPS and to report issues to the City (Advocates for

Privately Owned Public Space, 2015).

Many of the above City's have been examined and summarized to depict how POPS are

employed around the world. The research found that many of the policies as well as their

subsequent challenges are shared around the world. However, it is important to note that

each of the cities contain policies that are specifically designed to be context sensitive in

order to address the development landscape and achieve different goals. This section is

therefore useful as a reference tool to other cities preparing strategies on POPS, which

is the case for many of the cities identified in the following chapter.

CHAPTER 6: INTERVIEW SUMMARY

As is evident from the above section, the application of POPS is diverse. This was reinforced through several conversations with municipal planners from the Greater Toronto Area (GTA). These discussions have been distilled into several major themes. They explore current experiences, existing regulations, approaches and future expectations for POPS (See Appendix B for a complete summary). Most importantly, they highlight a visible presence of POPS which appears to be increasing in popularity. This research is therefore intended to examine this introductory period in order to understand the motivations and influences behind POPS in the GTA.

Existing Spaces / Current Context

Overall, most of the municipalities had limited experience with the provision of POPS. The cities that possessed existing spaces were limited to only one or two and were designed to achieve additional goals, such as below-grade parking or heritage preservation. These cities included Mississauga, Markham and Oakville. However, each municipality was at some level of policy preparation or were actively reviewing applications proposing new POPS.

In Mississauga, the first and only existing example of the City's POPS was built following the 2016 expansion of the Square One Shopping Centre. This major renovation involved the construction of an open and accessible space built over a new underground parking structure. The space contains hard surface treatment with several plantings separating the interior courtyard and sidewalks located along the perimeter. It

is divided into two sections with significant landscaping and a walkway travelling

through the middle, towards the entrance of Square One. The eastern portion of the

space includes a grass lawn, seating and a climbing structure for children. The western

portion provides seating as well as a gravel base (See Figure's 2 - 6).

Figure 2: Mississauga POPS, looking at Holt Renfrew

Figure 3: Mississauga POPS, western portion (looking east).

Figure 4: Mississauga POPS, eastern portion (looking east).

Figure 5: Mississauga POPS, metal dividers to prevent skateboarding.
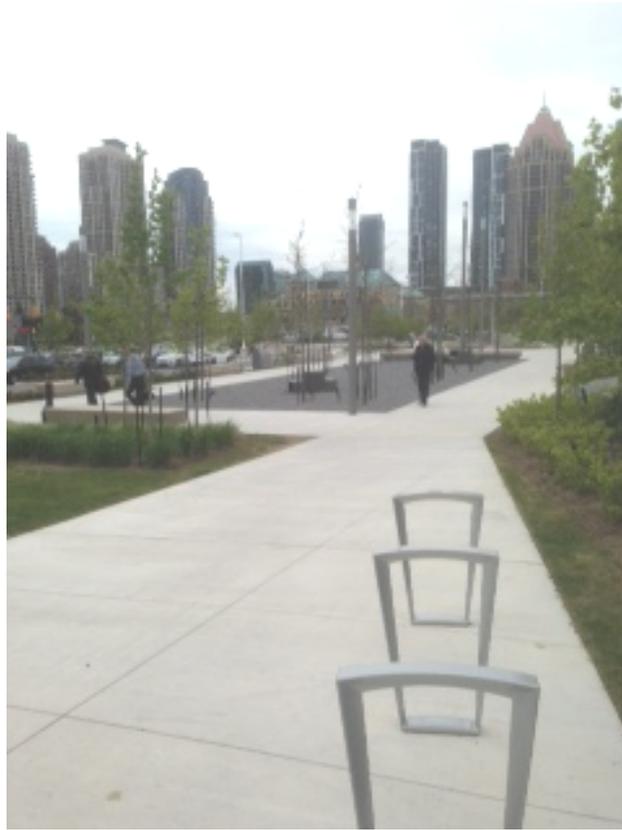
Figure 6: Mississauga POPS, Eastern portion (looking west).

The space in Mississauga is a result of the historical and planning context. As part of

the provincial government's intention to regulate and restrict urban sprawl, the Places to

Grow Growth Plan (2006) was created to identify where intensification would be best

accommodated. Several *growth areas* were designated by the Ministry to support the

highest levels of residential and employment densities (Ministry of Municipal Affairs,

2013). In Mississauga, the growth centre is generally located along Hurontario Street,

from Highway 403 to the Queen Elizabeth Parkway (QEW). Since the designation, the

City has witnessed significant growth of residents and jobs to the area. However, the

intensification within this growth centre has also strained existing infrastructure including

public facilities such as parkland. To ease that strain, the City has begun to accept

POPS as a way of producing accessible space. To further implement this approach, the

Downtown Growth Area Park Provision Strategy was implemented which included

symbolic locations for future POPS as well as general policies administering these

spaces.

Like Mississauga, Oakville has had limited experience with POPS as only two spaces

have been constructed. In both cases, the spaces were built within the Growth Centre

and were designed to preserve the heritage features of the adjacent buildings. One of

the spaces has been designed as a public square and is located on the corner of

Speers Road and Kerr Street. The space contains a mixture of paving materials as well

as plantings and seating for public use (See Figure 7).

Figure 7: Landscape Plan for Rain Condominiums Site Plan Application. Source:

The MBTW Group (2011)

Recently, a large-scale development project, located outside of Oakville's growth area, has proposed a broad application of POPS. The proposed *Health Sciences and Technology District* requires a high amount of parking, due to the size of the proposed development, which will be located underground and spread across the property (See Figure 8). The lands above the structure are intended to be predominantly POPS and will take several forms including pedestrian connections, squares and parks. Additionally, each of the POPS will be programmed to serve a variety of activities

(MacNaughton Hermsen Britton Clarkson Planning Limited, 2016).

Figure 8: Proposed Health Sciences and Technology District. Source:

MacNaughton Hermsen Britton Clarkson Planning Limited (2016)

In Markham, although no POPS have been built, several Strata Parks have been

constructed over parking garages. The parks will allow public access, however the land

immediately underneath will remain owned by the private land owner. One of the Strata

Parks, at 7171 Yonge Street, has been integrated into a mixed-use development which

includes retail and residential uses (City of Markham, 2012). The accessible portions

include hard surfaces, plantings, seating areas, water fountains and are separated with

a membrane between the topsoil and the concrete structure (See Figure 9) (City of

Markham, 2012).
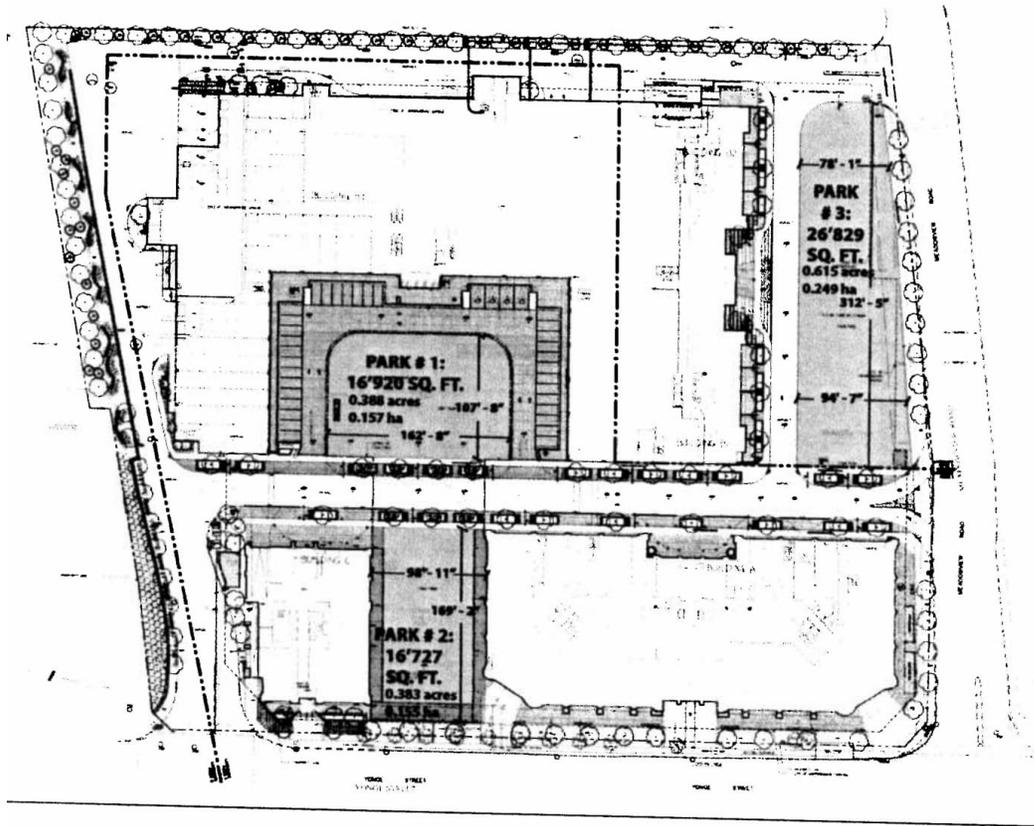
Figure 9: Strata Park(s) located at 7171 Yonge Street. Source: City of Markham

(2012)

In addition to the Strata Parks, Markham has received several proposals which include various applications of POPS. The proposals range in design with some as mid-block connections and others as parkettes and squares. The redevelopment of Buttonville Airport is one such project which may include the future application of POPS. Although POPS have yet to be confirmed through the submission of a Site Plan, the current concept proposes POPS on a widespread scale and will act as an open space amenity area (See Figure 10).

> *"At its north end the parkland is strategically positioned adjacent to the Rouge Valley and it can accommodate a wide range of active and passive recreational uses. Privately owned and maintained, but publicly accessible, urban squares, a waterfront promenade, parkettes, and pedestrian lanes will provide places of shared uses, community interactions and outdoor programs"* (City of Markham, 2013).

RETAIL
RESIDENTIAL
OFFICE
CINEMA
CONV. CENTRE
**PARKADE**
PUBLIC PARKLAND
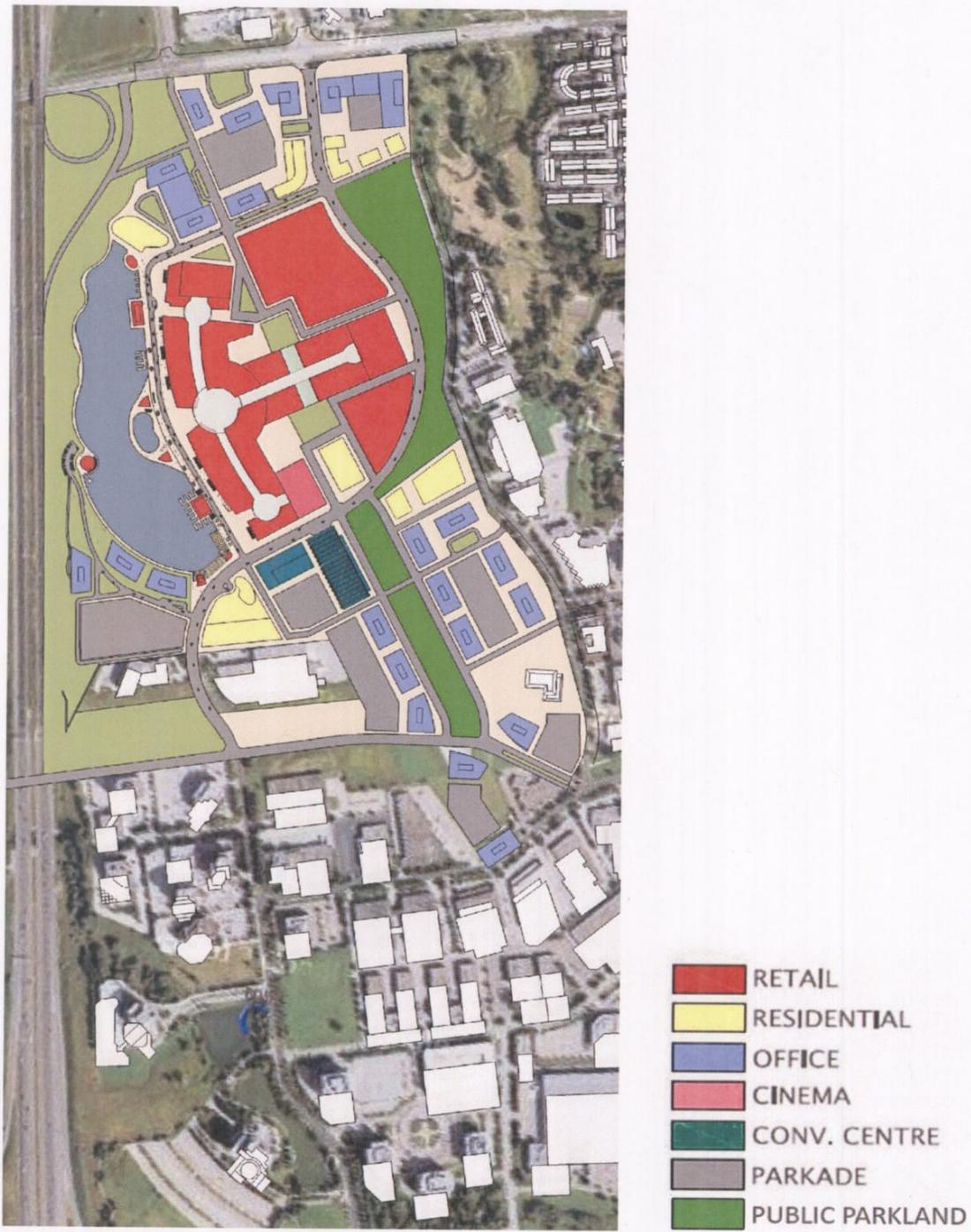
Figure 10: Buttonville Airport Redevelopment proposal to include POPS in public parkland areas. Source City of Markham (2013)

In Newmarket and Richmond Hill there are no existing spaces; however, both are reviewing proposals which may become POPS. In Richmond Hill, the conceptual spaces have been mostly pedestrian connections. These linkages are intended to improve circulation between multiple properties or parts of a property. As well, planning staff noted that one of the spaces is likely to include a sizable parkette, with significant space devoted to various public activities. In Newmarket, although no physical POPS exist, Staff admitted that with the desire for vertical growth, and through the recently adopted Parkland Dedication By-law, future spaces are anticipated.

