Density Bonusing and Development in Toronto

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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 Ontario, Canada

July 28, 2014

ABSTRACT

Height and density bonusing is a planning tool that municipalities in Ontario have authority to use by virtue of Section 37 of the provincial *Planning Act*, which allows a municipality to grant a developer bonus height or density beyond that allowed by prevailing zoning restrictions in exchange for the provision of community benefits. In Toronto, a major building boom has brought more than a decade of high-rise construction, mostly for new condominium towers and to a lesser extent new office buildings. Rising land values, a buoyant real estate market, and population and employment growth have created an ever-increasing incentive for developers to seek approval to build buildings taller and denser than envisioned by City Planners, local politicians, and the public at large. In order to obtain some degree of public benefit from this private development boom, the City of Toronto has extensively applied Section 37 to secure community benefits such as parkspace improvements, public art, and funds for new daycare facilities and affordable housing. To date, the City of Toronto has secured over $350 million through Section 37 agreements, as well as hundreds of in-kind benefits that likely double the total value of the City's Section 37 revenues to approximately $700 million.

Although density bonusing policies have been in place in Ontario since 1990, this planning tool continues to be fraught with criticism that such bonusing opens the door to "let's make a deal planning" between developers and municipal actors, and permits community opposition to be silenced through legalized bribery. Furthermore, the nebulous logic of the Ontario Municipal Board, which makes planning decisions that trump the authority of municipal councils, has given rise to an increasingly prevalent trend of negotiated settlement; under such an arrangement a developer obtains expedited approvals in exchange for agreeing to the local Councillor's Section 37 demands, and revising their initial proposal to mitigate the most vociferous objections of City Planning staff and community actors.

My major research paper contributes a new perspective to the limited existing literature on Section 37 agreements in Toronto, by undertaking distinct analyses four distinct actors: developers, local ward Councillors, City Planning staff and community actors. The broad objectives of my paper are as follows: first, I provide a detailed overview of the provincial and local policies that govern height and density bonusing; second, I examine several prominent development projects to analyze the effectiveness of past Section 37 agreements; third, I undertake separate analyses of each actor in Toronto's urban development process; fourth, I conduct case studies of bonusing practices in three Toronto wards, and; lastly, I discuss my findings, highlight patterns and trends, critique particular elements of Toronto's bonusing regime, and offer some recommendations regarding how it might be modified to function more effectively, consistently and equitably.

FOREWORD

This Major Research Paper is the final document to satisfy the requirements of my Plan of Study in the Master of Environmental Studies Planning Program in the York University Faculty of Environmental Studies. The paper assembles a case study on density bonusing in Toronto which draws on the three components of my Plan of Study: 1) Development industry actors and local political economy in Toronto; 2) Planning governance and density bonusing in Toronto, and; 3) the Toronto condominium boom.

Component #1, 'Development industry actors and local political economy in Toronto', focuses on the role of developers in Toronto's urban development process. Through my engagement with development industry actors in my major paper, I contribute to each learning objective for Component #1 of my Plan of Study: first, to understand how the development industry functions in Toronto; second, to understand the kinds of building activities developers undertake in Toronto, and third, to analyze how developers use density bonusing to obtain development approvals.

Component #2, 'Planning governance and density bonusing in Toronto', is concerned with the laws and policies that guide planning matters in Ontario in general, and Toronto in particular. This component also considers the role of the Ontario Municipal Board in governing planning matters in Toronto. My major paper fulfills each of the learning objectives for Component #2 of my Plan of Study: first, to explore how various local government actors engage with Section 37 matters; second, to study the use of Section 37 in negotiated settlements, and third, to explore how the OMB has ruled on density bonusing.

Component #3, 'the Toronto condominium boom', relates to my interest in exploring the factors that gave rise to the city's condo boom and continue to sustain it to the present day, as well as the consequences and implications of the "condofication" of Toronto. My major paper contributes to the fulfillment of each learning objective of Component #3: first, to understand the factors sustaining the condo boom in Toronto; second, to explore the link between Section 37 agreements and the built form of new condo development, and; third, to understand how fees like development charges and Section 37 agreements impact condo development proposals.

ACKNOWLEDGEMENTS

I would be remiss not to acknowledge the assistance and support of several individuals in helping me complete this major paper. To my supervisor Ute Lehrer, for working closely with me for my two years in the MES program, helping me to cultivate my ideas, and providing me with several amazing opportunities to further develop my research through presenting conference papers. To my second reader, Stefan Kipfer, I am grateful for your generous input on my Plan of Study and major paper proposal. To my interviewees: Peter Langdon, John Mascarin, and Councillors John Filion, Kristyn Wong-Tam, Mike Layton and Pam McConnell, I am deeply appreciative that you set aside time in your busy schedules to meet with me and share your insights into density bonusing – your contributions were extremely valuable for my paper. And last but not least to my fellow MES-ers, who always stayed convivial during trials and tribulations, and were always there for a pint, a kvetch, and many a heated but always respectful debate: Jamie Unwin, Amanda Napoli, Stefanie Hardman, Madison Van West, Roxy Shiell, and David Fleischer.

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1.0 Introduction

Over the past twenty years, height and density bonusing has become an important factor in urban development in the city of Toronto. This planning tool allows a developer to propose a new building larger than permitted by prevailing land controls, if that developer enters into an agreement with the city to provide community benefits in return for receiving approval. The bonusing regime that has emerged has resulted in a dramatic rise in tall building construction across the city, and has led to the accumulation of hundreds of millions of dollars worth of public benefits being invested into communities[1].

Since its inception, this bonusing regime has been fraught with controversy and criticized by various actors in Toronto's urban development process over its allegedly inconsistent application and tendency to engender poor planning decisions. At the same time, density bonusing has been embraced by local politicians and city planning staff eager to generate public benefits from an abundance of private development, given the shortage of public resources available to match the needs arising from intensification.

This paper is a synthesis of the debates and criticisms surrounding Section 37 of the Ontario *Planning Act*, the statutory cornerstone of density bonusing in the province. I bring together a disparate body of competing perspectives on density bonusing in Toronto in order to glean an enhanced understanding of why this planning tool has become so controversial. By looking at density bonusing from the perspective of four separate actors – developers, local politicians, city planning staff,

[1] See Appendix 1 for a ward-by-ward breakdown of Section 37 funds secured citywide.

and community actors – I explore how these different actors have competing views on the place of bonusing within Toronto's urban development process. I will identify several significant limitations that pose barriers to improving the city's bonusing system, while at the same time questioning whether Section 37 can ever generate adequate public benefit to offset the planning impacts of private development. My core research question for this major paper is thus: **How does different actors' engagement with Section 37 affect urban development politics in Toronto?**

Throughout this major paper I rely on several research methods to bring together a fulsome and revealing narrative on density bonusing practices. Density bonusing derives legal sanction through the *Planning Act* as well as a number of subsidiary municipal policies that govern the parameters and rules of bonusing. Thus, I critically examine these regulations that circumscribe Toronto's density bonusing regime. But as I document extensively in this paper, these bonusing practices have been subject to a tremendous range of interpretation and application by the human actors that negotiate Section 37 agreements, therefore I rely on information gleaned through interviews with local councillors, city planning staff, and a planning law expert. And thirdly, I make extensive use of discourse analysis, to reveal how different actors apply their own distinct spin on density bonusing in order to create a guise of altruism. This discourse analysis is particularly important when considering who exactly is the "community" that is ostensibly the recipient of community benefits secured through Section 37 agreements.

1.1 - The Toronto Development Boom

For the last ten years, urban development patterns in the Greater Toronto Area have transitioned from low-density sprawl to predominantly high-rise intensification. This change from horizontal to vertical growth was spurred by unprecedented legal and policy interventions into land use planning and environmental protection by Premier Dalton McGuinty's Liberal government, which established a protected greenbelt area that dramatically reduced the amount of developable greenfield land across the region (see Sandberg et al, 2013). These sweeping changes, which were codified through a suite of new statutes and policies in 2005-6, introduced a broad push toward intensification of already built-up areas in order to redirect growth inward to urban growth centres (Ministry of Infrastructure, 2006).

Coinciding with this policy push toward intensification was the emergence of a condominium boom in the city of Toronto, resulting in a large volume of new high-rise condo developments located predominantly in the downtown core, along the city's subway lines, and dotting the Lake Ontario waterfront. Writing at the nascent stages of Toronto's condo boom, Kipfer and Keil documented how in the early-2000s, city planning officials had begun actively deregulating zoning and land controls to stimulate new inner-city investment (Kipfer & Keil, 2002). A consequence of these planning reforms would be a new interest in residential condo development, which began in previously derelict neighbourhoods like King-Spadina and King-Parliament, but gradually began to overtake the entire downtown core.

The provincial reforms initiated by Premier McGuinty accelerated the condo boom by encouraging urban intensification, which compelled developers to pursue high-rise condominium projects as greater share of their development portfolios. Sustained population growth into the Greater Toronto Area (GTA) provided an ample number of new condo buyers to fuel demand, and the vast availability of mortgage capital allowed developers to easily obtain financing for larger and larger condominium developments.

The 2008 subprime mortgage crisis, which ravaged US housing markets and nearly destroyed the American financial system, brought about only a hiccup in the Toronto condo boom. This resulted in the suspension and cancelation of a handful of large-scale development projects including the infamous One Bloor West, which was to be financed by the fallen financial giant Lehman Brothers. However, by and large, the condo boom was not significantly impacted by the economic conditions of the United States, and condo sales quickly rebounded to pre-recession levels and continued on an upward trajectory. By 2010, the condo boom had expanded beyond the downtown core, waterfront, and main transit corridors, into new parts of the city such as the 'avenues', which had been identified by planning staff as areas to accommodate ongoing population growth through mid-rise development (Brook McIlroy et al., 2010). The skyrocketing cost of detached and semi-detached homes throughout Toronto made condominium ownership the only viable alternative to freehold homeownership for many. Furthermore, investor-owned condo units became an increasingly common form of rental housing. The city's vacancy rate for rental units has hovered around 2% for the past half-decade, considerably lower

than what is generally considered to be a 'healthy' vacancy rate of 4-5%. A large number of opportunistic condo owners have taken advantage of the shortage of rental units throughout the city by tenanting out their units for premium rents, providing a much-needed supply of rentals for professional classes but doing little to mitigate the growing demand for affordable rentals. A 2013 documentary by the Canadian Broadcasting Corporation called *The Condo Game* illustrated how thousands of speculative condo investors have purchased new pre-construction units at bargain prices, and then either rented the new units or flipped them back onto the market for substantial profits not subject to any kind of capital gains tax (dir. Helen Slinger, 2013).