Policy Provisions

As directed through the Planning Act (2016), municipalities are able to acquire parkland through several different methods. In accordance with Section 37, cities are able to utilize bonusing strategies to acquire community benefits such as POPS. In the Mississauga Official Plan, policies have been included which regulate the use of bonusing, however these are applicable to only some parts of the city. Although one of these areas is the downtown, the granting of permissions is not likely to occur as there are little restrictions to height or density. For the developments which can facilitate bonusing, the City would accept POPS (City of Mississauga, 2011).

Since the downtown is unlikely to receive community benefits through bonusing, the area is extremely limited in its ability to generate new accessible space. Furthermore, much of the developable land in the downtown area is privately owned, which confines the City's ability to create public park space even further. POPS are viewed as a tool to

create new publicly accessible space and within the *Downtown Growth Area Park Provision Strategy,* are illustrated at key locations of the downtown (The Planning Partnership, 2015).

> *"We undertook that [Downtown Growth Area Park Provision Strategy] and it was completed in November 2015. We knew we were going to be having more people coming into that area and we had a look at our parkland, which is going to be pressured (with the intensification). So we are going to require additional parkland in that area." (City of Mississauga Planner, phone interview, May 8, 2017)*

The Markham Official Plan also includes direction for POPS through policies addressing Section 37. The City permits the granting of increases in height and/or density in exchange for community benefits such as the provision of increased amounts of open space (City of Markham, 2014). The language associated with these regulations is vague, especially relating to the creation of privately owned parkland and requires updating. To achieve this, Markham is undergoing a Parks and Open Space Master Plan which is intended to update policies relating to parkland and involves the completion of several background studies with the specific goal of better administering POPS. The anticipated work for the Master Plan will include examining how policies are designed elsewhere. One city which will act as an important reference will be the City of Toronto. This is due to existing planning policy as well as a lengthy experience with POPS. However, staff did note that the Toronto experience is different than Markham's. This is because while downtown Toronto has little alternative then to acquire parkland

through POPS, Markham has more flexibility to acquire parkland through dedication or cash-in-lieu, as the land is more readily available.

> *"This is where the approach differs from Toronto to municipalities like Markham. Toronto is very under served in the amount of accessible space and must entice developers to provide accessible space in exchange for provisions such as additional height or density through Section 37." (City of Markham Planner, personal interview, April 12, 2017)*

In the conversations with the planners from both Richmond Hill and Markham, Section 42 was suggested to be better suited than Section 37 to retrieve accessible space from proposed development. Although both can generate accessible space, it was identified that Section 37 would produce public space through concessions for something that can be legally required. As such, acquiring parkland through Section 42 can avoid approving developments with unsupportable heights and densities.

> *"Why should we give concessions through Section 37 for something such as parkland when developers are required to provide through Section 42 anyways. This is where the approach differs from Toronto to Markham." (City of Markham Planner, personal interview, April 12, 2017)*

> *"Developers want to get credits for outdoor space [parkland dedication], but the debate arrives regarding what the space is intended to be. Why should cities be giving developers credit for something they need to do anyways?" (Town of Richmond Hill Planner, phone interview, March 16, 2017)*

In Newmarket, new policies have been adopted for parkland dedication and bonusing. Recent modifications to the Official Plan, through the Urban Centres Secondary Plan (2016a) planning process, included regulations which allow POPS to count towards parkland dedication. This occurred following considerable background work and resulted in updates to the Parkland Dedication by-law which included new terminology, definitions and policies addressing "Privately Owned Public Space" (Town of Newmarket, 2016c). The by-law also separates the dedication requirements for development inside and outside of the Urban Centre, which is intended to receive the greatest density (Town of Newmarket, 2016c). Additionally, the by-law now permits the use of POPS towards parkland dedication requirements directly, following the completion of appropriate legal agreements between the owner and the Town (Town of Newmarket, 2016c). Although this is allowed only in the growth area, and if certain types of parks (i.e. Urban Squares, Plazas, and Pocket Parks) are created, developers can receive up to 100% of their parkland dedication requirements.

> *"We knew that Parkland was one of the pieces of the puzzle. Having a parkland dedication by-law in place that allows for urban parkland typologies. We also went one extra step and self-imposed a 25% cap." (Town of Newmarket Planner, personal communication, March 30, 2017)*

In Oakville, an amendment to the Official Plan was adopted which updated the policies regarding the provision of public space. These policy enhancements were intended to encourage the creation of new parkland by including ownership language. This opened

the door to where parks and open spaces could be built by allowing the involvement of private landowners. However, these modifications (particularly during that time) were done with the mindset that in the future, additional comprehensive studies would be completed as part of the Town's Parks and Open Space Master Plan.

> *"We recognized this would be part of a larger study/initiative related to our Parks and Open Space Master Plan review (parkland dedication). The policy enhancement was a sort of 'placeholder' for future work." (Town of Oakville Planner, email interview, March 15, 2017)*

Approach

The application as well as how POPS are viewed, differed between each city and town. In Mississauga, it was conveyed that POPS are beneficial as they can augment the City's public park system. Staff identified that the City is challenged with both restrictive planning policies as well as limited land availability. As such, Staff view POPS as a tool to augment public, open space, particularly for an area which is underserved.

> *"It's not like the greenfield that we went through in the previous decades with farmers fields, where you ask the developers for 5% for residential parkland dedication. Now, this is going to be more challenging than previously. And that is one of the reasons we started looking at it as well. And let's try to get our larger open spaces in public ownership through the development process or through acquisition. And then how are we willing to augment those spaces. And that was when we started looking into privately owned publicly accessible spaces." (City of Mississauga Planner, phone interview, May 8, 2017)*

.

Staff in Mississauga also identified that where possible, publicly owned parkland will always be preferred over POPS. One of the main reasons for this is because of the impermanent nature of POPS, both in terms of the design of the space as well as ownership. Staff believe that the spaces have a turnover period, as the structures below will eventually require repair or replacement as they age. Staff anticipate that this will add challenges to the operation and control of future POPS.

> *"Where we can, we would still like to get publicly owned parkland. One of the main drivers for this is so we can grow trees to maturity. We will own the land, we will control it and there will be soil underneath. Whereas the POPS we will have with the mall are over an underground parking garage, so every 20 or so years, they will have to redo that parking structure and we will lose trees through that process and we will have to start again." (City of Mississauga Planner, phone interview, May 8, 2017)*

> *"We know that they (Square One) are not going anywhere and they have a vested interest in making their property look attractive. And they have been doing a great job in maintaining it. It is more challenging when you are trying to get a public open space for a residential condo building, because when the people who were involved with its inception are gone, and the space is now in the hands of a condo board, this becomes more challenging." (City of Mississauga Planner, phone interview, May 8, 2017)*

For some of the municipalities, the approach towards to creation of POPS revolved around the how staff were or would be involved. In Markham, the City is a significant driver in the creation and review of POPS. Through their experience with the Strata Parks, Staff were able to maintain a level of control in the process as their involvement extended to the construction of the space. This participation allowed staff to ensure that the community would benefit from the space and not just the property owner. Staff were could also better control the process to ensure a quality product was created and thereby reducing future issues.

Although the Markham planners were influential in the creation of the spaces, it was noted that the developers were highly invested as they were aware of the benefits that this type of accessible space could bring. They understood that the POPS could benefit their economic return through reduction in costs. Specifically, they were aware that credits could be given to count towards Development Charges and parkland dedication, which would alleviate significant expenses. It was also understood that the spaces would act as another amenity to attract residents to their development (City of Markham, 2012).

> *"Parks are an amenity to them. In these cases, the developers were interested in having a park adjacent because it enhances the quality of life and is a benefit to them." (City of Markham Planner, personal interview, April 12, 2017)*

Newmarket maintained an approach which was unique, as they viewed POPS as a method to facilitate and attract intensification. Specifically, the Town was aware that

while the costs for development were the same as in downtown Toronto but that the profit margins were much less. To address this, the Town structured POPS to incentivize developers to build in Newmarket. The rationale was that POPS would reduce the cost of development by minimizing the fees which would normally be required through Parkland Dedication.

> *"We are trying to reduce those costs as much as possible and to make ourselves as competitive as possible. The market is coming, we know that, but we are trying to bump it up by a couple of years if we can." (Town of Newmarket Planner, personal interview, March 30, 2017)*

Planning staff in Newmarket also conveyed that their approach is indicative of an increased appreciation of parks. Like many other municipalities, Newmarket is beginning to realize the importance of public space. Greater attention is being placed on how parks and squares can be more than a space to play soccer. To illustrate this mindset, changes occurred to the parkland dedication by-law and updates to the Official Plan were implemented to demonstrate the importance of the open space network. In the interview, it was shared that POPS can complement not only the public realm but also provide additional amenity areas for the greater public.

> *"I think municipalities are finally seeing the value of public spaces in general, POPS or not. They are investing in them and they are seeing the areas come to life so there is something in it for them." (Town of Newmarket Planner, personal interview, March 30, 2017)*

In Richmond Hill, POPS were identified as an example of both intensification and the planning process. Staff identified that within the current planning process there is a reliance on the OMB to mediate development. The presence of this judiciary system has become an industry standard and altered the review process into an exercise of negotiation. This has demanded that planners establish creative methods to achieve benefits for their communities. POPS are seen as a tool that can allow municipalities to generate parkland at the same time as approving a development which better aligns with their policies.

> *"We need them from a functional perspective but we need them in negotiating...it is more of means than an end." (Town of Richmond Hill Planner, phone interview, March 16, 2017)*

It is important to note, that each of the planners indicated varying levels of apprehension towards POPS. Some identified that because of different viewpoints across departments, the ability to create useful POPS may be confined. As well, the interviews illustrated that the planners had concerns with how enforcement may be unable to ensure the spaces remain accessible to the public. Alongside each of these challenges, the planners maintained that all could be addressed. In Richmond Hill, future experiences and appropriate legal mechanisms would be revised to ensure previous mistakes do not occur again. In Oakville and Markham, background research is already underway which seeks to create policies which are flexible and can adapt to new challenges.

Historical Context

Each of the municipalities were subject to previous events or decisions which have informed how POPS will be integrated. In the past, many of the municipalities largely sought parkland in the shape of sprawling open fields. This was the preferred form as it was viewed to be most appropriate alongside single-detached housing. As each home had its own amenity space in the backyard, only large fields were needed for sports and other activities. As such, parkland has largely been acquired and designed to meet this need. With the intensification of the GTA, housing forms are now developed in higher densities and are located on smaller lots. This means that different amenity spaces will be needed to allow residents to be active or congregate. Yet, as a result of the past parkland acquisition methods, planning staff identified that there is still a mindset that larger, grass covered parks are more desirable. This has stalled attempts by other city staff to expand and evolve parkland typologies.

In Richmond Hill there was a notable attempt to change this mindset in order to expand how parkland is acquired. In 2013, the Town adopted the *Parks Plan* (2013) which included establishing new service levels, identified the locations of new parks, the required land for parks needed to accommodate forecasted growth and also expanded public space nomenclature to include forms such as plazas, piazzas and courtyards. Additionally, the Parks Plan included an alternative parkland dedication calculation of 1 hectare for every 300 units of residential development (Town of Richmond Hill, 2013). Although this rate was subject to a lengthy OMB case, it ultimately led to a condition which now allows the use of POPS towards parkland dedication. This experience has

left a belief that POPS are more than simply indicative of the intensification of Richmond Hill. It was suggested that they are also an outcome of the existing planning process, where development proposals are increasingly approved or refused through hearings at the OMB. This constant need to defend or support a development has resigned planners to accept that all development, regardless of scale or scope, will be appealed to the OMB. As a result, planners must create tools or opportunities to ensure the community is protected. POPS were identified as a device to assist staff when negotiations on a proposal occur.

> *"Any time you can get something that offers you flexibility and that you can use as an incentive in those negotiations is useful. And I wonder if the whole reason that POPS are being talked about in the 905 is not necessarily that we need them from a functional perspective but we need them in negotiating, as it is more of a means than an end." (Town of Richmond Hill Planner, phone interview, March 16, 2017)*

Mississauga is also confined by past planning decisions, especially through the 1971 approval for the Square One Shopping Centre, which included the approval of all parkland dedication as a one-time provision. This meant that any future expansions would not be required to provide land or cash-in-lieu for parkland to the City. This has had repercussions to the downtown as Square One operates on a significant percentage of this land. At the time of the 2016 expansion, Staff were aware that the addition would not be accompanied by new parkland or cash contributions. Instead,

staff suggested that the use of privately owned accessible space may serve to benefit

the developer as well as the residents of the surrounding areas.

> *"It was a way for us to get public access to open space through the development*
>
> *process that we wouldn't have otherwise been able to get." (City of Mississauga*
>
> *Planner, phone interview, May 8, 2017)*

Private Sector Response

Each of the interviewed planners shared a belief that land developers were or are

becoming aware of the benefits that POPS can provide. It was identified that a

significant level of interest had been shown by developers. In many experiences,

planners identified that once the space was built it could be marketed as an additional

amenity to attract more visitors and shoppers, while still lowering the costs on parkland

dedication. This "win-win" in several cities became widespread amongst the

development community and led to considerable pressure being placed on staff to allow

the creation of POPS.

> *"This piece of open space across from the entrance to Holt (Renfrew), has added*
>
> *to their space as well. They have benefitted as well." (City of Mississauga*
>
> *Planner, phone interview, May 8, 2017)*

> *"I would say they are really dragging us into the conversation, more than we are*
>
> *forcing them. They are saying we want to make great communities or great*
>
> *downtowns and this is what we are going to do. We are going to create these*
>
> *outdoor plazas and piazzas or waterfronts and they are saying to the City, since*

these are publicly accessible, what can we get for it?" (City of Markham Planner,

personal interview, April 12, 2017)

Of the municipalities examined, staff identified that several proposals were currently

under review which may include future POPS. In Newmarket, several proposals have

been submitted which may include spaces that can be implemented as POPS.

However, each are too preliminary to know their final use or design and Staff are unable

to know yet if they will in fact become POPS. In Richmond Hill, planning staff identified

that although there has been no construction of any POPS, some applications have

included pedestrian walkways, plazas and squares which may turn out to be POPS. It

was also noted that although some attempts at POPS have been meaningful and well

designed, others have proposed spaces which have been undesirable. These spaces

were refused to be considered POPS, as they either provided little public benefit or

were features which would have been provided otherwise.

> *"But we have had a couple of other ones where we had to decline because they*
>
> *were based on features that were needed for the building to operate. We said*
>
> *that those are not publicly accessible spaces, that is the frontcourt of your*
>
> *building." (Town of Richmond Hill Planner, phone interview, March 16, 2017)*

Security

As identified in the previous section, security is a central theme in literature as it is

common for POPS to be monitored through surveillance and security guards. Although

these are common practices for POPS across the world, the examined municipalities

offered little insight into how, if at all, security would be addressed in future POPS. Across Markham, access to all public parks and open spaces is restricted past eleven o'clock at night. The application of a similar by-law could be applied to POPS. It was also expressed that there may be merit in allowing POPS, like other public parks, to only be open at certain times. This too would be the case for the use of security guards. Planning staff identified that the use of private security may be acceptable and even beneficial to the City.

Markham staff also shared an importance of ensuring safety. To achieve this, they are currently contemplating numerous methods, including the establishment of standard hours of operation or location requirements. However, Staff stressed that while safety will be a priority in the creation of POPS, it will be equally important to ensure that the spaces are not exclusive or restrict access. These and other measures will be explored through future experiences and through the completion of the Parks and Open Space Master Plan.

> "*We have to negotiate all of these rules; we should determine when it is logical to close a park. But I don't necessarily agree that someone should close it at 2 in the afternoon or close it to certain groups of people or say you are not wearing the right outfit today and you can't come into my park. This aspect on the right to protect safety needs to be discussed. As long as it is reasonable and it doesn't infringe on the rights of the public." (City of Markham Planner, personal interview, April 12, 2017)*

Enforcement

A common theme shared in most of the interviews was regarding enforcement. Many of the planners expressed that the existing issues with how by-law enforcement is currently conducted may translate into even greater challenges for regulating POPS. In Markham, by-law enforcement occurs through a complaint basis. As such, if infractions were to occur or public access was to be diminished, the City would only be notified if a complaint was made. This would be a future challenge that staff would have to address.

In Newmarket and Richmond Hill, it is believed that POPS require an increased level of enforcement to ensure resident's interests are protected. However, in both municipalities this may be challenging as each are at capacity in the resources they have available to the oversight and enforcement of existing public parks. The Richmond Hill planner identified that this may be problematic for future POPS, particularly if they become increasingly favoured in proposed developments. This could mean that there would be minimal attention devoted to the administration of POPS, needed to ensure they are operating according to the legal agreements and remain publicly accessible.

> *"Eventually if we got some resident complaints about POPS that are gated off, then we would do something then. But we won't proactively go out and look for issues. But this is one of the problems. We will have a conversation with the other party and reason at first, but if they don't want to do what they are supposed to be doing, then we have a problem." (Town of Richmond Hill Planner, phone interview, March 16, 2017)*

"It is difficult for them [enforcement staff] to keep up and convince Council to provide adequate staff. In Richmond Hill there is one or two full time staff over the past 3 to 4 years all the while the Town has acquired hectares of lands, so it is a growing problem." (Town of Richmond Hill Planner, phone interview, March 16, 2017)

Access

In all of the interviews, it was shared that access is a crucial element for POPS. It was jointly identified that the accessibility of the public started by ensuring each space was clear in its intention to allow public access. To achieve this, the spaces will need to demonstrate that they are available for public access. One of the ways in which this will be achieved will be through the creation of signage. The Markham planners will achieve this by requiring the installation of signage at the entrance to the POPS to illustrate that the space is useable to everyone. As well, it will include any restrictions or regulations attached to the space. Staff identified that they will likely draw heavily from the City of Toronto's signage requirements.

"Most of the time you wouldn't know, and this is the thing with Toronto, why they started putting up signage was because there were all these POPS and people wouldn't know. The City thought that they should be publicizing this, we should let people know they have public access." (City of Markham Planner, personal communication, April 12, 2017)

In Richmond Hill, another way access was to be prioritized was through policy improvements to the Richmond Hill Official Plan. The planner identified that in response to the OMB condition to allow POPS as part of parkland dedication, the Town made it a priority to ensure public access was protected. Section 3.4.4 of the Official Plan (2017) was adopted which outlines that the *Parks and Urban Open Space System* would permit private ownership or involvement for several types of parks but would be subject to requirements which protect public access. The Official Plan also included policies that provide direction on ensuring both public and private spaces are universally accessible and barrier-free:

> *"Private urban squares created through the development approval process shall be encouraged to provide public access." (Town of Richmond Hill, 2017, Sec. 3.4.4.16)*

> *"Barrier-free access to Town-owned parks and publicly accessible urban open spaces shall be incorporated". (Town of Richmond Hill, 2017, Sec. 3.5.7.5)*

Design

Since each municipality is limited in their experience with POPS, not much was shared with regards to how design would be regulated. Markham staff identified that the design of future POPS would be heavily dependent on the engineering of the site. As such, the City will work with the public and the private developer to create a space which is attractive as well as addresses any functional requirements. This will include factoring in specific requirements for different soil depths as well as grading and features to be

included in the space (i.e. seating, exercise equipment, playgrounds). As well, Staff identified that their experience with Strata Parks will be applied to future work on POPS.

Most importantly, each planner identified that the design of the space will demonstrate that the space is publicly accessible. In Markham this means that POPS will be designed similarly to other public parks and will not be located as remnant lots or behind a building. Instead, POPS will be placed adjacent to public roads and found within accessible locations. Staff emphasized that everything about the space will demonstrate that it is publicly accessible, including its design.

> *"This relates to any type of park we would accept. And that is, that it must look public, act public and if Joe blow walks down the street and if you ask him if that's a public park, he has to be able to say yes, that is a public park". (City of Markham Planner, personal interview, April 12, 2017)*

Role of the Planner

Like all development proposals, the role of the planner was identified to be one which included providing comments. In Markham, planners identified that whenever development proposals are to be publicly accessible, the City would only provide recommendations on its design or structure. This sentiment applies to all developments, regardless if POPS are proposed or not. Meaning, whenever the public is allowed to enter or use the land (but is privately owned), the City reviews the design to ensure the interests of the public are a priority. As well, during the design of the space, the City would take a role of trying to emphasize the needs of the community to the

96

development. Planning staff anticipate this being a definitive role in their review of POPS.

> *"I see it almost reverse, where they [developer] are largely driving it [the POPS] to serve their private needs. However, once they say it will be publicly accessible, that's where the City enters a commenting role. To say, okay, if the public is now using this, what do we think about some of the uses or the design, or how can we inform the design." (City of Markham Planner, personal interview, April 12, 2017)*

> *"I would honestly see the City taking a bigger role in helping them understand how it should be programmed. Because they [the developers] want it to be successful but we also want it to be successful and make sure at the end of the day the residents are served." (City of Markham Planner, personal interview, April 12, 2017)*

Similar to Markham, the Oakville planner shared that their role was primarily to comment on the POPS. With the existing spaces, Urban Design staff were involved in providing comments on the design and use of the POPS. Development planners were also involved in obtaining securities which ensure that the space is built according to the approved site plan. This level of involvement is expected to continue with future spaces.

> *"Urban design staff were involved in all aspects of the development proposals and we take securities for certain elements until they are completed and inspected (mostly for plantings and some hardscape)." (Town of Oakville Planner, email interview, March 15, 2017).*

Agreement

Most of the municipalities require or will require the creation of a legal instrument to bind the POPS to the property and the property owner. The City of Markham anticipates relying upon a legal agreement to ensure the developer executes and builds the space according to what has been approved. Staff believe that such an agreement will be essential to the future success of the space and will protect the City's interests. The agreement will also allow the municipality to register the space on title, meaning any requirement or criteria could be legally enforceable and tied to the property owner.

Staff from Newmarket also expect future POPS to be implemented through legal agreements. It is assumed that the details of the space, operational features and ownership requirements will be included in such an agreement. Through the binding of the legal agreement, Staff anticipate being able to ensure the spaces remain publicly accessible. It is assumed that the agreement will mandate that the spaces look and feel like public parks. The Oakville planners identified that agreements, called heritage easements, were used to preserve heritage features and protect public access in the POPS:

> *"In both instances, a heritage easement is in place and quasi-monitored through that process. For future ones, we will have to develop a process". (Town of Oakville Planner, email interview, March 15, 2017)*

The Future of POPS

All planners expect POPS to be a definitive part of future planning. Each highlighted that this type of park is not only useful to encourage future intensification but is also unavoidable. In Markham, staff commented that their impending work on these spaces was late and 'behind the times'. The planners expect that POPS are going to be developed imminently and that within the next 5 years, will become a reality in their more urban areas. To do so, the City will likely require further analysis and review. Yet, the planners also identified that they were aware that the first space may take time to reveal any deficiencies or issues. However, the timing will benefit them as it will allow the City to utilize the best practices from other cities.

> *"If you go to New York, Chicago, Vancouver, San Francisco, we are so behind the times. Thank goodness we can learn from all of these. POPS don't even have to be on the ground floor, they can be up on a terrace or fully enclosed."*
> *(City of Markham Planner, personal interview, April 12, 2017)*

In Markham and Oakville, several developments are revealing that the future of POPS may be much larger in scale. In both municipalities, developments (described above) are being proposed which connect large areas and are integrated into the overall design of the proposed neighbourhood. Here, the developers believe that POPS can serve to attract new residents as well as ensure greater control over the lands. In both developments, the integration of POPS has been driven by the developer without significant involvement by the City. While it is likely that the developer will attempt to utilize these spaces towards the parkland dedication requirements, it remains to be

seen how the final design will integrate POPS into the development. These proposals also potentially represent an expansion of the use of POPS in a 'macro' manner.

In Mississauga, the planner identified that future POPS are anticipated for the Square One lands as well as elsewhere in the City. Staff believe that the experience of the first POPS will serve as a reference point for the future. As well, staff are confident that since the space will remain under the ownership of Square One, there will be little change to its operation and use. This is important as staff are concerned with future spaces, particularly those that are part of a residential condominium development. This was identified to be potentially problematic as it may be more challenging to maintain the space as priorities of the condominium board can quickly shift, altering how the space is used and maintained in the future.

> *"It is more challenging when you are trying to get a public open space, especially for a residential condo building, because when the people who were involved with its inception are gone, and the space is now in the hands of a condo board, this becomes more challenging." (City of Mississauga Planner, phone interview, May 8, 2017)*

In Oakville, Staff identified that it is still too early to tell what lessons can be learned from the existing spaces. However, they do anticipate undergoing further studies to refine their approach regarding the creation and regulation of POPS.

> *"It is too early to tell from our own experiences. We have been recently working with staff in parks/open space [department] as they review their master plan and*

we have collectively identified urban open spaces as a gap and need to explore

further. There have been recent meetings with staff in GTA municipalities for a

better understanding of how they are delivering these spaces. This will be critical

for us with future development in the Midtown and Uptown areas, as well as

development in North Oakville." (Town of Oakville Planner, email interview,

March 15, 2017).

CHAPTER 7: DISCUSSION

Through the conducted interviews, this research examined the increasing use of POPS in municipalities located in the GTA. The discussions revealed that POPS are increasingly becoming infused into the planning process on a more visible scale. It is evident that although their experience is limited, the municipalities fully expect this to change as greater application of POPS is anticipated. The following examines the results of the interviews and provides several reflections. The intention is to dive further into what was shared in order to highlight potential areas of concern, as each municipality moves towards forming policies regulating POPS.

Inception

Many municipalities have begun the process of undertaking updates and reviews of their Public Space provisions to include POPS. These policy changes have been different between each municipality. Some have chosen to develop strategies for specific growth areas, while others are in the process of creating design guidelines or adding new policies to Secondary Plans or the Official Plan. Yet each has demonstrated an increasing desire to have supportable policy in place, as POPS are believed to be increasingly common in development. This was conveyed in several conversations where the planners identified that this is the starting point for POPS, both as a tool and as a response to development.

Possible Benefits

The planners expressed a sense of appreciation for the benefits that these spaces can offer. The potential advantages ranged from the ability to shift the responsibility for maintenance and operation of parks to the private land owner to the provision of financial assistance to municipalities in the creation of accessible space. Additionally, the planners conveyed that the use of POPS could support and facilitate intensification, especially for the municipalities who desire it. This means that hardscaped and manicured squares, common to POPS, have become a tool to attract higher density residential developments. This becomes compounded as the Province continues to increase density targets and growth requirements. As parkland is an aspect of infrastructure, it too requires improvements to support rising populations. As such, POPS may therefore be viewed as more appropriate for the areas identified to accommodate intensification.