Over the duration of the condominium boom, the scale and scope of new development proposals has grown significantly. Buildings that would have been perceived as inappropriately tall or dense a decade ago are now par for the course in the most-intensified parts of Toronto. As of early 2014 Toronto had over 130 active high-rise construction sites, the vast majority for new condominium towers (Evans, 2014). Entire new high-rise neighbourhoods have sprouted from long-dormant brownfield lands like Southcore, Cityplace, Liberty Village, and the Distillery District. In the past two years, City Planning staff have received an influx of mega-proposals for tightly-bounded downtown sites, reflecting the current shortage of developable urban land and demand for unprecedented densities. Perhaps the most famous such mega-development application is a proposal by local theatre impresario David Mirvish to construct twin Frank Gehry-designed 88 and 92-storey towers along an historic stretch of King Street West. In addition to

Mirvish + Gehry, there are several other development proposals currently being reviewed by Planning staff for buildings in excess of seventy storeys[2].

As Toronto's condo boom has matured, tall building development applications have grown in scale and scope due to several interconnected factors. First, provincial growth legislation has created a surge in demand for developable urban land resulting in rapidly rising land acquisition costs that must be subsequently recouped by developers through expanded sales opportunities, leading to taller and denser development proposals. Kristyn Wong-Tam, a downtown city councillor indicated that land in her ward is currently selling for as high as $30 million per acre, and as a result she has seen development quantums for new applications rise dramatically (personal correspondence March 27, 2014). Second, the completion of each new tall-building development seems to have an affect of raising the threshold of what constitutes an acceptable level of development for the surrounding area. This is especially the case when a tall building proposal is opposed at the municipal level but approved by the Ontario Municipal Board, which then serves to establish a new development precedent[3]. Even though new developments frequently exceed prevailing zoning restrictions, it is commonly asserted by developers that the zoning bylaws in place are antiquated and not reflective of heights and densities that are reasonable in light of the policies

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[2] Ex. A proposal by Pinnacle Developments at 1 Yonge Street for several towers of 88, 2x80, 75, 70 and 40 storeys; a proposal by Morguard Properties at 50 Bloor West for an 83-storey condominium; a proposal by Oxford Properties to redevelop the Metro Convention Centre with twin 70-storey towers

[3] Interestingly, the *Ontario Municipal Board Act* R.S.O. 1990 indicates that the Board is to issue planning decisions on a case-by-base basis (*de novo*), although in practice the Board often adheres to the principle of *stare decisis* where it refers to past precedents in deciding on a current case.

of the provincial Growth Plan. Whether Toronto's zoning regime can be aptly described as antiquated or not, this ideological assertion exemplifies developer rhetoric that the City should not retain final jurisdiction over land controls. Third and lastly, developers continue to come forward with tall building proposals because real estate markets continue to be sufficiently robust to impel such developments. It is not uncommon for new developments to sell out entirely at the pre-construction stage, before the necessary approvals and permits have been obtained. The vast pool of buyers, coupled with easily-accessible mortgages and low interest rates, have accelerated the city's condominium boom and led observers to warn of an overheated market, yet claims of an impending housing bubble burst have not yet materialized. Now that I have provided some background of the condominium boom in Toronto, I will turn to a brief explanation of land uplift theory, and describe the local density bonusing regime that has engendered this proliferation of high-rise construction which has continued unabated to the present day.

1.2 - Land Uplift and Density Bonusing

In land economics, the doctrine of *highest and best use* describes the optimal profit-generating scenario for a parcel of land. If a piece of urban land can yield the highest profit by operating as a parking lot, its owner, as a rational economic actor, will likely use the land in such a manner. Similarly, if another piece of urban land is zoned for a certain height and density, the way for that landowner to maximize its highest and best use is to build to the allowable size. This nostrum assumes that

landowners all wish to maximize the exchange value of their land holdings, which is obviously not the case; not all owners of urban land are developers, and a great number of citydwellers forego optimizing the exchange value of their land in exchange for enjoying its use value. Developers, on the other hand, have a vested interest in maximizing the exchange value of their land holdings, and realizing their highest and best use. In some circumstances, in order to realize highest and best use, land must be re-designated from one use to another; for instance, a conversion from employment land to residential use (see Lehrer & Wieditz, 2009b).

Recall from the preceding section that urban land in Toronto is frequently zoned for lower height and density than developers believe to be reasonable given the province's policy push for intensification of already built-up areas. This has created a scenario where almost all new development proposals require an amendment to the zoning bylaw, and sometimes an amendment to the Toronto Official Plan, especially when the proposal involves a conversion of land to another use. Once such zoning and Official Plan amendments are enacted, the value of that land is instantly uplifted to reflect its new highest and best use. Density bonusing is a planning tool that is used to enable a developer to build beyond prevailing land controls in exchange for *returning part of the land uplift* to the approval authority in the form of 'community benefits'. In Ontario, density bonusing is authorized through Section 37 of the *Planning Act* R.S.O. 1990, which allows a local municipal council to authorize increases in height or density beyond those permitted in the zoning bylaw in exchange for the provision of community benefits by the developer in return. In a simple *quid pro quo*, the local approval authority provides zoning

relief in return for the developer returning some of the value of that uplift back to the municipality in the form of a public benefit.

While the notion that a developer who is given zoning relief should return some of the value of their land uplift to the municipality as a benefits contribution seems fair and equitable, there are some hidden considerations to this transaction that are frequently overlooked in discussion about density bonusing. In Toronto, the Building Industry and Land Development association (BILD), which functions as a collective voice for the development industry, has candidly proclaimed that any additional layers of obligation imposed on developers, such as a Section 37 contribution, are paid *not by the developer* but are passed on to consumers at the sales stage, creating an upward pull on housing affordability (Altus Group Consulting, 2013). In other words, instead of absorbing a Section 37 requirement into their *pro forma*, developers spread the cost of the Section 37 contribution across all of the residential units in the building, increasing prices for homebuyers.

A second hidden consideration brings us back to the notion of 'antiquated' zoning bylaws and development entitlements. Most zoning restrictions in the downtown Toronto area were implemented in the 1970s and have not since been updated. It would seem reasonable to question the contemporary relevance of these forty-year old zoning restrictions, given the degree of urbanization and intensification that has taken place in the subsequent decades. From developers' perspectives, land developers are being forced to pay density bonuses in order to obtain development rights that they should be entitled to as-of-right[4]. The

[4] Provide brief definition of as-of-right

'antiquated' zoning regime in place, it is therefore argued, must be modernized to reflect realistic contemporary development potential. For instance, the Ontario Homebuilders' Association has expressed concern that several Ontario municipalities have kept zoning restrictions artificially low in order to extort Section 37 benefits from developers (OHBA, 2014). This question of a 'zoning gap' brings to mind Neil Smith's rent gap theory (Smith, 1979), where he documented how gentrifiers redeveloped properties whose so-called 'highest and best use' significantly exceeded the rents previously being collected.

The zoning gap, however, is not simply a consequence of an ongoing conflict between a monolithic local government and the development community. Rather, the controversy surrounding the zoning gap and height and density bonusing in Toronto stems from the highly fractured system of planning governance engendered by Ontario planning law and policy.

1.3 - The Fractured Landscape of Planning Governance in Toronto

Local political economy (LPE) is a literature that emerged in the 1980s which sought to understand relationships of power and influence between local governments, business actors, and community groups in North American cities. Logan and Molotch's 1987 book *Urban Fortunes* describes the 'urban growth machine' as a broad coalition of government and business actors who help one another pursue an agenda of 'value-free development', by reducing planning and land controls and facilitating development approvals. While Logan & Molotch's growth machine theory has acquired widespread currency for its accuracy in

describing urban development politics in North America, Aaron Moore (2013a) has argued that Toronto diverges from this earlier LPE literature due to the implications of the Ontario Municipal Board. Moore argues that whereas Logan & Molotch considered just three core actors in urban development processes – local government, business, and community – an analysis of Toronto's planning regime must be broadened to include the Ontario Municipal Board and City Planning staff, in addition to local politicians, developers and community actors.

Just as Moore argues that one cannot view urban development in Toronto through the lens of a conventional LPE model due to the Ontario Municipal Board, I too argue that the practices of the OMB demand a readjustment of scope when analyzing the multi-scalar nature of planning issues in Toronto, including height and density bonusing. The Ontario Municipal Board is a quasi-judicial land use planning tribunal which operates at the provincial level and hears disputed planning issues that have been appealed from the municipal level. Proponents of planning applications that have been rejected by municipal council may exercise their statutory right to an OMB appeal where they have a second chance to defend their application in the setting of an adversarial hearing, presided over by an appointed Board member. In the next section of this paper I will go into greater detail about the implications of the OMB for height and density bonusing, but for now I wish to stress a crucial point: as the final arbiter of planning matters in Ontario, save for appeals that can be made to higher courts on a question of law, the Board effectively removes final jurisdiction over planning from municipal councils. Throughout Toronto's current development boom, hundreds of applications that were rejected

by Toronto's Council have been successfully appealed at the Board or have proceeded as a result of negotiated settlement at the Board. Appeals are heard on an ostensibly case-by-case basis, and are won or lost on the merits of the planning evidence presented by the parties to an appeal. The ability of developers to retain high-quality legal counsel and planning experts places cash-strapped local governments at a disadvantage and creates a systemic power imbalance that favors developers, a trend supported by developers' success over municipalities in most OMB hearings.

A second source of fractured planning governance in Toronto derives from the city's ward-based council system. Toronto Council is comprised of Forty-four wards, each with their own individual local councillor who is elected by their ward constituents. While City Planning staff are the primary reviewers of development applications, the local councillor of the ward that a particular development falls within retains the ability to mobilize fellow councillors to either approve or reject a staff approval/refusal report for a development, when it comes before council. This practice has led some to characterize councillors as ward dictators who run their wards like a personal fiefdom (Soknacki, 2013). Councillors often act as the lead negotiators with local developers in density bonusing negotiations, and often trade support for other councillors' preferred community benefits and personal 'pet projects' (*ibid*), regardless of whether or not the planner on file has assessed the development application to be supportable or not. As my paper will argue in later sections, the ability for ward councillors to run roughshod over the advice of City Planners on development applications creates a scenario where there are varying

degrees of different planning outcomes in each of the city's forty-four wards. Furthermore, depending on the negotiating acumen of the local councillor, some councillors are able to secure a much higher value of community benefits through density bonusing than their council colleagues, engendering a patchwork of varying approaches to bonusing negotiations. Developers thus often encounter significantly different negotiating conditions from one ward to another, when engaged in density bonusing discussions.

A final, less tangible, but equally pernicious source of divisiveness in Toronto planning governance is the increasing prevalence of development fatigue in the areas of the city that have experienced the greatest degree of intensification pressure. A broad sense of public disillusionment with the planning process has coalesced into an unprecedented movement to free Toronto from the jurisdiction of the OMB in order to empower local authorities to retain final say over planning and development. Given dismal prospects for success when participating in appeals against development applications at the Board (Moore, 2013b), community actors have little recourse to dispute developments they vehemently oppose. Frustrated community associations and ratepayers' groups have explored every avenue to reconcile their lack of influence over local development, to little avail. Councillors who were interviewed for this paper indicated that new development has vastly outpaced the provision of new infrastructure, and one councillor commented that he would like to explore options for implementing a moratorium on new residential development until a proportional investment in new services and infrastructure can be made.