The planners also shared that POPS may present an opportunity to modernize what parkland should include and achieve. Ultimately, this illustrated a general change in how the public will conceive accessible space. In the past, municipalities in the GTA built parkland with grassy open fields; however, this popular form of public space is evolving to meet the increasing densities. This changing nature of public space is perceived to benefit the public's changing lifestyles and activities.

Concerns

Although the interviews expressed optimism in the use of POPS, several of the planners also identified concern for the enforcement of the spaces. Some of the conversations identified that within a municipality's by-law enforcement, there are existing struggles with the monitoring and managing of city infrastructure. Municipal staff may be hard-pressed to ensure future POPS adhere to the rules and restrictions which they are approved with. This means that the enforcement of future spaces will need to be addressed through policy changes.

The discussions also highlighted unease with the future internal management of the spaces. It was shared that residential developments which include POPS may be more challenged to deal with, as residents may assume the space is intended for their use only and may try to restrict public access. As well, in cases where a condominium board governs how a building is operated or maintained, changes to the board structure may also alter how the space operates or even impede access entirely. Although these problems are more likely to occur with residential developments, planning staff seemed to convey a sense of unease towards changes of ownership for any POPS, as this may lead to a disruption of public access. Given the on-going struggles with by-law enforcement, this will be an issue which will need to be rectified.

Intensification or Planning Process

One of the questions presented to the planners was, 'is the increasing presence of POPS in the GTA indicative of the general intensification of these municipalities'. In

many conversations planners identified that POPS were an item which coincided with the growth being witnessed. The planners shared a belief that although POPS are definitely symptomatic of the intensification of their cities, it is also an outcome of the current planning approval process. As most development proposals involve an extensive level of negotiation, the average development application has a high probability of being appealed to the OMB. This is known and anticipated by municipal staff, who need to direct time and resources to act as witnesses during the hearing. In order to ensure that the planning direction for the community is maintained, staff must contemplate ways to achieve arbitration without detrimental impacts to the future. The prevalence of POPS is therefore believed to be an outcome of this common struggle.

It is important to note that the Province has recently reviewed the OMB structure and has proposed dramatic changes. Along with a complete overhaul of many of its powers, the proposed changes will ensure that any future review of development applications will place greater importance on the decision of a Municipal Council. However, even with the modifications, the negotiation component of development will likely still occur either in the new OMB form or at a different level such as with municipal councils. As such, the City will still need to leverage their approval with the addition of tools like POPS.

A Force of Hand

Although POPS may represent a means to achieve community benefits, some municipalities, like Richmond Hill, have been forced to allow POPS through OMB

decision. In Richmond Hill, innovative parkland dedication policies were created which expanded how the municipality could acquire parkland. The policies were appealed to the OMB which resulted in a condition that allowed POPS policies to count towards parkland dedication. Although POPS may be beneficial to the future of Richmond Hill, the Town was largely mandated to permit and regulate their use.

Exclusion

Several of the proposed or existing POPS are linked to large-scale and high-end developments which also appear to be of an exclusive nature. In Markham, the Buttonville Airport redevelopment is marketing itself as an urban and exclusive development. The POPS are proposed to connect large areas of the property as well as between buildings. A similar development in Oakville is also proposing a broad application of POPS to connect several high-tech office buildings together. The spaces will be uniquely design to support the goal of creating a futuristic and complete community which serves the residents that can afford to live and work there. In Mississauga, the existing POPS was created as part of the recent Square One expansion, which was anchored by the high-end retailer, Holt Renfrew. The space was located adjacent to the store and acts as an entrance to this part of the mall. Being in such close proximity to the retailer extends the high-end nature of the merchandise and the luxurious lifestyle it seems to cater.

In each of these cases, the forecasted and existing POPS seem to serve a select public, rather than the entire public. In Markham, the luxurious lifestyle of the Buttonville

Airport development may be out of reach for segments of the population and thus make

use of the POPS also restricted. This may also be the case for the development in

Oakville as well as the existing space in Mississauga, where each may benefit only a

select portion of residents. While it is important to note that these criticisms have also

been found in other types of public spaces, these examples reflect that the presence of

private interests may lead to the exclusion of activities or users.

Security

The planners offered minimal reflection overall on how security or safety could be

approached within future spaces and policies. While this is more likely the result of their

POPS programs being in its infancy, it may also be due to the conceptions of private

space and public space. In nearly all discussions, the planners identified a priority that

POPS must be identified as accessible, even if privately owned. However, in a couple of

instances this was prefaced with the understanding that the spaces were privately

owned and that there may be a need to allow the private owner to control the space

according to how they see fit. When asked about themes of security and safety in POPS

policies, the respondents clarified that while exclusion must be avoided, there may be

situations where security could benefit the municipality and surrounding neighbourhood.

Sentiment

Lastly, many of the planners discussed POPS with primarily positive overtones. It was

largely believed that these spaces would provide opportunities to generate additional

and new types of public space. Although all of the planners shared some sense of

concern with the increasing presence of POPS, there was only minimal discussion on potential repercussions. Most of the shared sentiments focused on the opportunities rather than the risks. Planners identified that POPS would allow the municipalities to generate accessible space in areas which would be otherwise challenged. However, they provided little reference to the impacts of POPS on the greater public space network. Although these responses may be tied to a belief that POPS are unavoidable, it is still important to note that the positive sentiment may not provide sufficient critical reflection on potential recourses from a future with POPS.

CHAPTER 8: RECOMMENDATIONS

In one of the interviews it was suggested that the city is late to the 'party'. This not only implied that municipalities are ill prepared for the increasing use of POPS but also that they are an unavoidable reality. This shows that greater research is needed to support the municipalities development of POPS. The following includes several recommendations which aim to assist planners who have been tasked with preparing policies for POPS.

Support

Enforcement staff and policy were identified to be lacking in their ability to administer future POPS. Alongside the implementation of POPS policy, cities should consider changes to the powers of enforcement staff. These could include improved complaint systems, minimum staff presence and harsher repercussions. As well, new monetary penalties could be charged against property owners found to be in noncompliance with the agreed upon terms. Any funds received as a result of infractions could be put into an account for the purpose of improving or creating new public parks and open spaces.

An immediate fix could be the hiring of more enforcement staff or the creation of new positions with the specific role of monitoring POPS. A team of staff could be exclusively devoted to this task and visit spaces routinely as well as following complaints. The team could also be responsible for assessing the spaces to determine if the POPS are existing according to the agreed upon terms or if improvement is needed. This

recommendation is essential as any changes to policies will be ineffective unless staff are able to adequately enforce them.

Protections against exclusion

The preparation of future Parks Plans and policy amendments are crucial to the application of POPS. These guiding documents must address the locations, rates and zones of future spaces. It will also be important to development regulations which are explicitly written to prevent exclusion. It is recommended that the plans contain language which explicitly requires that the spaces are to be accessible to all groups and that the spaces are to be prioritized for public use over the interests of the adjacent businesses and shops.

To ensure the spaces are accessible, it is advised that a requirement for signage be inserted as policy. As each space will be constructed in accordance with a legal agreement, the signage requirement could be supported by an overarching policy located within a Parks Plan or the Official Plan. Policies could include the requirement of a Letter of Credit to the amount of the cost of the signage, to be returned upon construction of the regulated sign. As well, the adoption of stringent monetary penalties is recommended to be incurred if the required signage is not installed.

To strive towards preventing exclusion, municipalities may include policies which restrict the use of certain design techniques and materials. As identified above, outside analysis has recognized that the design of the spaces can often be responsible for limitations to

access and use. The use of defensible architecture such as the installation of spikes to prevent sleeping or guards to stop skateboarding are examples of this. Future policy documents can include limitations to policies implementing similar directives or the use of security officers and cameras. These may be able to prevent exclusion while still creating a space which is attractive to an assortment of uses and users.

Finally, POPS Management Plans are becoming favoured by cities across the world. These provide a document specific to the space and remain with the property owner even during changes in ownership. A management plan can include features such as a description of the permitted space as well as the regulations which control its use. Cities could adopt policies which require the submission of a plan prior to any approvals or the issuance of a bonusing agreement. It may also be beneficial that it become compulsory for the plan to be passed on to all future owners and be made readily available to City staff, if complaints are ever lodged.

Public Involvement

The future of POPS in the GTA would be well served by increasing the level of public involvement. It is recommended that cities engage the public as planners move through the process of creating POPS policy. This engagement could arrive in the form of community meetings to educate the public on POPS. In addition, during the approval process for developments with POPS, special facilitation sessions could occur which allow planners to inform the public of the intention of the space, what features are to be

included and potential restrictions attached to the space. This would improve resident's role in the creation of the spaces as well as may increase their eventual use of it.

Other cities have been successful in creating public committees and groups that work in conjunction to city staff and ensure POPS continue to exist according to their legal agreements. A committee could be established to oversee the creation of any new POPS and could issue recommendations on the design and function of the space. The committee could comprise of council members, residents, community support groups and landowners of POPS. The process would involve the presentation of each proposed POPS to the committee alongside the submitted management plan. The committee would then issue either a decision to accept the POPS or issue directions on ways to improve the space. The formation of a Community Support Group could also be beneficial and has been utilized in both New York and San Francisco. Such groups can support the operations of enforcement staff, act as a potential oversight committee and become a source for residents to learn about POPS.

CHAPTER 9: CONCLUSION

Privately Owned Public Spaces (POPS) are public spaces which allow access but remain under the ownership of the property owner. They exist in numerous forms and sizes including pedestrian connections, squares, above-grade courtyards and enclosed plazas. As noted in this research, POPS can be beneficial as they have an opportunity to provide accessible space for recreational activities or social mobilization. Yet, they can also be problematic as private ownership may lead to exclusion through restricting users and activities.

Around the world, POPS have been subject to much discussion and debate both in academic literature and planning practice. This includes conversation regarding themes of security, design, exclusion and management. There has been an increase in the number of cities allowing or encouraging the use of POPS within new developments. This is the case for many cities located in the Greater Toronto Area (GTA). Although the presence of POPS in Toronto has been visible for several decades, cities located in the periphery are beginning to adapt planning documents to allow for the creation of POPS. Although their integration is in its initial stages, with few spaces constructed and policy preparation only just beginning, there is a conscious intention to add this type of public space into the network of parkland and open space.

As such, this research has identified that the integration of POPS in the GTA has largely been the result of three major explanations. The first is that as cities are either required to or have a desire to intensify, POPS have been identified to be a method of

incentivizing developers through their ability to reduce costs. The second reason is a result of Ontario's planning process being largely an exercise of negotiation. Many proposed developments require some level of mediation either at the Ontario Municipal Board or through City Council. In response, several municipalities are looking to POPS as a tool to leverage their position on a proposed development while still protecting other planning objectives. The third reason is simply a result of private interest. Increasingly, new developments are integrating POPS into their proposed designs as it allows them often receive additional height and/or density while maintaining ownership and offers additional amenities to prospective residents or workers. Staff are thus forced into the conversation of reviewing and approving POPS.

What this research has shown is that there is an increasing demand for POPS from both the private and public sectors in the Greater Toronto Area. Although it may be concluded that the involvement of the private sector in the creation of accessible open space could be a more cost efficient way of improving the public realm, this would be inconsiderate of the greater impact. A conclusion of this nature would not highlight the potential issues which have been observed time and time again from the use of POPS. However, it is just as important to understand that the presence of POPS is unavoidable. As such, many of the actions of planners today, through their work on developing POPS policies, will have direct impact on the future of the public space network and the future of the urban landscape. If regulations are developed which clearly demarcate the accessibility of the spaces, support meaningful activities and encourage all users, POPS may be able to assist with good city building. Therefore, it

will be up to both public and private planners to make sure the policies are created in an equal and mutually beneficial manner.

REFERENCES

Advocates for Privately Owned Public Space (2015). *Privately Owned Public Space*. Retrieved from: http://apops.mas.org/about/history/

Anurakpradorn, S. (2013). Examining Publicly Usable Spaces on Private Property in Bangkok, Thailand. *Privately Owned Public Space - The International Perspective, Vol. 25,* 19-21. doi.org/10.1017/CBO9781107415324.004

Banerjee, T. (2001). The future of public space: Beyond invented streets and reinvented places. American Planning Association. Journal of the American Planning Association, 67(1), 9-24.

Beau, B. (2013). Public Private Partnerships in Melbourne: Using Private Investment and Public Accessible Open Space to Transform the CBD. *Privately Owned Public Space - The International Perspective*, *Vol. 25,* 16-18. doi.org/10.1017/CBO9781107415324.004

Benn, S. & Gaus, G. (1983) *Public and Private in Social Life*. Croom Helm, London

Berding,U., Haveman, A. & Pegels, J. (2013). Challenges in Co-producing Publicly Accessible Spaces: The Example of Bucherplatz in Aachen. *Privately Owned Public Space - The International Perspective, Vol. 25*, 30-33. doi.org/10.1017/CBO9781107415324.004

Blackmar, E. (2006). Appropriating the 'Commons': The tragedy of property rights discourse. *The politics of public space*. 49-80. Routledge.

Block, D. (2003). *Privately Owned Public Space: The City of Calgary Experience.* Master's Degree Project. University of Calgary.

Bondi, L. (1998). Gender, class, and urban space: public and private space in contemporary urban landscapes. *Urban geography*, *19*(2), 160-185.

Button, M. (2003). Private security and the policing of quasi-public space. *International Journal of the Sociology of Law, 31*(3), 227-237

Byers, J. (1998). The privatization of downtown public space: The emerging grade-separated city in North America. *Journal of Planning Education and Research*, *17*(3), 189-205.

Carmona, M. (2010). Contemporary public space: Critique and classification, part one: Critique. *Journal of Urban Design, 15*(1), 123-148.