For councillors, the risk and uncertainty of fighting an appeal at the Ontario Municipal Board has created an incentive to reach a negotiated settlement with a developer in order to attempt to resolve the most salient planning-related objections to the application at hand, and to attempt to secure Section 37 community benefits in order to bring some tangible benefit back to their constituents. Negotiated settlement can be beneficial to developers, as it saves them the length and expense of engaging in a full OMB hearing and indicates that the developer is willing to make concessions to the local councillor and surrounding community. Hence, negotiated settlement has become a very common outcome for development applications that exceed zoning restrictions for height and density, as it can remove some of the antagonism that almost always accompanies OMB hearings, and can produce at least some community benefits out of the approval. However, settling over development applications undermines established local planning policies that have emerged out of significant public consultation and planning staff resources, and every settlement is essentially an *ad hoc* eleventh-hour arrangement to forestall an OMB hearing and, as Councillor Wong-Tam remarked, "make lemonade from lemons" (personal correspondence, March 27 2014).

2.0 Density Bonusing Policy: Ontario and Toronto

2.1 - The Genesis of Section 37

Height and density bonusing was first introduced into Section 36 of the *Planning Act 1983 R.S.O.* Before 1983, the *Planning Act* had not undergone any significant amendments since the 1940s, and the 1983 revision codified many *ad hoc* planning practices that had emerged over several decades, by giving them legal sanction in the *Act*. One such *ad hoc* practice which had been taking place for decades was density bonusing, which was negotiated on a case-by-case basis with no underlying consistency in its application or methodology. The developer and local approval authority would simply negotiate the height and density of the development proposal that would be proffered in exchange for the provision of benefits or amenities back to the city. In 1990 the *Planning Act* underwent more revisions, and the density bonusing policies were moved from Section 36 to 37, where they have remained to the present day. Section 37 of the *Act* reads:

Increased density, etc., provision by-law

37. (1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height or density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

Condition

37. (2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

Agreements

37. (3) Where an owner of land elects to provide services, facilities or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

Registration of agreement

> 37. (4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions therof against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. R.S.O. 1990, c. P. 13, s. 37

Section 37(1) states that a local council may pass a bylaw authorizing increases in height or density greater than what would be allowed under prevailing zoning bylaws, in exchange for the provision of "facilities, services or matters" which are written into that enabling bylaw. Facilities, services or matters are more commonly referred to as community benefits, or public benefits, by actors engaged in bonusing. Section 37(2) prohibits the use of bonusing unless there are Official Plan policies in the local municipality which contain provisions relating to the use of bonusing. Section 37(3) states that a municipality may require a landowner/developer to enter in to a Section 37 'agreement' in order to secure the terms of the density bonus. Lastly, Section 37(4) allows for a Section 37 agreement to be registered on title of the land. Once registered on title, the agreement is enforceable against subsequent owners of that land until the terms of the agreement have been fully executed.

2.2 – Section 37 in Ontario Municipal Board Decisions

Despite being a remarkably short and straightforward section of the *Planning Act*, Section 37 has been given considerable attention and scrutiny by the Ontario Municipal Board since the landmark *Minto BYG v Toronto* hearing in 2000 (see Devine, 2007;2013). Several significant hearings have dealt with disputes from aggrieved appellants who believed they were being unfairly imposed with a Section 37 contribution by the local approval authority. As a result, the OMB has had

numerous chances to establish clearer policy and guidance for the proper use of Section 37, and conversely, to identify situations where Section 37 was improperly used by local governments. In this section I will provide brief synopses of significant OMB hearings that have dealt with Section 37 matters, beginning with *Minto BYG*.

Re. City of Toronto Official Plan Residential Development Amendment, [2000] O.M.B.D. No. 1102 (OMB).

This OMB hearing, known more colloquially as *Minto BYG v City of Toronto*, was the first major Board hearing to address conflicting interpretations of Section 37 since density bonusing was inserted into the *Planning Act* in 1983. In 2000, Ottawa-based developer Minto applied to the City of Toronto for a zoning by-law amendment and Official Plan amendment in order to permit an eighteen-storey, 171-unit residential condominium in Toronto's Yorkville Neighbourhood. The City indicated that a Section 37 benefits contribution would be necessary in order to issue an approval, but Minto objected to this requirement and believed their application represented good planning and did not call for the provision of community benefits as a condition of approval. On appeal to the OMB, the presiding Board member noted that there was no link between Minto's development proposal, and the community benefits the City sought to secure from the developer in return. *Minto BYG v Toronto* had two significant outcomes: first, the ruling that there must be a clear and demonstrable planning relationship – or ***essential nexus*** – between the benefits requested and the density relief conferred, and; second, that requested community benefits must fall within the clear limits of established Official Plan

policy. Minto's appeal was allowed without any Section 37 contribution because the City had requested community benefits that were unrelated to the development proposal from a planning perspective, and were not listed as eligible benefits in the Official Plan policies related to density bonusing.

Re City of Toronto Official Plan Residential Building Amendment, [2003] O.M.B.D. No. 926 (OMB).

Known more colloquially as *1430 Yonge-St Clair v City of Toronto*, this 2003 OMB hearing concerned a proposed sixteen-storey condominium tower in midtown Toronto which was rejected by Council and subsequently appealed to the Board by the developer. Once the developer appealed Council's rejection, the City reevaluated its stance on the proposal and submitted they would approve the development if public benefits were provided. The developer then took issue with City's insistence of a Section 37 agreement for various community benefits as a condition for approval, including a dog drinking-fountain in a local park, which the developer complained was not a reasonable community benefit to have to provide. Entirely eschewing the logic behind the *Minto BYG v Toronto* ruling, the Board member in this hearing opined:

> "The Section 37 benefit need not be related to the project or caused by it… what is relevant is that in return for additional development rights granted to the developer, the exercise of which may have social costs to the public in the area, the public receives some tangible benefit or amenity to offset the cost" (para. 22-23).

The development was allowed to proceed subject to the execution of the City's proposed Section 37 agreement, doing away with any notion that there needed to be a nexus between the benefits identified by the city, including the dog drinking fountain, and the developer's proposal. However, this would later turn out to be an anomalous Board ruling, with subsequent hearings returning to the nexus requirement as set out in *Minto BYG v Toronto*.

Sterling Silver Development Corp v City of Toronto, [2005] O.M.B.D. No. 1313 (OMB).

In *Sterling Silver v Toronto*, the OMB heard an appeal by a developer who opposed the City's Section 37 demands to provide social housing in addition to landscaped greenspace, which the developer had agreed to contribute. The Board member hearing the appeal struck down the social housing benefit, noting that the proposal did not entail the loss or modification of any existing social housing stock. In the written decision, the Board reproached the City for attempting to force the developer to provide social housing through a Section 37 agreement, cautioning that, "… the Planning Act is not a revenue statute" (para. 81). The Board did however enforce the contribution of landscaped greenspace, recognizing that the development would remove existing landscaped space, and that future residents of the development would all benefit from the provision of such a public amenity.

Sunny Hill Gardens Inc v City of Toronto, [2006] O.M.B.D. No. 1313 (OMB).

In *Sunny Hill Gardens v Toronto* the City requested that the Board impose a package of Section 37 benefits on the developer, if the Board allowed the

developer's appeal, including capital improvements to two local parkettes, streetscape improvements, and funds for a heritage conservation district study. The Board declined to do so, opining that the benefits sought by the City were not identified in the Official Plan, nor were they part of any comprehensive assessment. Rather, "… they amount[ed] to a wish list prepared on an ad hoc basis as a result of an application filed for rezoning" (para. 33). The refusal of the presiding Board member to impose a Section 37 contribution on the developer prompted the City to announce that it would soon undertake extensive consultations in order to develop implementation criteria and protocol for negotiating Section 37 benefits, ostensibly to avoid a similarly disappointing loss in the future (see Section 2.4 of this paper for an overview of the City of Toronto Implementation Guidelines for Section 37).

Dunpar Developments Inc. v City of Toronto, [2008] O.M.B.D. No. 61 (OMB).

In 2008, the OMB heard an appeal by Dunpar Developments of Toronto Council's refusal to pass the necessary planning amendments to permit a residential condominium development. The City solicitor for the hearing requested that in the event the Board allowed the development to proceed, it enforce a Section 37 contribution of $15 000 per each additional residential unit that exceeded the height and density provisions of the in-force Etobicoke Official Plan, totaling $300 000. The City's planning witness was unable to provide a rationale for the contribution sought, nor could she elaborate any nexus between the proposed Section 37 sum and the benefits it would offer to the development. Consequently, the Board member reprimanded the City Planner for failing to furnish the Board with a more

detailed explanation of its desired Section 37 agreement, and declared, "[the Board] has no choice but to conclude that the amount requested is arbitrary and therefore the application of any Section 37 policies is arbitrary" (para. 147). The appeal was allowed, permitting the development to proceed with no Section 37 requirement.

English Lane Residential Developments v Toronto, [2011] O.M.B.D. No. 974 (OMB).

In *English Lane Developments v Toronto*, the OMB heard an appeal by the developer of the City's refusal to grant a rezoning to allow further intensification of English Lane's multiphase development. Although City Planning staff had supported the application without recommending any Section 37 contribution, City Council ignored Planning's advice and rejected the application due to political pressure from local constituents opposed to the development. Now before the OMB, the City wished that should the Board approve English Lane's site plan and rezoning application, the Board enforce a requirement for a Section 37 contribution for between $72 – 158 000 to fund a children's splash pad in the local park. When the presiding Board member asked the City solicitor to outline their planning concerns with the development proposal, they identified traffic concerns as the primary source of opposition. The Board then considered how the City's proposed Section 37 contribution for a splash pad would alleviate concerns over traffic congestion, and remarked that, "the imposition of the proferred Section 37 community benefit in this case is devoid of substantive rationale or planning conditions" (para. 90). As such, the Board member did not see the merit to imposing such a benefits contribution on English Lane and rejected the City's request to do so.

Menkes Church Street Holdings Inc. v City of Toronto, [2012] O.M.B.D. Case No. PL120119. (OMB).

In 2012, high-rise property developer Menkes appealed City Council's rejection of Menkes' application to construct a 29-storey residential condominium tower in the east side of downtown Toronto. The development was vociferously opposed by the nearby McGill-Granby Village Residents' Association, as well as the local councillor and City Planner on file. While the developer argued that such residential intensification was consistent with local and provincial planning policy, the City and local community feared the proposed building would loom oppressively over the adjacent low-rise residential community and set a negative precedent for future development in the area.

During the hearing, the City solicitor asked the Board to impose a Section 37 cash contribution of $1.23 million, if it approved Menkes' development. This sum had been arrived at through prior negotiations between the local Councillor Kristyn Wong-Tam and Menkes, and Menkes had agreed to the contribution, however the two parties were not able to arrive at a consensus over the scope of the development proposal before it was appealed to the OMB (personal correspondence, *date*). Throughout the hearing, presiding Board member Reid Rossi brusquely dismissed the City's planning arguments against the proposal and opined that Menkes' application represented good planning. When the City's planning witness was called to give evidence regarding the $1.23 million Section 37 contribution, Rossi declared there to be no essential nexus between the amount of money sought and the subject site, and allowed the development to proceed as

proposed, with no community benefits required. Councillor Wong-Tam called the decision a "slap in the face to the local community" (*ibid*), and noted that the City solicitor as well as area Planning staff were shocked that the Board allowed a development which vastly exceeded the zoning allowance to proceed without a conditional Section 37 contribution.

Dun West Properties Ltd. v City of Toronto, [2014] O.M.B.D. Case No. PL121287 (OMB).

One final Board decision with important implications for density bonusing was a 2014 hearing between Dun West Properties and the City of Toronto regarding the former's proposed twenty-six-storey condominium tower near Bloor & Dundas Streets. The development site was located within the bounds of an area-specific Avenue Study that outlined appropriate built form zoning regulations limiting building heights to generally six storeys, with the exception of the anomalous subject site which could support up to 15 storeys due to its adjacency to a major multi-modal transit hub. At twenty-nine storeys, the developer's proposal was almost double the height envisioned by the Avenue Study, and was thus rejected by the City. The developer then appealed to the Board, arguing that such height and density was warranted given the significant transit infrastructure nearby.

During the Board hearing, the expert planning witness for the City outlined the City's list of desired Section 37 benefits in the event the Board allowed the application, which included improvements to the Bloor-Dundas intersection, funds for acquisition of local parklands and improvements, pedestrian lighting and streetscaping, and public art. The presiding Board member described these Section

37 benefits as a "… wish list without a clear connection to the proposed development" (para. 37), even though the benefits were concentrated in the immediate vicinity of the development site. The Board did not further elucidate why it did not deem the benefits to bear an appropriate nexus to the proposed development, and allowed the development to proceed without any of those benefits. The Board did, however, endorse as a Section 37 contribution the conveyance of a land easement to build a pedestrian connection through the site for the Bloor Street stop of the future Union-Pearson airport rail link.

As the above OMB decisions reveal, since *Minto BYG v Toronto* in 2000, the Board has adopted the logic that any Section 37 benefits must bear a clear and demonstrable planning relationship to the subject development, or *essential nexus*. Since the *Minto* hearing, despite pleas from the City, the Board has consistently refused to impose Section 37 agreements for development proposals seeking to exceed height and density restrictions, usually ruling that the nexus requirement had not been adequately met. The nexus test clearly places the onus on the City to demonstrate that their requested Section 37 contribution is defensible from a planning perspective, even in cases where the developer has requested approval to build well beyond zoning limitations.

But the 2014 *Dun West v Toronto* Board decision generates profound questions related to how strong a nexus must exist between the desired community benefits and the development proposal at hand. The City had requested public amenities within the immediate vicinity of the development which would enhance

the public realm and mitigate some of the future impacts of the development. The Board member hearing the case, however, dismissed these benefits as being superfluous and unrelated to Dun West's development. This would suggest that the nexus requirement is predicated on more than a merely geographical proximity of the benefits to the development. If the nexus requirement for Section 37 benefits is to retain credibility in future application, it is incumbent on the OMB to further elaborate on how the nexus test should be administered so the City can propose Section 37 contributions that the Board will endorse and enforce.

It is important to note that in general it is relatively rare for a developer to appeal a Section 37 contribution to the OMB, unless a developer feels that the benefits they are being requested to provide by the City are flagrantly unrelated to their proposal from a planning standpoint. It is more common for developers to agree to the City's Section 37 requests than it is for the developer to appeal them to the Board: this is due to the reality that Section 37 agreements are usually *negotiated* between the developer, the local councillor, and City Planning staff. Section 37 negotiations generate an agreement for a developer to provide community benefits that are *mutually beneficial* to both parties. However, as the OMB decisions in this section have illustrated, developers will not hesitate to air their Section 37 grievances before the Board if they feel they stand a strong chance of successfully disputing the City's Section 37 demands.

2.3 - Section 5.1.1 of the Toronto Official Plan: Height and Density Incentives

The City of Toronto's Official Plan policies concerning height and density bonusing are found in section 5.1.1 of the OP (see fig. *x* **paste in OP s. 5.1.1**). These policies outline the eligible benefits for Section 37 agreements, the conditions for considering a density bonusing agreement, the minimum development threshold to trigger a bonusing agreement, a methodology for identifying and selecting Section 37 benefits, and quantitative formulations for Section 37 contributions in Secondary Plan areas. Previous OMB decisions such as *Minto BYG v Toronto* have made it abundantly clear that unless the Section 37 benefits being requested by a municipality are found within the local Official Plan, the developer cannot be compelled to provide them through a Section 37 agreement. The purpose of OP bonusing policies is to help articulate how Section 37 can be used to secure benefits that will help the municipality achieve the objectives of their OP in a more broad sense.

2.4 – City of Toronto Implementation Guidelines for Section 37

In Section 2.2 I provided several examples where the City of Toronto unsuccessfully attempted to defend their desired Section 37 benefits at the Ontario Municipal Board. In numerous successive hearings, the OMB chastised the City for what the Board considered improper application of Section 37, and rewarded the appellants by allowing their appeals without imposing a Section 37 contribution. After the City's loss in the 2006 *Sunny Hill Gardens v Toronto* hearing, City Council directed the Policy and Research Section of City Planning to develop implementation

criteria and negotiating protocol for Section 37 (City of Toronto, 2007). The purpose of this new document was to bring clarity and consistency to density bonusing practices in Toronto, which would benefit developers by engendering an enhanced degree of predictability as to what they would be expected to offer as community benefits, and would benefit the City by ostensibly reducing the likelihood of OMB appeals over Section 37 matters. The resulting document, which was adopted by City Council in December 2007, was divided into two main sections:

Implementation Guidelines

The Implementation Guidelines are intended to assist in implementing section 5.1.1 (Height and Density Incentives) of the City of Toronto Official Plan. The guidelines contain general considerations for using Section 37, which attempt to standardize how density bonuses are determined across the city. As I explained in Section 1.3 Toronto's ward-based Council system has engendered a fractured patchwork of planning practices across Toronto's forty-four wards, reflecting the varying preferences of individual ward councillors regarding development in their local wards. The Section 37 Implementation Guidelines were an attempt to get all councillors to play by the same rules when determining Section 37 bonuses, and eliminate the prevalence of "ward fiefdoms" (Soknacki, 2013) wherein ward councillors usurped control over local urban development. As I will argue in Chapter 4, the issue of ward fiefdoms has persisted despite the City's adoption of Section 37 Implementation Guidelines, which is an inevitable consequence of Toronto's local government structure.

The Implementation Guidelines also sets out a list of broad principles that are to be followed when using Section 37 of the *Planning Act*, many of which have been extracted from previous OMB decisions concerning bonusing, including:

- A proposed development must already represent 'good planning' before a Section 37 bonus can be discussed. Section 37 cannot be used to make a poor application acceptable, but it can make a good application even stronger.
- There can be no quantum approach, or set formula, to determining Section 37 benefits (i.e. *x* amount of additional square feet for *x* benefits). If the city adopted a quantum approach into its Official Plan policies, the quantum would likely be disputed in a court of law and might not withstand a challenge as an illegal tax.
- Community benefits must be capital facilities – operating expenses are not eligible benefits.
- There must be a reasonable planning relationship, or nexus, between the community benefits requested and the increase in height or density being given.
- Good architecture and design are expected of all development proposals, and are not eligible Section 37 benefits, although a Section 37 agreement can be used as a legal convenience to secure materials, finishes or special built form features.
- City Planning staff should always be involved in discussing or negotiating Section 37 benefits with developers/landowners.

Negotiating Protocol

Recognizing that Section 37 agreements are the product of lengthy negotiations between the developer/landowner, City Planning staff, ward councillor, and local community, the Section 37 Implementation Guidelines were accompanied by Negotiating Protocol to standardize the negotiation process across the forty-four wards of Toronto and ensure consistent application of bonusing policy through each individual negotiation. The Negotiating Protocol begins by suggesting that a community benefits needs assessment should be undertaken in areas anticipating potential intensification, involving input from local communities, Planning staff, Councillors, and other City Divisions. Such an assessment can determine particular benefits that are most urgently needed by a community, ensuring that when a development application is received for additional height or density, the City is prepared to begin Section 37 negotiations with a predetermined list of community benefits.

The Negotiating Protocol then outlines the steps to be followed once a development application for extra height or density is submitted to the city. The City Planner on file makes a determination as to whether the use of Section 37 is appropriate, and then consults with the local ward Councillor before discussing or negotiating a Section 37 contribution with the applicant. An estimate of the value of additional density being requested by the developer is obtained from the Facilities and Real Estate Division, and this information is conveyed to the City Planner and Councillor who together decide the value and type of benefits that they will request in negotiations with the applicant. As per the Negotiating Protocol, City Planning

staff should coordinate Section 37 negotiations; however, as my research has revealed, it is typically the ward Councillor who retains control over Section 37 negotiations with developers, thereby politicizing a planning-based negotiation which, according to the Protocol, should remain in the realm of impartial, objective Planning staff (see Chaper 4/5).

Finally, the Negotiating Protocol identify other matters, such as allowing community members an opportunity to provide input on Section 37 community benefits at the community consultation meeting and statutory public meeting for the individual development proposal. Issues of timing of the negotiations are also addressed, to ensure that applicants have sufficient time to make revisions to their proposal to reflect ongoing Section 37 negotiations. As such, the Protocol require Section 37 to be addressed as a planning issue in the Preliminary Report for a development application, as well as an item to be included in the Financial Impact section of the Final Report.