Carr, S. (1992). *Public space.* New York: Cambridge University Press.

City and County of San Francisco (2016). *Privately-Owned Public Open Space and Public Art (POPOS).* Retrieved from: http://sf-planning.org/privately-owned-public-open-space-and-public-art-popos#downtown_plan

City of Auckland (2013). *Draft Auckland Unitary Plan – March 2013*. Retrieved from: http://temp.aucklandcouncil.govt.nz/plans/UnitaryPlan/Printable%20PDFs/Part%204%20-%20Rules/4.3.4%20City%20Centre%20zone.pdf

City of Edmonton (2010). *Zoning By-law*. Retrieved from: http://webdocs.edmonton.ca/zoningbylaw/ZoningBylaw/Part1/Interpretive/6_1(33)_Floor_Area_Ratio.htm

City of Markham (2012). *Design , Construction and Financing of Three Strata Parks at the World-On-Yonge Site by Liberty Developments.* Retrieved from: http://www2.markham.ca/markham/ccbs/indexfile/Agendas/2012/Development%20Services/pl120619/Design%20World%20On%20Yonge%20Report.PDF

City of Markham (2013). *Master Plan and Status Update Report: Application by CF/OT Buttonville Properties LP for Official Plan Amendment & New Secondary Plan for the Buttonville Airport Lands.* Retrieved from: http://www2.markham.ca/markham/ccbs/indexfile/Agendas/2013/Development%20Services/pl130507/Buttonville%20Report.PDF

City of Markham (2014). *2014 Official Plan*. Retrieved from: https://www.markham.ca/wps/portal/Markham/BusinessDevelopment/PlanningAndDevelopmentServices/OfficialPlan/2014OP

City of Markham Planner (2017, April 12). Personal Interview.

City of Mississauga (2011). *Mississauga Official Plan.* Retrieved from: http://www.mississauga.ca/portal/residents/mississaugaofficialplan

City of Mississauga Planner (2017, May 8). Phone Interview.

City of San Francisco (2017). *Article 1.2: Dimensions, Areas, and Open Spaces.* San Francisco Planning Code*.* Retrieved from:
http://library.amlegal.com/nxt/gateway.dll/California/planning/article12dimensionsareasandopenspaces?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_138

City of Toronto (2007). *Protocol for Negotiating Section 37 Community Benefits.* Retrieved:
https://www1.toronto.ca/City%20Of%20Toronto/City%20Planning/SIPA/Files/pdf/S/s37-Implementation-Guidelines-Negotiation-Protocol.pdf

City of Toronto (2014a). *Staff Report - Protecting and Increasing Access to Privately Owned Publicly-Accessible Spaces (POPS).* Retrieved from:
http://www.toronto.ca/legdocs/mmis/2014/pg/bgrd/backgroundfile-70176.pdf

City of Toronto (2014b). *Urban Design Guidelines for Privately-Owned Publicly Accessible Spaces*. Retrieved from:
http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=5c706b68ae586410VgnVCM10000071d60f89RCRD&vgnextchannel=7b0c1459a55e4410VgnVCM10000071d60f89RCRD

City of Toronto. (2014c). *Section 37.* Retrieved from
http://www1.toronto.ca/City%20Of%20Toronto/City%20Planning/SIPA/Files/pdf/S/SECTION37_Final_JK.pdf

City of Toronto (2015). *Toronto Official Plan*. Retrieved from
http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=03eda07443f36410VgnVCM10000071d60f89RCRD

City of Vancouver. (2011). *Rezoning & community amenity contributions.* Vancouver: City of Vancouver. Retrieved from http://vancouver.ca/files/cov/cacbrochure.pdf

City of Vancouver. (2015). *Community Amenity Contributions – through rezonings.* Vancouver: City of Vancouver. Retrieved from http://vancouver.ca/files/cov/CAC%20-%20CACs%20Through%20Rezonings%20Bulletin%20-%20update%202015-02- 13.pdf

City of Vancouver. (2016a). *Community amenity contributions*. Retrieved from
http://vancouver.ca/home-property-development/community-amenitycontributions.aspx

City of Vaughan (2016b). *Vaughan Metropolitan Centre Urban Design Guidelines*. Retrieved from:

https://www.vaughan.ca/services/business/urban_design/vmc_guidelines/Pages/default.aspx

Crawford, M. (1995). Contesting the public realm: struggles over public space in Los Angeles. *Journal of Architectural Education*, *49*(1), 4-9.

Crawford, M. (1999). Blurring the boundaries: Public space and private life. In J. Chase, M. Crawford, & J. Kaliski (Eds.), *Everyday urbanism.* New York: Monacelli.

Davis, M. (1992). City of Quartz. 1990. *New York: Vintage*.

Dawson, A. (2006). Geography of fear: crime and the transformation of public space in post-apartheid South Africa. *The politics of public space*, 123-42.

Day, K. (1999). Embassies and sanctuaries: women's experiences of race and fear in public space. *Environment and Planning D: Society and Space, 17(3),* 307-328.

Development Bureau (2008). *Public Open Space in Private Developments Design and Management Guidelines.* Retrieved from: http://www.devb.gov.hk/filemanager/en/content_582/Guidelines_English.pdf

Dimmer, C. (2013). Branding the Corporate Image City: Public Space in Shiodome, Tokyo. *Privately Owned Public Space - The International Perspective, Vol. 25,* 58-59. https://doi.org/10.1017/CBO9781107415324.004

Doherty, J., Busch-Geertsema, V., Karpuskiene, V., Korhonen, J., O'Sullivan, E., Sahlin, I., . . . Wygnanska, J. (2008). Homelessness and exclusion: Regulating public space in European cities. *Surveillance & Society, 5*(3), 104. Retrieved from http://resolver.scholarsportal.info/resolve/14777487/v05i0003/104_haerpsiec

Douglas, M., Ho, K., & Ling, O. G. (2002). Civic spaces, globalisation and Pacific Asia cities. *International Development Planning Review, 24*(4), 345-361.

Donnelly, D. (2017). Ontario Municipal Board Review: Hearings De Novo Reasonable or Trojan Horse. *Environmental Defense*. Retrieved from: http://environmentaldefence.ca/2017/02/22/omb-review-hearings-de-novo/

Fesler, S. (2016). Seattle's Review of Privately-Owned Public Spaces. *The Urbanist.* Retrieved from: https://www.theurbanist.org/2016/11/04/seattles-update-on-privately-owned-public-spaces/

Filion, P. (1999). Rupture or continuity? Modern and postmodern planning in Toronto. *International Journal of Urban and Regional Research*, *23*(3), 421-444.

Fuhrmann, E. S (2013). Possibilities of Planning Publicly Usable Space through Incentive Zoning: The Example of Santiago de Chile. *Privately Owned Public Space - The International Perspective, Vol. 25,*12-15.

Fyfe, N. (2006). *Images of the street: Planning, identity and control in public space (Ed)*. Routledge: New York.

Fyfe, N. & Bannister, J. (1996). *City Watching: Closed Circuit Television Surveillance in Public Spaces. Area, 28*(1), 37-46.

Garret, B. (2015). The privatisation of cities' public spaces is escalating. It is time to take a stand. *The Guardian.* Retrieved from: https://www.theguardian.com/cities/2015/aug/04/pops-privately-owned-public-space-cities-direct-action

Garvin, A., & Garvin, A. (2002). *The American city: What works, what doesn't*. New York, New York; McGraw-Hill.

Gaventa, S (2015). What Next for our Public Spaces? *Londonist.* Retrieved from: http://londonist.com/2015/05/what-next-for-our-public-space

Gehl, J. (1987). *Life Between Buildings: Using Public Space*. New York: Van Nostrand Reinhold

Gladki Planning Associates. (2014). *Section 37 review final report.* Retrieved from http://www.toronto.ca/legdocs/mmis/2014/pg/bgrd/backgroundfile-66994.pdf

Government of Ontario (2017). *Bill 139 – (Schedule 3) – the Proposed Building Better Communities and Conserving Watersheds Act, 2017: Amendments to the Planning Act.* Environmental Registry. Retrieved from: https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMyNjM2&statusId=MjAxNDY1&language=en

Gray, K., & Gray, S. F. (1999). Civil rights, civil wrongs and quasi-public space. European Human Rights Law Review, 46-102.

Greater London Authority (2011). *Public life in Private hands - Managing London's public space.* Retrieved from: https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Public%20space%20June%202011%20Webme.pdf

Hackenberg, K. (2013). The Return of the Port as Public Space in Antwerp. Eds: *Public Space and the Challenges of Urban Transformation in Europe*. Routledge. p.38-47

Harvey, D. (2006). The political economy of public space. *The politics of public space*, 17-34.

Hayden, D. (2006). Building the American way: public subsidy, private space. *The politics of public space*, 35-48.

Jackson, P. (1998). Domesticating the street. Images of the street. *Planning, identity and control in public space.* Londen: Routledge, 176-191.

Jacobs, J. (1961). *The death and life of American cities*.

Jim, C. Y., & Chen, W. Y. (2010). External effects of neighbourhood parks and landscape elements on high-rise residential value. *Land Use Policy*, *27*(2), 662-670.

Katz, C. (2006). Power, space, and terror: social reproduction and the public environment. *The politics of public space*, 105-122.

Kayden, J. S. (2000). *Privately owned public space: the New York City experience.* New York: John Wiley & Sons.

Koch, R. & Latham, A. (2013). Inhabiting Cities, Domesticating Public Space: Making Sense of the Changing Public Life of Contemporary London. Eds: *Public Space and the Challenges of Urban Transformation in Europe*. Routledge. 144-154

Kohn, M. (2004). *Brave new neighborhoods: The privatization of public space.* Psychology Press.

Koskela, H. (2000). 'The gaze without eyes': Video-surveillance and the changing nature of urban space. *Progress in Human Geography, 24*(2), 243-265.

Koutrolikou, P. P. (2012). Spatialities of ethnocultural relations in multicultural East London: Discourses of interaction and social mix. *Urban Studies, 49*(10), 2049-2066.

Kurose, T. (2013a). POPS in Sapporo: A City with a Vision and a Masterplan. The Centre for Sustainable Urban Regeneration - The University of Tokyo. (Vol. 25). *Privately Owned Public Space - The International Perspective*. (pp.56-57). Tokyo. doi.org/10.1017/CBO9781107415324.004

Kurose, T. (2013b). Creation of POPS and Cooperative Planning Culture in Osaka. *Privately Owned Public Space - The International Perspective, Vol. 25,* 52-55. Tokyo. doi.org/10.1017/CBO9781107415324.004

Lin, I., Wu, C., & De Sousa, D. (2013). Examining the economic impact of park facilities on neighboring residential property values. *Applied Geography (45):* 322-331

Litscher, M. (2013). Urban public spaces in Switzerland: 'Betwixt and between' the performance and the competence. In A. Madanipour, Sabine Knierbein & Aglaee Degros (Eds.), *Public Space and the Challenges of Urban Transformation in Europe.* 103-114. London/New York: Routledge, Taylor & Francis.

Loukaitou-Sideris, A. (1993). Privatisation of Public Open Space: The Los Angeles Experience. *The Town Planning Review*, 64(2), 139-167.

Low, S. (2006a). How private interests take over public space: Zoning, taxes, and incorporation of gated communities. *The politics of public space*, 81-104.

Low, S. & Smith, N. (2006b). Introduction: The imperative of public space. *The politics of public space*, 1-16.

Luk, W. L. (2009). Privately owned public space in Hong Kong and New York: The urban and spatial influence of the policy. *In The 4th International Conference of the International Forum on urbanism (IFoU)* , 26-28.

Madanipour, A. (1999). Why are the design and development of public spaces significant for cities?. *Environment and planning B: Planning and Design*, *26*(6), 879-891.

Madanipour, A. (2003). *Public and private spaces of the city*. Routledge.

Madanipour, A., Knierbein, S., & Degros, A. (2013). Vienna: (Re)Framing Public Policies, (Re)Shaping Public Spaces? Eds: *Public Space and the Challenges of Urban Transformation in Europe*. Routledge.

McCann, E. J. (1999). Race, protest, and public space: Contextualizing Lefebvre in the US city. *Antipode*, *31*(2), 163-184.

Ministry of Municipal Affairs. (2013). *Growth Plan for the Greater Golden Horseshoe, 2006 Office Consolidation June 2013* (Ontario: Queen's Printer for Ontario. Retrieved from https://www.placestogrow.ca/content/ggh/2013-06-10-Growth-Plan-for-the-GGHEN.pdf

Ministry of Municipal Affairs. (2015). *Provincial Policy Statement* . Ontario: Queen's Printer for Ontario. Retrieved from http://www.mah.gov.on.ca/Page1485.aspx

Ministry of Municipal Affairs (2016). *Planning Act, R.S.O. 1990, c.P.13.* Retrieved from https://www.ontario.ca/laws/statute/90p13

Ministry of Municipal Affairs. (2017a). *Growth Plan for the Greater Golden Horseshoe, 2017. Office Consolidation May 2017* . Ontario: Queen's Printer for Ontario. Retrieved from http://placestogrow.ca/index.php?option=com_content&task=view&id=430&Itemid=14#appendix

Ministry of Municipal Affairs (2017b). *Backgrounder – Protecting Quality of Life for Generations to Come.* Retrieved: https://news.ontario.ca/mma/en/2017/05/protecting-quality-of-life-for-generations-to-come.html

Mitchell, D. (1995). The end of public space? People's Park, definitions of the public, and democracy. *Annals of the association of American geographers*, *85*(1), 108-133.

Mitchell, D., & Staeheli, L. A. (2006). Clean and safe? Property redevelopment, public space, and homelessness in downtown San Diego. *The politics of public space*, 143-175.

Moore, A. (2013). *Trading density for benefits: Section 37 Agreements in Toronto* (ISBN No. 978-0-7727-0912-7). Toronto: Munk School of Global Affairs University of Toronto.

Moore, S. (2010). 'More Toronto, naturally 'but 'too strange for Orangeville': De-universalizing New Urbanism in Greater Toronto. *Cities*, *27*(2), 103-113.

Nemeth, J. (2006). Conflict, exclusion, relocation: Skateboarding and public space. *Journal of Urban Design*, *11*(3), 297-318.

Németh, J. (2009). Defining a public: The management of privately owned public space. *Urban Studies, 46*(11), 2463-2490.

Németh, J. (2010). Security in public space: an empirical assessment of three US cities. *Environment and Planning A*, *42(10)*, 2487-2507.

Németh, J., & Schmidt, S. (2011). The privatization of public space: modeling and measuring publicness. *Environment and Planning B: Planning and Design*, *38*(1), 5-23.

Ontario Professional Planners Institute (2014). *Provincial Policy Statement 2014 – Training Aid*. Retrieved: http://ontarioplanners.ca/PDF/PPS-Training-Sessions/PPS-2014-Training-Aid.aspx \

Palumbo, M. (2013). Urban Transformation, Social Transition: Barbes, Paris, Where 'Otherness' Takes (Public) Place. Eds: *Public Space and the Challenges of Urban Transformation in Europe*. Routledge,117-130.

Patti, D., & Polyak, L. (2017). Frameworks for Temporary Use: Experiments of Urban Regeneration in Bremen, Rome and Budapest. *Transience and Permanence in Urban Development*, 231-248.

Penfold, G. (1998). The Cornerstone of Development – Integrating Environmental, Social, and Economic Policies. *Planning Act Reforms and Initiatives in Ontario, Canada.* Ch. 5.

Project for Public Spaces (2009). *PPS's parks program.* Retrieved from: http://www.pps.org/parks plazas squares/ info/parks plazas squares approach

Rahi, G., Martynkiw, A., & Hein, E. (2012). Accessing Vancouver's Privately Owned Public Spaces. *Trail Six: An Undergraduate Journal of Geography*, *6*.

Reeves, D (2016). *Dory Reeves: Open up hidden public spaces in Auckland Towers.* New Zealand Herald. Retrieved from: http://m.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11702774

Sennett, R. (2017). *The fall of public man*. WW Norton & Company.

Schmidt, S, (2004). Worldwide plaza: the corporation of urban public space. *IEEE Technology and Society*, 23(4), 17-18

Schmidt, S., Nemeth, J., & Botsford, E. (2011). The evolution of privately owned public spaces in New York City. *Urban Design International, 16*(4), 270-284.

Seattle City Council (2016). *Design Commission Looks at Privately Owned Public Spaces.* Retrieved from: http://sccinsight.com/2016/06/21/design-commission-looks-privately-owned-public-spaces/

Seattle Department of Construction & Inspections (2017). Privately Owned Public Spaces. *Bonus Floor Area for amenities Downtown, Seattle Municipal Code (SMC) 23.49.013.* Retrieved from: http://www.seattle.gov/dpd/toolsresources/pops/

Sheller, M., & Urry, J. (2003). Mobile transformations of public and private life. *Theory, Culture & Society*, *20*(3), 107-125.

Staeheli, L. A., & Thompson, A. (1997). Citizenship, community, and struggles for public space. *The Professional Geographer*, *49*(1), 28-38.

Staeheli, L. A., & Mitchell, D. (2006). USA's destiny? Regulating space and creating community in American shopping malls. Urban studies, 43(5-6), 977-992.

The Planning Partnership (2015). City of Mississauga Downtown Growth Area Park Provision Strategy*. City of Mississauga.*

Tang, I. (2016). Town of Richmond Hill Successfully Defends Parkland Decision at Divisional Court. *Borden Ladner Gervais Lawyers*. Retrieved from: http://blg.com/en/News-And-Publications/publication_4666

The MBTW Group (2011). *Landscape Plan (Ground Level).* Rain Condominiums. Retrieved from: https://www.oakville.ca/assets/2011%20planning/sp-161606002-mar12-landscape.pdf

Town of Newmarket (2016a) *Newmarket Urban Centres Secondary Plan*. Retrieved from: http://www.newmarket.ca/LivingHere/Documents/Planning%20Department/Secondary%20Plan/Urban%20Centres%20Secondary%20Plan%20-%20October%2025%202016%20Consolidation.pdf

Town of Newmarket (2016b). *Town of Newmarket Official Plan*. Retrieved from:
http://www.newmarket.ca/LivingHere/Documents/Planning%20Department/Official%20P
lan/2006%20Official%20Plan%20-
%20December%202016%20Consolidation%20FINAL.pdf

Town of Newmarket (2016c). *Town of Newmarket Parkland Dedication By-law. By-law
Number 2016-061.* Retrieved from:
http://www.newmarket.ca/LivingHere/Documents/Planning%20Department/Parkland%2
0Dedication/2016-61%20Parkland%20Dedication%20By-law%20-
%20December%205%202016.pdf

Town of Newmarket Planner (2017, March 30). Personal Interview.

Town of Oakville Planner (2017, March 15). Email Interview.

Town of Richmond Hill (2013). *Richmond Hill Parks Plan - Better Choice for People at
Play.* Retrieved from: https://www.richmondhill.ca/en/find-or-learn-about/Parks-
Plan.aspx

Town of Richmond Hills (2017). *Richmond Hill Official Plan – Building a New Kind of
Urban.* Retrieved from: https://www.richmondhill.ca/en/shared-
content/resources/documents/OMB-partially-approved-Official-Plan-Part-I.pdf

Town of Richmond Hill Planner (2017, March 16). Phone Interview.

Vendeville, G. (2016). La Carnita's private patio on public space angers condo owners.
The Star. Retrieved from: https://www.thestar.com/business/2016/08/16/la-carnitas-
private-patio-on-public-space-angers-condo-owners.html

Viosin-Bormuth, C. (2013). How to build the public spaces of a democracy? The design
of new public spaces in the city centre of Dresden after reunification. In A. Madanipour,
Sabine Knierbein & Aglaee Degros (Eds.), *Public Space and the Challenges of Urban
Transformation in Europe,* 103-114. London/New York: Routledge, Taylor & Francis.

Wacks, R. (1993). *Personal information: Privacy and the law*. Clarendon Pr.

White, R. (1996). No-Go In The Fortress City: Young People, Inequality and Space.
Urban Policy and Research, 14(1), 37-50

Whyte, W. (1977). *Social Life of Small Spaces*.

Xing, N. & Siu, K.W. M. (2013). Vanishing Everday Space: Outdoor POPS in Hong Kong. *Privately Owned Public Space - The International Perspective, Vol. 25,* 22-25. Tokyo.

Zukin, S. (2009). *Naked city: The death and life of authentic urban places.* Oxford University Press.

APPENDIX A – BEST PRACTISES

Appendix A - Best Practices (International)		
City	**Policies**	**Criticism**
Manhattan, New York, USA	- Considered one of the first cities to implement formal POPS policies. - Initially adopted zoning resolutions to regulate skyscrapers and to reverse the decline in light (Kayden, 2000). - In 2007, the City implemented requirements which demanded enhanced design as well as minimum levels of amenities such as seating, lighting, planting and signage (Schmidt, Nemeth & Botsford, 2011). - City responded to William Whyte's review through the provision of a higher floor area ratio if developers were to create usable, high-quality POPS (Schmidt et. al, 2011). - A community organization, the *Advocates for Privately Owned Public Space,* was formed by Jerold Kayden and the Municipal Art Society of New York. This body is responsible for monitoring and promoting stewardship, engaging stakeholders (such as property owners, city employees, public members and civic activists) to ensure spaces remain accessible and offering crowd-sourcing opportunities to improve spaces and reports issues to the city (Advocates for Privately Owned Public Space, 2015).	- Through a review by William Whyte in 1975, many of the existing spaces were identified to be poorly designed and infrequently used by the public (Whyte, 1977). - Further analysis in the early 2000's identified that the City did not maintain a consistent inspection system or oversight program for existing POPS. This allowed many owners of POPS to let the space fall into disrepair or wall off portions of the space and restrict the public's access. Many of these concerns were addressed with the 2007 zoning reforms (Schmidt et. al, 2011)
San Francisco, USA	- City provides additional gross floor area to developments proposing the construction of Privately Owned Publicly Owned Spaces (POPOS), located in the downtown district in accordance with specific ratios of square feet of open space to gross floor area (City of San Francisco, 2017). - The ratios range from 1 square foot of open space for every 50 square of gross floor area to 1 square foot of open space for every 100 square feet of gross floor area. Each ratios is determined according to a district in the downtown (City of San Francisco, 2017). - Minimum standards exist which address size, location, design, protection from wind, seating, access to sunlight, lighting, enhancement of user safety, provision of toilet facilities and percentage of total open space available to the public during daylight hours (City of San Francisco, 2017).	- Critics have linked existing POPOS to problems with access, poor design and low sunlight (ASLA, 2013). - The City completed a separate review of POPOS in 2011 which identified that many property owners were found to be in violation with the agreed upon conditions of approval. The City's review revealed that little was done in notifying owners of complaints or infractions and that the use of penalties or fines for enforcement was insufficient to ensure the spaces remained accessible to the public (City and County of San Francisco, 2016).

	- To respond to some of the criticisms in 2011, the City brought together a panel consisting of academics and professionals to discuss and review many of the existing POPOS in hopes of improving the spaces. The panel recommended the addition of greater staff resources, the formation of a non-profit support group, that further protections be implemented which ensure public access from adjacent right-of-ways, greater public education through signage and the public adoption of poor spaces for renovation and the creation of more social-type spaces (ASLA, 2013).	
Seattle, USA	- The City provides incentives and requirements to permit the exchange of additional development capacity for publicly accessible space. - Additional floor area can be granted for the provision of public open space amenities including hillside terraces, urban plazas, parcel parks, public atria, green street improvements and green street setbacks on designated green streets (Seattle Department of Construction & Inspections, 2017). - Each type of space is permitted in specific locations of the City and must also adhere to specific standards which address location on the lot, that no entry fee is collected, minimum distance to bonus floor area, minimum contiguous area, execution of an easement and provision of public restrooms (Seattle Department of Construction & Inspections, 2017). - In response to the 2016 review, the Seattle Design Commission identified that POPS should follow the same standards of design as the ones used for parks and public spaces. This was determined to ensure the appearances conformed with City owned spaces in order to increase use (Seattle City Council, 2016). - As well, the programming of the space was recommended to be improved in order to encourage activities not directly related to commerce (Seattle City Council, 2016). - To assist with creating stronger reviews of POPS, the Seattle Design Commission began experimenting with new requirements. One of these stipulations included the submission of an operation and management plan for POPS as part of their formal review process (Seattle City Council, 2016).	- Through analysis on POPS, it was identified that the spaces appeared differently than other public spaces and as a result were accessed differently by the public (Seattle City Council, 2016). - The analysis also determined that the programming of the spaces for different activities and uses was identified to be limited when compared to the programing of public spaces (Seattle City Council, 2016). . - In addition, many of the spaces were designed to be conducive for activities which were related to commerce.

Toronto, Ontario	- POPS have been created for several decades through density bonuses and informal contracts and have been created as parkettes, plazas, atriums as well as other forms (enclosed or open-air). - In 2014, the City adopted the *Urban Design Guidelines for Privately Owned Publicly-Accessible Spaces* to strengthen regulations related to POPS. These guidelines were accompanied by an interactive website, signage requirements and a mapping tool. - In the Guidelines, the City stresses that POPS are intended to only complement the existing public space network, not to replace them (City of Toronto, 2014b, p.1). - The Guidelines provide direction regarding the different open space classifications, design priorities, elements and addresses signage requirements (City of Toronto, 2014b, p.1).	- Prior to 2014, the City faced losing several spaces due to a lack of strict and formal agreements. As well, many of the early spaces suffered from poor design and absent signage (Gee 2012). - In the early 2000's, residents and Council became concerned with the appearance, especially as POPS increased in popularity during the downtown condominium boom (Gee, 2012). - POPS have also been noted to be inconsistent across the City (especially prior to the adoption of the guidelines in 2014) as they did not have regulations to ensure uniformity, even amongst similar types of spaces (Gee, 2012). - Even after the implementation of the Urban Design guidelines, many spaces have been identified to not possess adequate signage. - Recent analysis has shown that of the existing spaces, most are located in the downtown and comprise of walkways or pedestrian connections. This suggests that there is an uneven distribution of POPS across the City and that the spaces mainly facilitate pedestrian traffic to and from other locations.
Vancouver, British Columbia	- Through the Urban Design Panel and the Development Permit Committee, the City can negotiate the lifting of restrictions in exchange for the provision of amenities such as public space and public art (Rahi, Martynkiw & Hein, 2012). - As well, the City permits the creation of POPS through the use of Community Amenity Contributions (CAC), which occur following a rezoning application (City of Vancouver, 2011). - CAC's can arrive in the shape of a park space, community centre or neighbourhood housing and are secured through a zoning agreement (City of Vancouver, 2016). - CAC's are used for accessible spaces and are permitted according to a delineated area which has a prescribed value rate per square foot of bonus floor area. The use of the pre-determined rates and areas have been found to provide sufficient guidance and structure when negotiating new public amenities (City of Vancouver, 2015).	- Research conducted by the University of British Columbia on POPS in the Central Business Area, found that many of the spaces included design features which discouraged certain uses and users. (Rahi, Martynkiw & Hein, 2012) - The spaces were also found to be places of movement rather than places to sit or congregate and were overall underutilized (Rahi, Martynkiw & Hein, 2012). - The research ultimately questioned the overarching policy documents and recommended plaza design guidelines be strengthened, that greater public input be integrated, that additional requirements for signage be implemented and that the existing spaces be required to conform to higher standards following renovations (Rahi, Martynkiw & Hein, 2012).