2.5 – Later Amendments to City of Toronto Section 37 Policies

In 2014, the City of Toronto retained Gladki Planning Associates to undertake a review of the City's Section 37 policies. Gladki held workshops with senior City Planning and Legal staff, staff from City operating divisions, councillors, and representatives of the Toronto Building Industry and Land Development Association, to identify areas of ongoing concern regarding Section 37 policies in Toronto, as well as opportunities for improvements and new policies. Throughout the review process, Gladki found, "… an overwhelming sentiment by participants

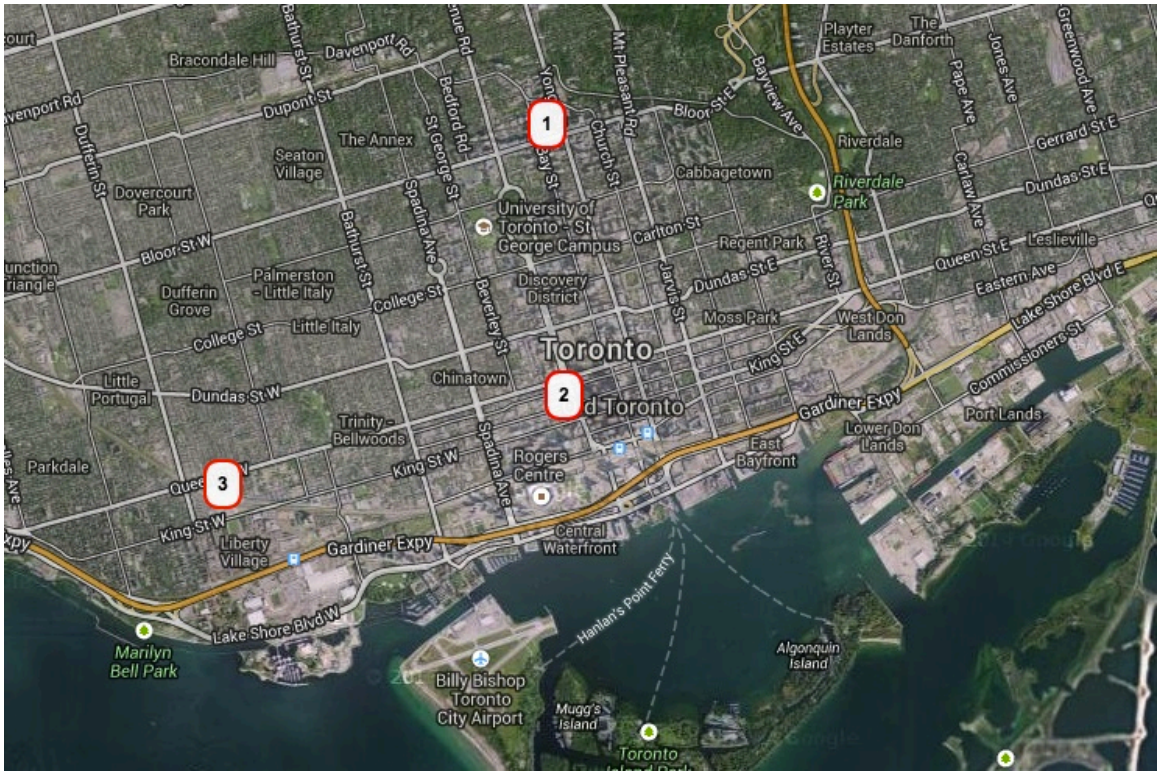
that a standardized approach towards calculating the value of the contribution towards community benefits would be preferable to the current case-by-case negotiation process" (Gladki Planning Associates, 2014 p. 9). When the Gladki report was received by City Council in April 2014, Council also adopted a motion to renew its request to the Ontario Minister of Municipal Affairs and Housing to allow the City to adopt a quantum approach to generating Section 37 community benefits in the Official Plan. This request to the Minister reveals Toronto City Council's desire to adopt the quantum approach, even if it exposes the City to a court challenge regarding the legality of such a quantum (Interview with Peter Langdon, *date*). It remains to be seen whether or not the Province will acquiesce to the City's request, but given the strong degree of support around calculating a standardized approach to community benefits contributions that was voiced in Gladki's Section 37 consultations, most remarkably from the development-sector lobby, it may be true that even developers would find a quantum beneficial.

Other significant recommendations from Gladki's review of Toronto's Section 37 policies include: annual appraisals of the value of the uplift being granted to developers in different geographical areas of the City for the purpose of establishing a percentage target for the capture of uplift; community benefits needs assessments to be conducted for various neighbourhoods within each ward, to be updated once every four-year term of Council; the adoption of a standard clause to allow Section 37 benefit contributions to be redirected to other benefits if the funds remain unspent after three years of receipt, without having to amend the original enabling bylaw, and; that Council should provide additional staff resources to ensure Section

37 agreements are executed and implemented in a timely fashion and not delayed due to the election of new councillors. As the Gladki report was only adopted by Council in April 2014, the implementation of its recommendations is currently in progress by the Strategic Initiatives, Policy & Analysis division of Toronto City Planning.

3.0 Historical Analysis of Section 37: A *Post Mortem* of High-Profile Developments

In this section, I wish to undertake a *post mortem* of four controversial high-profile development projects that each had large Section 37 contributions associated with their approvals. I will provide a brief overview of the approvals process for each development, the community benefits contained within each Section 37 agreement, and an analysis of the execution and implementation of each Section 37 agreement. I will evaluate how the Section 37 benefits for each development helped mitigate their planning impacts, and will support my observations with photographs and other personal observations gleaned through site visits.



Above: (1) Four Seasons; (2) Shangri-La Toronto; (3) West-Queen-West

3.1 – The Four Seasons Hotel and Condominiums

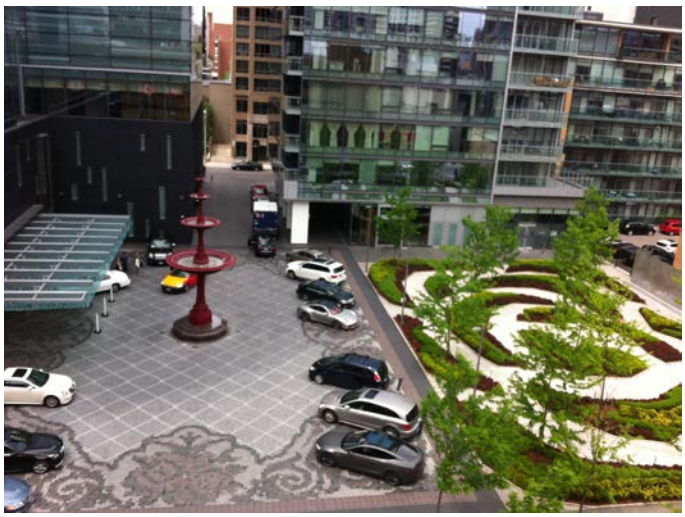
In July 2005, Toronto-based developers Menkes and Lifetime, in partnership with the luxury hotel chain Four Seasons, submitted an application to develop two mixed hotel-condominium towers, of fifty-five and thirty-five storeys respectively, in Toronto's Yorkville neighbourhood. A working group was convened to solicit input from local condominium associations, community groups, City Staff, and the developer, and after several meetings the developer agreed to lower the tower heights in order to appease some opposition to the proposal (Moore, 2013a). The parents' council of a nearby public school noted that the childrens' playground would experience shadow impacts from the towers, although they acquiesced when offered a $2 million Section 37 contribution for a new playground facility. While even the revised development application was unprecedented for Yorkville in terms of height and density, City Planning recommended approval of the application, which was then approved at Council in April 2006 (*ibid*).

Although the proposal was enthusiastically supported by the local councillor, Planning staff, and some local neighbourhood residents and businesses, Council's approval of the development was appealed to the Ontario Municipal Board by four parties: the Save Yorkville Heritage Association, the ABC Residents' Association, the nearby Jesse Ketchum Public School parents' council, and a number of nearby residents, all of whom objected to the proposal in some form. As Moore (*ibid*) describes:

> "Before the second OMB prehearing, ABC, the parents' council, and the individual residents, settled with the City and developer. The settlement agreed upon by the City, developer, and appellants involved the *increase* [emphasis added] in size of the larger tower from 179 to 195 metres in

> height, and the *reduction* [emphasis added] in size of the smaller tower from 110 metres to 89 metres. In addition, [the developer] offered additional funds for the improvement of a local park and street (p. 91)".

After these three appellants agreed to the settlement offer, Save Yorkville Heritage Association remained the sole appellant, although their appeal was swiftly dismissed by the OMB, who endorsed the settlement offer for the newly revised proposal. Final approval was granted for two towers of fifty-five and twenty-six storeys.



Above: Four Seasons streetscaping detail. Photo by author

Above: Adjacent historic fire hall. Photo by author

Above: Four Seasons twin high-rise towers.
Photo by author

The resulting Section 37 agreement was worth $5.5 million, and contained funds for the rebuilding of the Jesse Ketchum Public School childrens' playground, funds for the revitalization of the nearby Toronto Reference Library, streetscape improvements, and funds for improvements to an adjacent historical fire hall. The development is now complete and the Section 37 agreement has been executed. Both the Toronto Reference Library revitalization and the Jesse Ketchum playground redesign have been completed, and the enhancements to the fire hall and nearby public realm are complete. From my visit to the site, it is clear that the quality of the streetscape, from material finishes to landscaping, is of a higher quality than would normally be the case with regular City-maintained streetscaping. Evidently, parents' concerns over playground shadowing at Jesse Ketchum were assuaged by the $2 million Section 37 contribution they received from the developer, given that there is significant shadowing on the schoolyard throughout the day[5].

Since the Four Seasons development was approved in 2006 and completed in 2011, there has been a significant wave of further intensification in the Yorkville neighbourhood. Nearby, a small cluster of massive high-rise development proposals being bandied as the "largest urban redevelopment project in North America" (Kuitenbrouwer, 2014) threatens to exacerbate the shadow impacts of the Four Seasons towers, blocking sunlight to large swaths of Yorkville. In addition to discussions over shadowing, there is concern that the already-powerful wind impacts of the Four Seasons development could become much worse, after taking

[5] This supports the notion of Section 37 as a form of legalized bribery, which I will discuss later in section 6 of this paper.

into account the cumulative impacts of all new tall-building proposals for the area (*ibid*). The highly cautious skepticism and discussions that have accompanied this most recent influx of high-rise development applications reveal a changing attitude regarding how the *impacts* of tall tower developments are conceived – a new focus on the cumulative impacts (i.e. shadow and wind) of proximate tall buildings, rather than considering each individual proposal in isolation. The Four Seasons development came to fruition during the nascent stages of the Yorkville development boom, and provides an interesting example of a case where Section 37 was used to mitigate some undesirable impacts of development (i.e. Four Seasons' shadows on Jesse Ketchum playground), but future nearby development proposals have threatened to generate new impacts that compound upon the previous impacts that past Section 37 contributions were meant to mitigate.

Section 37 Benefits for Four Seasons
• $1,500,000 for Toronto Reference Library • $1,700,000 for fire hall Wall (max. $300K), Berryman St streetscape improvements ($290K); improvements to Ramsden Park ($100K), balance on greening initiatives in area (Greater Yorkville Residents' Association with input from ABC Residents' Association) • $2,000,000 for Jessie Ketchum School Playgrounds redesign and construction • Publicly accessible landscaped open space

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3.2 – Shangri-La Hotel and Condominiums

In mid-2005, Vancouver-based Westbank Developments applied to the City of Toronto for zoning by-law and Official Plan amendments to permit the development of a sixty-five storey mixed-use hotel and condominium tower, located at the northwest corner of University Avenue and Adelaide Street West. The

proposed tower would allocate the first fifteen storeys to the Hong Kong-based luxury hotel chain Shangri-La, with the remainder containing 334 luxury condominium units. Although the proposed height, at 214 metres, exceeded the site's 76-metre zoning cap, the final report for the development written by City Planning did not object to the requested height, rationalizing that the site fell within the City's Financial District where there were similar developments of comparable height. Thus, the final report by Planning was favorable, and the development was approved at Council in mid-2006.