Calgary, Alberta	- The City contains approximately 40 POPS located in the downtown. - POPS are created through the Bonus System which includes several rates. For public plazas, developers must provide at least 10% of the sites net area in order to receive a floor to site ratio of two. Developers who create arcades to a minimum of 5 metres in width and a minimum contiguous area of 30 square metres, can receive 5 square metres of additional floor area for 1 metre of public space. - Developers are also able to receive an additional 4 square metres of floorspace, if they contribute 1 square metre to the skywalk (Block, 2003).	- In 2003, research demonstrated that many spaces in the downtown have had difficulty in achieving a balance of high quality public amenity features (Block, 2003). This research recommended that the existing urban design guidelines be updated beyond the vision developed in the past (Block, 2003).
Providencia, Santiago, Chile	- POPS are permitted in only some parts of the downtown areas of Santiago, in the district of Providencia. - From 1976 onwards, planners in the city have negotiated with private developers to create privately owned accessible space in the inner districts of the downtown (Fuhrmann, 2013). - The first applications of POPS were influenced by the human scale and were well used. These spaces encouraged users to stay, especially because security was managed through social control (Fuhrmann, 2013). - In 1989, the City implemented a specific Floor Area Ratio provision which required that for each square metre of POPS, the building could earn up to 5 square metres of additional floor space. These spaces were successful in capturing the ideal of urban design for pedestrians by designing spaces which looked like public spaces by using similar materials, street lighting and vegetation (Fuhrmann, 2013). - Spaces created after 1989 were largely designed without the involvement of public planners which saw many spaces built indoors and possessed an exclusive look as well as were monitored by security experts (Fuhrmann, 2013). - Following the 2013 research analysis, the City implemented amendments which prioritized accessibility and visual clarity by requiring developers to to be specific in operation times, choice of	- Research, conducted in 2013, on existing POPS found that many of the spaces did not match the intent of creating meaningful public spaces (Fuhrmann, 2013). - It was also observed that the incentive zoning was largely geared toward creating the highest possible bonuses and not the creation of high-quality spaces (Fuhrmann, 2013). - In Santiago, the municipal regulations do not officially recognize the public's right of access to these spaces. Because of the absence of such requirements, the spaces provided by incentive zoning do not meet common standards for public space and only follow the logic of a private right of way between neighbouring lots (Fuhrmann, 2013). - Research highlighting key points gleaned from discussions with planners revealed that much of the focus is on the opportunities of POPS rather than the risks of incentive zoning (Fuhrmann, 2013) - Research also found that the spaces exemplified a private character which resulted from symbolic barriers that expressed the areas predominance of exclusive shops, pubs and restaurants, which alongside the requirement to pay to access, may repel users (Fuhrmann, 2013). - Many of the spaces are under surveillance by CCTC cameras or by the presence of private security personnel (Fuhrmann, 2013).

	architectural programs, pavement design, lighting all of which to safeguard a public character (Fuhrmann, 2013)	
London, U.K.	- The origin of POPS in London dates to the 1980s and grew in number during the 2000's as local Councils advised they could not afford to create or maintain parks and open spaces. (Garrett, 2016). - In 2012, The Guardian newspaper compiled a list of the number and location of existing POPS and overlaid the list on a map of Greater London. Prior to this undertaking, there were little means of knowing how many and where existing POPS were located (Garrett, 2016). - In 2016, the City responded by adopting a report which recommended changes to the structure of development agreements, clearer provisions and designs which included minimum standards for access, use and management (Greater London Authority, 2011).	- Through the research conducted by The Guardian, it was identified that the completion of the mapping exercise was challenging as information on POPS, beyond location and ownership, was non existent (Garrett, 2016). - Media attention on POPS has been ongoing since the early 2000's, which has requested government intervention to strengthen regulations and identify the locations of all existing spaces. Although governments have responded, little changes have been completed and concerns with access, exclusion, poor signage, poor design, excessive security still exist.
Bucherplatz, Aachen, Germany	- Privately Owned Publicly Accessible spaces are typically negotiated and shaped on a case-by-case basis in Germany (Berding, Havemann & Pagels, 2013, p.30) - In the case of the square, Bucherplatz, located in Aachen, Germany, the City granted the construction of the square in the 1960's, which was then registered as a right of way in the land to protect public accessibility in the square, but remained publicly owned. - Bucherplatz also contains security which is provided by the municipality, who is also responsible for the maintenance and cleaning. - Following an attempt to redevelop the square and neighbourhood, the City failed to involve the property owner which ultimately brought the redevelopment project to a halt. - It was identified that although the initial owner felt a sense of responsibility in improving the character and appearance of the city. The new owner felt differently and did not want to pay for any redevelopment (Berding, Havemann & Pagels, 2013, p.31). - This case is important because it shows how municipal powers stop at the property line. Even though the square was involved in the overall planning concept, the municipalities authority remains limited as the	- Increasing presence of shopping malls and other privatization processes in Germany has led to a disappearance of public spaces. - Cities are increasingly characterized by being covered with shopping malls, which have are exercising their right to exclusion and curtailing other civil rights (Berding, Havemann & Pagels, 2013, p.30). - This Bucherplatz case serves as a useful example for municipalities looking to engage in POPS as it demonstrates potential future issues. Through private ownership of public space, the ability to ensure the public has access to a quality public space is limited if the property owner or new property owner opposes redevelopment or improvements.

	square is privately owned. The existing easement could secure public accessibility, but upgrading and redesigning was not possible without the consent of property owner.	
Auckland, New Zealand	- POPS can be provided through a bonus floor scheme which allows developers to exceed permitted floor area in return for the provision of public space (Reeves, 2016) (City of Auckland, 2013). - The City will grant additional floor area through a ratio which is determined according to the location in the City. The space is also regulated according to the type of accessible space (i.e. heritage feature, square, open space, through-site links), that the space be accessible 24 hours a day and that the space contain a minimum horizontal dimension of 10m (measured at right angles) to its perimeter with a minimum area of 200m2 (City of Auckland, 2013). - Publicly Accessible Open Spaces are permitted with an additional floor area of 3m2 to 8m2 (depending on the location in the City) at a ratio ranging from 1:1 to 3:1 (also depending on the location in the City) (City of Auckland, 2013). - In 2017, the Local Board of Commerce sought to increase public awareness by improving signage.This public awareness campaign also included compiling a complete list of locations which described the space and its amenities. (Reeves, 2016). - Recommendations also suggested that improvements be made to the bonus floor scheme along with recurring audits of spaces ensuring proper compliance, better design standards, greater accessibility and advertisement of their existence (Reeves, 2016). - In 2011, Auckland Council carried out an audit on bonus floor provisions and through-site spaces in the city. Council identified that 65 of 72 properties were fully compliant, three were non-compliant and four were removed from the list (Reeves, 2016). - Following the audit, the Local Board of Commerce sought to increase public awareness by adding a requirement for signage installation.	- Recent assessments conducted by researchers identified that the spaces were largely exclusive, unusable at certain hours, possessed heavy surveillance and contained inadequate signage (Reeves, 2016).

Melbourne, Australia	- Melbourne produces privately owned public space through the use of Public Private Partnerships (PPPs), which has resulted in over 50 POPS (Beza, 2013). - These spaces range from forecourts and foregrounds, entrance plazas, office plazas, through-block circulation and urban open spaces (Beza, 2013). - As the PPP's are tri-lateral agreements, the responsibility of production and management of these spaces can differ from space to space. The PPP can involve the government (sometimes multiple levels), private sector (including large development organizations or small private actors such as accounting firms and lawyers and financial institutions) and community stakeholders. - To create publicly accessible spaces through PPP's, there are a number of different mechanisms, each of which are negotiated on a site by site basis and vary tremendously. As well, each must be open at certain times and ensure a certain level of sunlight (Beza, 2013).	- As PPPs involve development organizations and private companies, there is pressure placed by these groups to retain management of the space. The purpose for this is to protect their brand, company name and/or product by deciding which activities can occur, who can and cannot access the space. However, this has limited the involvement of public organizations and has also resulted in limited access by some groups who do not meet the image desired by the organization.
Hong Kong, China	- In Hong Kong, bonus floor area is given to a maximum of 5 times the size of the dedicated area (Luk, 2009). - The guidelines, *Public Open Space in Private Developments Design and Management Guidelines,* detail that responsibility for management and maintenance be established in the registered agreements between the government and the developer (Development Bureau, 2008). - The guidelines also recommend that the owners consider accommodating a wide range of uses, the prevention of obstructions for public passage, as well as the prevention of unlawful activities and are required to be open 24 hours a day, unless exception is granted (Development Bureau, 2008).	- Issues with enforcement and design of the spaces has been noted by several different researchers (Luk, 2008). - Examination of the spaces revealed that 70% of the spaces are smaller than 50 square metres and are largely narrow spaces, mostly used for pedestrian circulation (Luk, 2009). - The permission of POPS as well as the rapid urbanization of the City is also threatening the existence of traditional street markets (Xang & Siu, 2013). - Kai Fong, or traditional street markets, are being demolished to make room for new developments and are being replaced with private spaces such as shopping malls. These new areas have also become the primary locations for public activities, which in turn has weakened social connections between people (Xang & Siu, 2013).
Bangkok, Thailand	- POPS have been used to assist with the creation of open space in the Central Business District (CB) as it has little public or even semi-public space (Anurakpradorn, 2013).	- Issues were identified with the POPS program including a lack of use in these spaces. It was was also identified that Thai people still prefer using vehicles and using air conditioned area which has

	- In 2006, a Floor Area Ratio (FAR) system was initiated which provided bonus floor area to developers to create publicly usable space. - Developers were awarded an additional 5% of floor area if the project provided a POPS open to the outdoors, located along a sidewalk, and in front of a building (Anurakpradorn, 2013).	limited the popularity of the POPS spaces to only serving pedestrian circulation (Anurakpradorn, 2013). - The FAR was also noted to not be attractive to developers as it was found to be too small and contained too many restrictions (Anurakpradorn, 2013). - Many of spaces were also constrained by the climate and weather pattern which offer little incentive for outdoor spaces as the period of time when the spaces can be accessed and used is confined to a smaller window (Anurakpradorn, 2013).
Sapporo, Japan	- The City of Sapporo has developed public infrastructure like roads, parks and other public spaces in a grid structure which is large and requires considerable detours to navigate if connections are not present. POPS are used to aid in the pedestrian navigation of this grid (Kurose, 2013). - The City has two centres which are connected by an underground concourse to allow access between the areas during the winter period. The concourse was produced as a POPS by two developers (Kurose, 2013). - In Sapporo, POPS can be built in the form of pedestrian connections, atriums, squares, plazas, walkways and are required to be accessible in the winter with any accumulated snow be removed. - Developers can receive additional floor area or relaxed height limitations, if POPS are created. - Depending on the location of the POPS, some are subject to regulations which require a minimum setback from the property line.	- In several POPS there have been issues with accessibility and openness which has resulted from the height of the adjacent buildings and limit the spaces accessibility for non-residents (Kurose, 2013). - As well, entrances to courtyards POPS have been noted to be too small and appear akin to private gardens, which makes users believe the space is not publicly accessible (Kurose, 2013). - POPS have also been permitted alongside low density residential developments. These spaces have been found to be poorly used and ultimately remain vacant (Kurose, 2013). - Although several public projects and guided private developments have provided some successful examples of POPS, research still recommends that the City improve POPS regulations including signage and accessibility requirements.
Osaka, Japan	- The City of Osaka has provided extra floor area in exchange for the provision of 908 POPS in both office and residential buildings (Kurose, 2013b). - The City designates certain areas with distinct and detailed design guidelines for the spaces which address elements such as width, connections to subways, and landscaping (Kurose, 2013b). - The POPS are administered directly by the building control department	- The City has numerous POPS but many of the spaces face uninspired design, lack of adequate maintenance programs and are constricted by illegal bicycle parking (Kurose, 2013b).

| | of the City which require that POPS improve connectivity around the city.
- It is important to note that many of the private stakeholders and property owners of POPS have been commended for taking responsibility on enhancing the value of their community through improving their POPS (Kurose, 2013b). | |

APPENDIX B – INTERVIEW SUMMARIES

Appendix B - Interview Summaries with Municipal Planners					
	Mississauga	**Markham**	**Newmarket**	**Richmond Hill**	**Oakville**
Existing Spaces / Current Context	Lack of park space in the Downtown Growth Area has led the City to expand its understanding of parks and brought about the Downtown Growth Area Park Provision Strategy. This document includes guidelines and symbolic locations of POPS. The existing space is located at the Square One Shopping Mall. The space is located adjacent to the south entrance of the mall, near the Holt Renfrew retail store.	Increasingly, changes to demographics have altered how parkland is provided. New studies are addressing this as well as developing policy to regulate POPS. Markham has witnessed the construction of several quasi-public spaces but no POPS. Several projects are in the proposal stage and are contemplating the use of POPS within their developments. These projects include the Buttonville Airport redevelopment project.	No existing spaces. Several proposals have been submitted which may include POPS (although this has not been confirmed by developers).	No existing spaces have been constructed. Several spaces are in the preliminary planning stages. One of these developments is proposing a POPS in the form of a sizable parkette with significant space devoted to a variety of activities.	Oakville has two spaces currently built. Both are located in the growth area of the Town. As well, both spaces have been designed to help preserve several heritage features. Currently, a development project is under review which includes a large-scale application of POPS.

Appendix B - Interview Summaries with Municipal Planners					
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Policy Provisions (Section 37 & Section 42)	The Mississauga Official Plan contains policies which address Section 37 & Section 42 of the Planning Act. These policies generally reference public space improvements through private investment. Additionally, the City provides recommendations for POPS in the Downtown Growth Area Park Provision Strategy. Although the City has policies addressing Section 37 citywide, the Downtown has limited height and density maximums, which reduce the opportunity to generate POPS through Section 37 policies.	Markham has limited policy regarding non-publicly owned accessible spaces or POPS. The Markham Official Plan includes policies directing the use of Section 37 and Section 42, in accordance with the Planning Act. Markham is currently undergoing a Parks and Open Space Master Plan which will seek to calculate forecasted park needs, expand the City's parkland typologies as well as improve the provisions regarding POPS. For the Parks and Open Space Master Plan, Planning staff identified that Toronto will be used as a reference in a limited fashion. This is because Toronto has different requirements than Markham. As a result of the incredible development pressures, Toronto has little choice besides acquiring parkland through POPS, hence why Section 37 bonusing is more common in Toronto. In Markham, the City has more flexibility to acquire parkland through dedication as the lots are generally bigger, and the park space per capita is much greater.	The Town contains policy in the Urban Centres Secondary Plan that allows for the provisions of additional height/density in exchange for accessible space. The Town will also permit developers to create a POPS which can be counted as a credit for their total parkland dedication requirements.	The Town provides policies which allow the creation of POPS through both Section 37 and Section 42. The general mindset is that as Section 42 forces developers to create parks, to do so in any other manner would mean unnecessary concessions.	Within the Urban Design sections of the Official Plan, the Town includes limited direction on POPS. The Official Plan also includes policies which direct bonusing for certain areas of the Town. These policies implement Section 37 policies and allow for the creation of public benefits such as parkland improvements. In 2014, the Official Plan was modified to include 'ownership language' regarding private accessible spaces. Staff identified that future studies are to be completed as part of the Town's Parks and Open Space Master Plan.

	Appendix B - Interview Summaries with Municipal Planners				
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Approach	Planning staff explained that in Mississauga, POPS are intended to augment the City's park system. As parkland has become increasingly challenging to produce in the Downtown, POPS can assist with facilitating open space. POPS can also offer a way for the City to get public access to open space through the development process that would be otherwise impossible. The City of Mississauga desires publicly owned park space over privately owned because of its impermanent nature. A main driver for this is growing trees into maturity. POPS are often built in locations which are often replaced or redesigned over time. When this occurs, trees which have grown in maturity would be lost.	Markham planning staff understand the benefits that these types of spaces can bring, both in terms of cost savings as well as improvements to the quality life of users (as a greater quantity of spaces can be built). Markham planners identified that Section 42 is better suited in the creation of new parkland. They identified that it provides the City with the ability to legally acquire parkland, without negotiation from a developer. With Section 37, parkland can be developed but through concessions and negotiations with the developer to determine size, shape and design. Planning staff highlighted the importance of legal agreements which will be utilized to ensure that the function of the space, as permitted by the City, remains consistent. This will occur as the agreement is registered on title and would therefore be legally enforceable by the City.	Several areas in Newmarket have been identified for intensification. POPS are envisioned in these locations to complement existing parks and public spaces. Through the designation of the growth area, POPS may be well suited to accommodate emerging types of activities and lifestyles. The Town views POPS as another incentive to attract developers to come to Newmarket.	The Town's general approach towards POPS is that although there are issues, the issues are surmountable. POPS are also believed to have value and can provide flexibility during the negotiation aspect of development. Planning Staff identified that the mindset differed across departments in the Town. One department felt that all parks should remain under public ownership, while others wished for all public parks to be maintained and operated by a private landowner. It was identified that the increasing presence of POPS may be a result of intensification as well as the planning system. As most applications end up at the OMB, anytime you have something that can provide flexibility during negotiations is useful. POPS are one of these tools because the City receives specific items from the development to ensure development is built in a preferred manner. The planner identified that POPS are not necessarily needed from a functional perspective in the '905' communities but mainly needed for negotiating.	Planning staff identified that the approach to POPS is that Staff are always seeking to encourage the creation of public spaces, regardless of ownership. It was identified that the lack of experience with POPS has made the Town apprehensive in their view of POPS.

Appendix B - Interview Summaries with Municipal Planners				
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Historical Influences	Through the approval of the Square One Shopping Mall in the 1970's, all required parkland (including future requirements) for those lands were obtained at that time. Since the mall takes up a majority of the land, this has limited the ability to develop parkland for this area.	Markham's history has mostly witnessed the development of park space in the form of sprawling green open fields. Through current intensification trends, this approach is slowly changing. However, the mindset for the needs of these larger, grass covered parks still exists amongst other City staff and has impacted how the City evolves its parkland structure.	Now that the Town is maxed out in horizontal growth, they need to go vertical. To encourage this, incentives need to be provided to attract this form of development. POPS are viewed as one of those incentives and they can reduce costs for developers.	Richmond Hill has historically been a suburban community, consisting of parks which are mainly grassy parks and soccer fields. This is representative of how parkland has been acquired in the past. Through a precedent setting case, a condition was imposed by the OMB which required the Town to accept the application of POPS towards parkland dedication.	N/A
Private Sector Response	At this time, POPS are primarily driven and initiated by the private sector. The planner identified that the spaces provide benefits for the property owner because POPS can act as another amenity as well as allow the owner to maintain control of the use and design of the space.	Planning Staff anticipate allowing developers to receive credits for their development charges or reductions to the required parkland dedication. It is expected that this will be attractive to developers. There has been a positive response by the private industry. Developers are interested in not only the savings for development costs but also because of the ability to enhance the quality of life. Planning staff identified that Private developers are motivating staff to engage in POPS. The developers want to know what they can get if they are to build and allow public access to POPS.	Planning Staff are reviewing several proposals which may include POPS spaces. This indicates that there is some interest by the private sector, particularly if it allows developers to lower their parkland dedication requirements. Although several proposals may have the potential to contain POPS, the developers haven yet to identify if the spaces will be integrated into their parkland dedication requirements or if they will count towards Section 37 policies.	Planning Staff identified that the Town's Parkland Dedication rates are high which has brought developers to constantly look for ways to reduce those requirements. Several developers have shown interest in creating POPS. They argue that there is benefit for the City as they can build the parks that the City needs and will oversee maintenance and other issues. This is their justification to receive reduced costs in the development process. While some developers have shown that they wish to create functional and usable spaces, others are proposing spaces which offer little public benefit or are located within features that are essential elements for the development (i.e. internal courtyards, hallways).	N/A

	Appendix B - Interview Summaries with Municipal Planners				
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Security	N/A	Planning staff identified that there is merit in allowing private public spaces to be only open at certain times as this practice already exists for public parks and could also act to ensure safety. The planners also identified that there would also be merit in allowing the property owners to 'self-monitor'. Staff identified the importance of ensuring the safety of users as long as the measures do not make the space exclusive or create restrictions to use.	N/A	N/A	N/A
Enforcement	N/A	There are existing issues with by-law enforcement which would have to be analyzed. This is largely because current by-law enforcement occurs through a complaint basis. If this practice was to continue to could mean that POPS are only regulated if and when the public submits a request to the City to intervene. Planning staff identified that POPS built as part of a residential condo developments may be enforced and monitored through private security. This approach may be something they would be receptive to and would be addressed in legal agreements.	It was identified that the spaces may cause future issues for enforcement staff. This is due in part because of the limited staff resources for enforcing City by-laws. Since City by-law enforcement functions through complaints, if the public is unaware that POPS are required to be accessible, City staff may never be directed to ensure the spaces remain as POPS. Staff identified this to be problematic and an issue that will need to be rectified before a POPS is approved.	Currently, the Town offers limited resources to the oversight and enforcement of existing parks. It is difficult for staff to keep up and even convince Council to provide further resources. In Richmond Hill, they have had one or two full time staff over the past 3-4 years while the Town has continued to acquire hectares of new land for park. Planning staff identified that this may become an issue for POPS if they are increasingly favoured in development projects. This could mean that there may be insufficient attention provided by the Town staff to the administration and monitoring of POPS to ensure they operate as per their legal requirements.	N/A

Appendix B - Interview Summaries with Municipal Planners					
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Access	Part of the City staff role is to comment on the design options. City staff also offer suggestions on the programming of the space. This included accessibility issues or timing of when the space is available for public access. Planning staff have desire to make sure the space is open and that people know they can go there. The City has arrived at this through background research, where previous spaces (outside of Mississauga) which do not read as public, are not adequately used by the public as most people don't know they are accessible.	In all public spaces, access is restricted past eleven o'clock. Application of a similar policy would likely be applied. Planners identified merit in allowing POPS to be open at certain times. Planning staff also identified a priority of ensuring all POPS look and feel publicly accessible. Signage initiatives completed by the City of Toronto will be used as reference to ensure the spaces appear accessible. Planning staff discussed the possibility of requiring minimum frontage requirements for POPS.	Planning staff will rely on the legal agreements to ensure that public access is protected.	The Town created Official Plan policies which ensure that all POPS (and similar spaces) are subject to strict Town guidance. This was created following the condition imposed by the OMB. The policy identifies that through legal easement or legal agreement, the owner recognizes that the space will always remain a public space and that the owners abide by certain rules which regulates aspects like access. This policy acts another protection for items such as access.	N/A

Appendix B - Interview Summaries with Municipal Planners					
	Mississauga	Markham	Newmarket	Richmond Hill	Oakville
Design	Planning staff identified that through the existing space, they have had limited involvement (outside of a commenting role) in the administration or the design. Although a high level of design is desired, right now it is up to the private developer to create this.	The existing quasi-public spaces, including Strata Parks, have required considerable engineering in their designs. Experiences gained from these of these will go into informing how POPS will be regulated. Planning staff stressed that the overall design of the space will clearly demonstrate that the space is publicly accessible. The planners identified that the spaces will not be built on leftover or remnant parcels of a development. There will be policies which dictate where the spaces must be in order for credits or exchanges to occur. Planning staff also identified that there will need to be a high level of justification for the designs. They will need to include engineering rational as well as a logic in how the space will be used. Planning staff identified that future POPS spaces do not necessarily have to be on the ground floor and can be on a terrace or fully enclosed.	The agreements were identified to ensure that the spaces look and feel publicly accessible and that they are not blocked off. Planning staff recognize that the emerging desires and wishes of residents require context sensitive parkland which doesn't necessarily have to be entirely made of grass. Instead, a small, hard-scaped, well designed space can sometimes make more sense.	Planning staff identified that one thing that they will need to create is a unified list of criteria. This would include an outline which sets out what the Town would be willing to give for parkland dedication. As well, it would address size, materials, features and other standards to be applied on a consistent basis.	In regards to the example of the large-scale development, it was identified that the use of POPS is a result of a high parking requirement as well as engineering requirements associated with the fact that the entire development is going to be built over a parking structure. The areas in between buildings including sidewalks and squares are all proposed to be POPS.
Role of the Planner	Although the existing space was primarily designed by the developer, the City commented on the design which included advising on materials, designs and features.	If a POPS is proposed as part of a redevelopment project, Planning Staff will enter a commenting role. Planning staff will also take a role of conveying the needs of the community to the proponent and integrating those needs into the design of the space. If planning staff identify that there is a need in the community which can be addressed in the design of the POPS, they will recommend the developer to do so.	Planning staff will mainly review and comment on the spaces. However, planning staff identified that this role may grow as staff continue to accept POPS.	N/A	With the existing spaces, planning staff provided comments on the overall development as well as the POPS. Staff also require and oversee the completion of securities which provide a financial guarantee that the POPS are built according to the approved Site Plan.

Appendix B - Interview Summaries with Municipal Planners				
	Mississauga	**Markham**	**Newmarket**	**Richmond Hill**	**Oakville**
Legal Agreement	N/A	An agreement would be created to bind the space to the property by and the owner. The agreement will be created to not only protect access but also leave any liability with the private property owner and not the City.	Planning staff anticipate that future POPS will be implemented through legal agreements which are registered on title. These agreements will likely address design features, operational details and ownership. The agreements will be designed to ensure the spaces continues to look and feel like public parks.	Planning staff identified that there is difficulty in administering separate agreements (distinct from Site Plan Agreements) as one may be prioritized over the other. Staff identified that a standard agreement or easement document will need to be create to ensure a consistent approach to the creation of POPS.　　　　When staff create and implement the first agreement, it may not be until down the road that issues are identified. Although these impacts won't be realized until the future, their realization will still strengthen future agreements.	N/A
Future of POPS	Several other spaces, similar to the existing one, are anticipated for several other parts of the Square One lands. The planner identified that there is a level of trust with the Square One owner, as they too want to the space to succeed as it benefits their interests too. Planning staff also conveyed a sense of concerns with other owners, such as residential condo developers, as they may not manage the POPS as well. .	Staff anticipate greater application of POPS in the future. In the next 5-years, planners expect POPS to be very visible in the City. Planning staff believe they are behind the times in allowing the creation of such spaces. Through the ongoing Parks and Open Space Master Plan, Staff foresee including a certain standard and quality of design. Markham planners identified that several developments will be creating POPS on a large-scale basis. The POPS will not only be aesthetic pieces but due to their size will also act as major pedestrian connectors within the proposed neighbourhood.	The planner identified that through the future intensification, demands for new types of activities are likely to occur. These will be much different than the activities and lifestyles of the past. POPS will likely function as one way parkland typologies are to address these changes. Planning staff are aware that while similar developments in Toronto may be more profitable, the costs to design and build are the same. To level the playing field, Staff are seeking ways to reduce those costs in order to attract development and POPS may be one tool to do this.	N/A	Staff believe that it is too early to discern any conclusions from their limited experiences. The Town has recently commenced a parks/open space master plan and urban open space is a gap which needs to be explored.