Above: Shangri-La public art component. Source: westbankcorp.com

Above: historic Bishop's Block incorporated into Shangri-La podium. Source: westbankcorp.com

Above: Shangri-La, looking southward from Queen & University. Source: westbankcorp.com

The by-laws passed by Council to approve the development contained a Section 37 agreement dealing with matters of heritage preservation, streetscape enhancements, and improvements to a park approximately one kilometer away. The subject site for the development, which had previously operated as a surface parking lot, also contained one of Toronto's oldest heritage buildings, Bishop's Block, which was constructed in 1829. Although Bishop's Block had sat in dereliction for decades, the proposal called for the restoration of its heritage facades, which would play an integral design role within the new tower podium. The developer's proposed heritage treatment provided an excellent opportunity for the City to apply its Official Plan policies, on heritage and height and density incentives, to enter into a Section 37 agreement with the developer to secure $1.5 million for the restored heritage facades. The other components to the Section 37 agreement included: $400 000 for streetscape enhancements on the building's Simcoe Street and University Avenue frontages; $500 000 for improvements to Grange Park; and a $50 000 contribution to a heritage study for University Avenue.

For Westbank, the Toronto Shangri-La Hotel was the developer's first foray into Toronto's real estate market, and undoubtedly a lucrative one. The Shangri-La development was contemporaneous to the Four Seasons project, which drew a Section 37 contribution worth $5.2 million, $2 million of which was for shadow mitigation for the nearby schoolyard, a contribution that bought support from some community-members but would not benefit the Four Seasons development at all; by contrast, Shangri-La's Section 37 contribution totaled $2.45 million, and all of the community benefits outlined in the agreement, with the exception of $500 000 for

Grange Park 1 kilometer away, would directly benefit the development proposal by enhancing both its use and exchange values. For Westbank, a developer accustomed to paying significantly higher density bonusing agreements in Vancouver[6], such a modest community benefits contribution was surely an unexpected, but pleasant surprise. According to Councillor Wong-Tam, who shared with me an anecdote she heard of an early meeting between then-Councillor Olivia Chow and Westbank representatives, Westbank came prepared to negotiated as much as $13 million worth of community benefits (personal correspondence, March 27 2014). The Westbank reps were astonished when told they would only be required to provide a fraction of that sum in the city's requested Section 37 agreement.

When visiting the Shangri-La development, the restoration of Bishop's Block is apparent from the street. The bricks have been cleaned, windows replaced, and heritage elements restored, and a new building has been constructed behind its facades which contains the exclusive Soho House, a club for arts and media professionals. The surrounding streetscape has been enhanced to a high quality, with granite pavers, bespoke seating, and lush landscaping. The public art component, a massive statue by Chinese artist Zhang Huan, has been completed on the building's University Avenue frontage. The half-million dollars earmarked for Grange Park improvements, however, seem to be still awaiting disbursement.

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[6] For instance, the Vancouver Shangri-La Hotel and Condominium project, another Westbank development of the same size and scope, and from the same time as the Toronto iteration, required a 'Community Benefits Contribution' of *$14 million*, or more than *four times* more valuable a contribution than the Toronto development's Section 37 contribution. I will further outline Vancouver's approach to securing Community Benefits Contributions in Chapter 6.

Section 37 Benefits for Shangri-La Hotel and Condominiums
• 180-188 University Avenue, 192, 194 Adelaide Street West • Amend Heritage Easement Agreement; submit a heritage conservation plan for reconstruction and restoration of 180 University Ave; restore heritage facades on Simcoe and Adelaide at a cost of $1.5M with any excess to be for streetscape improvements; streetscape improvement to a value of $400K; cash contribution of $500K for Grange Park improvements; public art at 1% gross construction cost; $50K for a heritage study for University Ave

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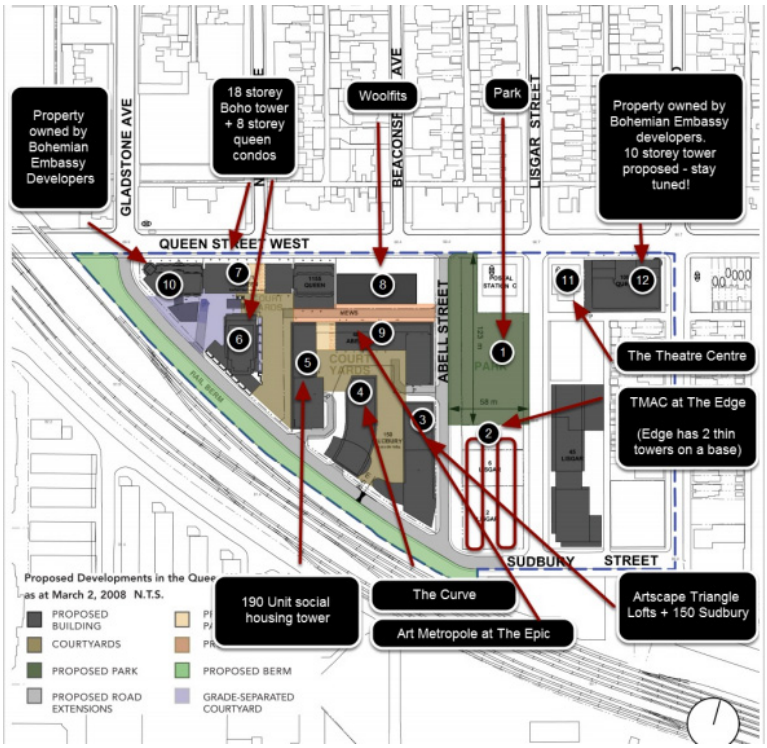
3.3 – Queen West Triangle

The Queen West Triangle (QWT) is a wedge of land located west of downtown Toronto, which is bordered by Queen Street West to the north, Dovercourt Road to the east, and the Canadian National railway corridor to the west and south. From the late-1880s, the QWT and its broader environs contained a heavy manufacturing zone, where Canadian industrial giants like Massey-Ferguson and Inglis and Co. produced an array of consumer goods. The early-1980s recession, combined with globalization and the offshore flight of industry, led to a large-scale abandonment of the area by manufacturing firms, and by the 1990s "artists illegally filled the gap in [this] post-industrial wasteland, creating often invisible art communities within the cavernous open spaces and shadowy hallways of the vast indoor warehouse city" (Bain, 2006 424). The eclectic form of the hulking Victorian-era factories and warehouses appealed to these pioneering artists, who would unwittingly initiate gentrification of the area by more commercially-oriented artistic professionals and trendy technology firms (*ibid*).

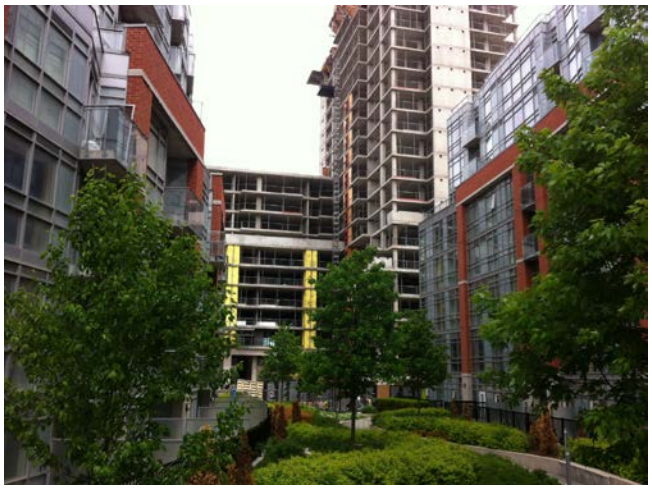
By the early 2000s, the City of Toronto, realizing the redevelopment potential of the QWT area and its erstwhile industrial surroundings, created the Garrison Common North Secondary Plan to establish land use restrictions and guidelines for new development. QWT was sold off to three developers who sought to build residential condominium towers, which worried City Planners who had hoped to retain a significant level of employment uses (Foad, 2007). As a conflict brewed between developers Verdiroc, Baywood Homes, and Landmark Developments and City staff over what should be considered appropriate development for QWT, a community group called Active 18 was formed to generate strong neighbourhood involvement in negotiating concessions from the developer, and also to advocate for the artists that would be displaced by the proposed demolition of the heritage warehouses (Lehrer, 2008).



Above: Schematic map of Queen West Triangle developments. Source: http://www.blogto.com/upload/2012/05/2012510-qwt-map.jpg

Above: Renovated Carnegie Library building at 1115 Queen St. West. Photo by author

Above: Bohemian Embassy condos at 1171 Queen St. West. Photo by author



Above: Westside Lofts by Landmark Developments at 150 Sudbury St. Photo by author

Above: The Edge condos by Verdiroc. Photo by author

The trio of developers who had together purchased the majority of the land in QWT were not successful in obtaining Official Plan and zoning by-law amendments from City Council. Their three subsequent Ontario Municipal Board appeals were consolidated into one thirty-five day Board hearing, given that the circumstances and planning issues for each of the developments were virtually identical. The Board rejected the City's argument that a quantum should be applied to each proposed development to generate a specific amount of new space for employment use, and opined that the developers' proposals were of an appropriate size and scale for QWT (cite Board hearing). The OMB allowed the appeals, and granted the developers virtually all of their desired development entitlements. The City then attempted to have the OMB decision overturned by the Ontario Divisional Court, but entered into an eleventh-hour Section 37 settlement with the developers just hours before their first appearance at Divisional Court was to take place (Foad, 2007).

The Section 37 agreement that was finalized through the last-minute settlement offer was a result of negotiations between the developers and the City, and contained concessions that the City and Active 18 had been pursuing since the genesis of the QWT proposals. However, Active 18, outraged over being excluded from the final settlement, criticized the City for endorsing what they claimed to be a mediocre settlement offer that did not secure nearly enough affordable live/work space for the affected artist population. One frustrated Active 18 member expressed dismay over the finalized proposal endorsed by the settlement offer, calling it "a planned arts community… a failure… it's completely gentrified and looks like a mall… [authentic] arts communities grow organically" (*ibid*). Then-City Councillor

for Ward 18, Adam Giambrone, defended the City's settlement offer as a necessity, given the risk that had the case gone forward to Divisional Court, the City could have lost all Section 37 benefits. Giambrone argued, "The city's legal opinion was that we would not win [the Divisional Court appeal]. Am I happy with the settlement? No. Active 18 has played an incredibly important role, and its input has formed the basis of the settlements. But had we gone to court and lost, there'd be no negotiation at all."

Notwithstanding criticism of the settlement offer, the final Section 37 agreement did constitute a significant contribution of community benefits, which were oriented to providing social housing, affordable live/work space for artists, and heavily discounted space for Artscape, a local non-profit arts organization. A 190-unit purpose-built social housing building is now complete and fully occupied. Three floors of the Westside Lofts condo development, appraised at $19 million, were made available to Artscape at the discounted price of $8.4 million (Artscape, 2010). Artscape will use the space to create seventy affordable live/work spaces for artists, which will be rented or sold at below-market rates (*ibid*). Section 37 monies from the condominium at 150 Sudbury Street allowed Toronto Public Health to relocate into the building's podium, freeing up their former office space in the nearby historic Carnegie Library, which has now been converted into a performing arts hub and community meeting space.

In many ways the QWT case study was an early manifestation of an increasingly prevalent Toronto trend in urban development and density bonusing, the use of negotiated settlement to manage risks in the development process. The

City's legal staff had given City Council the opinion that there was a high probability they would lose their Divisional Court appeal. Under such a scenario, the QWT developers would have been given approval to proceed with their developments with no obligation to engage in any further negotiations with the City over providing Section 37 benefits. Hence, a last-minute settlement offer was reached between the City and developers, which gave the developers their desired approvals and generated a list of community benefits for the City. However, in reaching a settlement, the City exposed itself to criticism from Active 18, who had been more militant in their demands for concessions.

This dilemma raises an important question for my paper: given the increasing prevalence of negotiated settlement in Toronto urban development, how do the *optics* of bonusing negotiations ultimately affect what kinds of Section 37 benefits are agreed upon, and what height and density of development is permitted? In QWT, Councillor Giambrone claimed that the input from Active 18 played a crucial role in forming the basis of the City's negotiations with the developer. Despite the dissatisfaction of Active 18 with the final settlement, it would appear that they had leverage in the negotiations between the City and developers, given the political need for the Councillor to appear sympathetic to the needs of his constituents. Active 18 thus played at least an indirect role in the Section 37 negotiations, and if they had not applied such strong pressure on Giambrone and the developers to obtain their desired community benefits, the substance of the final settlement offer could have been much different. I will explore this key topic later on in the discussion section of my paper.

Section 37 Benefits for West-Queen-West Developments
1155 Queen Street West (2059946 Ontario Inc.)
• $175 000 for artists' affordable housing/workspace, development or construction of Lisgar Park, or renovation/restoration of Carnegie Library building at 1115 Queen Street West for use as a performing arts hub and community meeting space
1171 Queen Street West (2059946 Ontario Inc)
• $500 000 for one or more of the following: affordable live/work or work spaces for artists, owned/operated by the City or non-profit artspace management organization; public art; new work space for Toronto Public Health to allow community/arts use of former space; renovations/restoration of Carnegie Library building at 1115 Queen Street West for performing arts hub and community meeting space; development of Lisgar Park
48 Abell Street (Verdiroc Development Corporation)
• 190 units of affordable housing in Phase 1, in a separate building (180 Sudbury Street) including 27 artists' live-work units and 280 square metres of contiguous workshop space • Workshop space in Phase 2 • Publicly accessible open space and pedestrian access • Construction of Sudbury Street extension prior to condo registration • Provide publicly accessible open space and mews
150 Sudbury Street (Landmark Developments Inc.)
• $1 250 000 for: affordable live/work spaces or workspaces for artists, owned and operated by the City or a not-for-profit artspace management organization • New work space for Toronto Public Health to allow community and/or arts use of the previous Toronto Public Health work space • Renovation and restoration of Carnegie Library building at 1115 Queen St. West for use as a performing arts hub and community meeting space • Up to $250 000 for costs related to the relocation of the Public Health offices from 1115 Queen St. West

4.0 Actors in the Development Process

In this brief section, I will provide a brief overview of the four general sets of actors involved in urban development processes in Toronto, and an explanation of the scope of their involvement with Section 37 agreements. The process for obtaining community benefits through density bonusing is very proscribed through Section 37 of the *Planning Act*, the Toronto Official Plan, and the Toronto Section 37 Implementation Guidelines, and so the four actors I consider in this section generally negotiate bonuses in a relatively standardized, predictable fashion. This is not to suggest that all individual agents in each of these four sets of actors behaves identically; there can be a significant degree of varying behaviours depending on the preferences of the particular agent. For instance, City Councillors have varying approaches to dealing with developers in their wards, creating different Section 37 negotiating conditions for developers. That said, I wish to use this section to generate an abstract understanding of how each actor in the urban development arena engages with density bonusing in order to optimize their own individual gain.

4.1 – Developers

Developers are in the business of acquiring underutilized land and developing that land to its so-called 'highest and best use', in order to optimize exchange values and maximize their profit. Urban land development is an inherently complicated and risk-fraught activity; it can take several years from the initial acquisition of a parcel of land through to the final completion of construction, and over this time changing market conditions can jeopardize the viability of that

development. For residential condominium towers, the building type which has generated the vast majority of density bonusing revenues in Toronto, developers must usually pre-sell the majority of a building's total units before they can obtain construction financing, which creates a pressure to secure all necessary development approvals as quickly as possible. City Councillors, cognizant of the developer's desire for speedy approvals, use this source of leverage to attempt to acquire the highest value of Section 37 benefits possible, in exchange for ensuring the developer's application is processed in a timely fashion. Thus, many developers have come to use Section 37 contributions strategically, in order to expedite their approvals and avoid risky delays, such as a protracted OMB hearing.

Through the Ontario Home Builder's Association (OHBA), the development industry has occasionally objected to what they perceive to be onerous Section 37 requirements imposed by municipal governments who intentionally under-zone lands in order to extract maximal community benefits (OHBA, 2014). While noting that Section 37 costs ultimately get passed down to homebuyers, and thus do not cut into the developer's final profit, the OHBA argues that municipalities' excessive Section 37 demands run contrary to the spirit and intent of provincially-mandated intensification efforts (*ibid*). However, despite these protestations of sectoral development groups like OHBA and BILD-GTA, developers increasingly acquiesce to local councillors' Section 37 demands, even if they might find them to be slightly unreasonable, as anteing up those community benefits can significantly expedite their approvals.

Recall that the Ontario Municipal Board has ruled in the past that there must be a nexus – or a real and demonstrable planning relationship – between Section 37 benefits and the development project they are drawn from. Consequently, in the past, when developers have been asked to provide Section 37 benefits with no nexus to their development, they have typically been able to successfully dispute having to pay these benefits at the OMB. However, the nexus requirement is entirely cast aside when developers and the City enter into a negotiated settlement that allows a development to proceed. Given the widespread rise in negotiated settlements in the City of Toronto, it is increasingly common for developers to agree to provide community benefits that have no nexus to the subject development whatsoever, which is a boon to Councillors who have become increasingly free to pressure developers into agreeing to provide whatever Section 37 benefits that particular Councillor desires.

4.2 – City Planning Staff

City Planning is a distinct division within the City of Toronto that is responsible for a range of planning-related administration, including the evaluation of development applications. Save for informal pre-consultations between developers and ward Councillors, City Planning staff are the first formal point of contact between the City and developer, which begins upon the receipt of the development application. A City Planner is assigned to the incoming development application and over several months makes a determination as to whether to write a report recommending approval or refusal of the application. In arriving at their

decision, the Planner consults the Official Plan and any other relevant planning documents (i.e. the Tall Building Guidelines, Avenues & Mid-Rise Policies) to come to a decision on whether or not that application constitutes good planning. The Planner authors two reports: the preliminary report, which identifies the main relevant planning issues to be addressed through ongoing discussions with the applicant, and a final report which contains the Planner's ultimate recommendation to approve or refuse the application. The final report is voted on at Community Council, and if it is adopted there, it proceeds to a full Council vote.

Although City Planners are the main source of planning expertise in Toronto's local government, their authority is frequently overridden by Councillors who then make decisions on planning matters that are not grounded in the objective criteria used by Planners to evaluate development applications. Whether this constitutes a usurpation of Planners' authority by Councillors, or a smart city-building move given the specter of an OMB loss, there is plenty of grist for debate around the issue of Councillors' divergence from the advice of Planning Staff. Nonetheless, City Planners in Toronto recognize that ultimately they act in an *advisory* capacity to City Council, and that Planners' reports are in no way binding or final.

City Planners tend to be reluctant to engage in Section 37 discussions with developers until the built form of the development application under consideration has been finalized; Peter Langdon, Manager of Strategic Planning and Policy for the City of Toronto, identifies that "If [Planners] decide on a package of Section 37 benefits before the built form is finalized, or even simultaneously, they will get

criticized by citizens as having approved a bad development in order to get benefits" (personal correspondence, March 4 2014). This logic is consistent with Official Plan policies which state that a development application must already constitute acceptably sound planning before a Section 37 contribution may be discussed. But Moore (2013b) raises an interesting question: if an application already constitutes good planning, why should additional community benefits be required as a condition of approval? There is a certain unresolved, residual ambiguity over what exactly it is that Section 37 benefits are intended to rectify or compensate for, from the perspective of City Planners.

4.3 – Local Councillors

The City of Toronto is governed by a ward-based Council system with forty-four Councillors, each representing an individual ward. Councillors act as the elected representative for their ward constituents, responding to residents' complaints, coordinating local city services, advancing new City initiatives, and maintaining a high degree of oversight over planning matters and urban development in their ward. While City Planning staff objectively and impartially evaluate development proposals and ultimately recommend an approval or refusal of the application, it is Councillors who ultimately decide the fate of a development when it moves forward to the local Community Council, and then to a full Council vote. Councillors can, and indeed often do, make decisions on development projects that overturn the recommendations of City Planning staff, and one common reason for doing so is to generate Section 37 benefits. One often hears Councillors defend

their decision to ignore the recommendations of Planning staff, citing the risk of losing out on any Section 37 benefits if the application gets appealed to the OMB.

Although the Toronto Official Plan policies on density bonusing, as well as the Toronto Section 37 Implementation Guidelines identify that City Planning staff should take the lead on Section 37 negotiations with developers, in practice it is the local ward Councillor who facilitates the majority of negotiation. Most Councillors will not begin negotiating Section 37 benefits with a developer until City Planning staff advise that the development is sound enough from a planning perspective to merit a density bonus. This is due to the fear that if a Councillor negotiates prematurely, they will render themselves vulnerable to accusations that they are engaging in 'let's make a deal planning' (Devine, 2007). However, due to the ever-present risk of losing at the OMB, some Councillors feel inclined to proceed with Section 37 negotiations around particular developments that have planning deficiencies, so that the City can ultimately reap at least some positive benefits from that project. This situation increasingly outweighs the alternative of the City fighting a development at the OMB on principle, risking the application being approved by the Board, and thus being forced to accommodate the development without receiving any community benefits.

By virtue of Toronto's ward-cased Council system, Councillors have been accused of governing their wards like personal fiefdoms, and one Toronto development lawyer agrees (personal correspondence, June 25 2014), opining that over time Councillors tend to become beholden to particularly powerful and vocal segments of the communities they represent. When Councillors argue that their

Section 37 negotiations are driven by the needs and desires of their constituencies, it is precisely those powerful community members with established, routine access to the Councillor's office who are represented in those Section 37 negotiations. So although there is truth to Councillor's claims that their Section 37 negotiations are predicated on the interests of local communities, it is important to recognize that 'community' is a somewhat hegemonic entity that marginalizes certain voices and participants.

4.4 – Community Groups

The final actor that possesses a stake in Section 37 negotiations is, broadly speaking, the 'community', which encompasses ratepayers' groups, residents' associations, and a broad array of other non-governmental organizations operating at the local scale. Residents' groups in particular tend to be dominated by homeowners, rather than renters, and comprised of white, upper-middle class residents (Kipfer & Keil, 2002). Community groups can employ both use-value logic, such as improving the quality of life in a neighbourhood by lobbying for new park improvements or affordable housing units, as well as exchange-value logic, such as protecting local property values or neighbourhood prestige (Logan & Molotch, 1987). Often, community groups mobilize a combination of use and exchange-value logics when they are involved in discussions about urban development in their neighbourhood, raising concerns over issues like construction disruptions, loss of privacy, views and sunlight, and increased strain on local infrastructure. These complaints, and many more, come up time and time again during statutory public

consultations for new development projects, as well as through routine correspondence with the local Councillor's office.

Community groups do not participate directly in density bonusing negotiations, as their inclusion is not required by Section 37 of the *Planning Act* nor the City of Toronto Official Plan. However, Moore (2013b) identifies that community groups derive power in the politics of local urban development by virtue of their ability to mobilize the local constituency against the ward Councillor when the community feels their interests are not being adequately represented. Applying Moore's argument to Section 37 negotiations, it is evident that although community groups might not be physically present at the bargaining table, they are there by proxy as it would be politically unwise for a Councillor to negotiate a Section 37 contribution from a developer without first bringing that agreement back to the community for ratification. But those community groups that do get consulted about Section 37 benefits are precisely those well-represented residents and business owners that stake a hegemonic claim to the 'community' label.

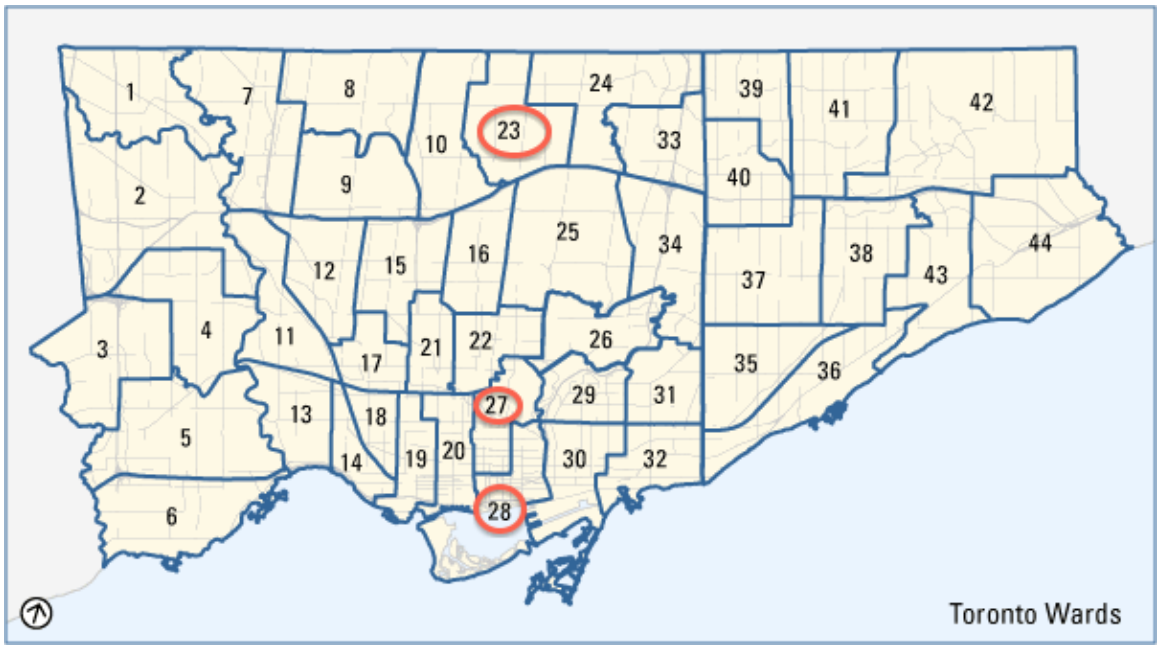
In an effort to democratize the process of determining Section 37 benefits, Ward 23 Councillor Shelley Carroll recently hosted a participatory budgeting session where residents of her ward could vote on how to spend $500 000 in Section 37 funds from a local development project. The ballot listed several options for spending the funds, such as a digital innovation hub at a local library, an outdoor park pavilion, a seasonal skateboard park, and other community benefits. Residents could vote for a single, expensive community benefit, or a combination of several less-expensive benefits. Councillor Carroll lauded the vote as a superior alternative

to a Section 37 decision made only by herself and well-connected community groups, and indicated a desire to see participatory budgeting of Section 37 funds become more prevalent across the city (Dale, 2014). However, Carroll's Section 37 experiment, while certainly a well-meaning attempt to increase community participation in Section 37 decision-making, violates several elements of establishing density bonusing policy. The OMB has ruled on several occasions that any community benefits secured through Section 37 must bear a reasonable nexus to the subject development site, and must be grounded in clear, transparent and predictable criteria outlined in the local Official Plan. Carroll's budgeting exercise listed community benefits that might not meet the test of having a clear and demonstrable planning relationship to the specific development from which the bonusing funds originated. It thus remains to be seen whether applying participatory budgeting to Section 37 funds will prove to be a viable alternative to the current practice of Section 37 negotiations.

5.0 Section 37 in Practice: Three Ward Case Studies

It is a key contention of my paper that the manner in which Section 37 policies are interpreted and applied by Toronto's local politicians varies significantly from ward to ward, resulting in a fragmented and inconsistent bonusing regime. Because each City councillor has particular preferences for community benefits and a unique negotiating acumen, developers face widely divergent conditions for Section 37 negotiations depending on the ward within which their proposed development falls. In some cases, certain developers have cultivated a good relationship with certain local councillors, leading to amicable negotiations over community benefits. Conversely, there are situations where developers may feel that a councillor is trying to extort an unreasonably large Section 37 contribution, especially when the developer has grown accustomed to negotiating comparatively smaller Section 37 agreements with other councillors. The different conditions that developers encounter in negotiating Section 37 agreements may damage the overall efficacy of Toronto's bonusing regime by reducing developers' perception of its legitimacy. However, although development-industry spokespeople have criticized Toronto's bonusing regime as unfair and opportunistic (Altus Group, 2013; OHBA, 2014) the number of Section 37 agreements negotiated throughout the City have risen unabated over the course of the regional urban development boom.

In this section I will undertake case studies of three City of Toronto wards that have accumulated the largest amount of Section 37 benefits[7]: Ward 23 Willowdale, Ward 27 Toronto Centre-Rosedale (I) and Ward 28 Toronto Centre-Rosedale (II). The section will be predominantly informed by interviews with each ward councillor. I conducted my interviews with the councillors in a semi-structured manner, asking the same general questions regarding how they experienced Section 37 matters in their Council duties. Thus I will structure each of my three case studies in a similar manner, examining the unique urban development patterns of each ward, the distinct local planning challenges that have arisen due to intensification, how each councillor prefers to negotiate with local developers, how the councillors determine which benefits to secure, and how each councillor believes Toronto's density bonusing regime can be improved.



[7] Ward 20, which has generated the second-highest value of Section 37 benefits, will be omitted from my account due to my inability to obtain an interview Councillor Adam Vaughan, who has since resigned from Council to run in a federal by-election.

5.1 – Ward 23 Willowdale

Ward 23 Willowdale is located in north Toronto, and includes the city centre of the former municipality of North York, which was amalgamated into the new City of Toronto in 1998. Represented by Councillor John Filion since the 1990s, ward 23 has received a significant amount of intensification over the last decade, mostly in the form of new high-rise condominium tower development. Ward 23 has generated the fourth-highest amount of Section 37 contributions of all Toronto wards – a sum of more than $51 million. No other area outside of the city's downtown core has yielded such a high amount of density bonusing revenues. The area in which virtually all of this development is taking place is known as North York Centre, which is identified as an 'urban growth centre' in the provincial Growth Plan, and subject to mandatory residential and employment growth targets. Given this extra significance of North York Centre, the City created the North York Centre Secondary Plan (NYCSP) to proscribe area-specific planning policies related to urban design, transportation management, land use, and density allowances.

In most parts of Toronto, zoning restrictions on height and density are effectively irrelevant due to their 'antiquation'; developers will always seek to exceed these restrictions because contemporary realities of land development in Toronto, such as skyrocketing land costs and provincially-mandated intensification targets, permit them to do so. In North York Centre however, the NYCSP establishes two zoning figures for land: a minimum or 'base' density, which is as-of-right, meaning no zoning by-law amendment is required to develop a building to the site's base density, and; maximum density, which a developer may build to by purchasing

density incentives, such as building a social facility within the development, or providing funds through the expansion of local roads. The density incentives here are secured through a Section 37 agreement, and the way the NYSCP is structured allows the City to capture 100% of the value of the land uplift that the developer receives by exceeding the base density of the site and reaching the maximum density by purchasing the incentives. It is still profitable for the developer to build to the maximum allowable density in North York Centre because of the formulations of the Secondary Plan. As a result, each individual tall building development site in North York Centre tends to result in a more valuable Section 37 contribution than developments in, say, downtown Toronto where there is no overarching secondary plan to control densities. Examples of developments in North York Centre that have generated sizable Section 37 contributions include: developer Tridel's 'Grand Triomphe' project at 5435 Yonge Street, a five-tower condo development built in 2007 with a $7.4 million Section 37 agreement; developer Tridel's 'Avonshire' community at 1-12 Oakburn Crescent, a multi-tower condo development first proposed in 2008 which secured a $9.2 million Section 37 agreement, and; developer Bazis' 'Emerald City' project at 4750 Yonge Street, a two-tower condo development approved in 2010 with an $11.2 million Section 37 agreement.

Due to the NYSCP policies on density incentives, Councillor John Filion explained to me during an interview, there is no negotiation regarding the provision of a density bonus. The rules and incentives in the NYSCP apply to all developers who wish to build in North York Centre, and there are no exemptions or exceptions.

Occasionally, Filion recalls, a developer that has never built in North York Centre will exhort him to negotiate a deal to circumvent the NYSCP:

> "At least once or twice a year, I'll have someone who's not used to doing business in the North York Centre who thinks they can negotiate their way out of the rules in the NYSCP and they don't believe you at first when you say 'no you can't'. They say 'what do you mean there is a maximum density, everywhere else there is no maximum and it's *whatever you can get*'." (personal correspondence, March 5 2014)

The above quote clearly represents the realities of land development in the City of Toronto, and the belief that developers can demand 'whatever they can get' due to the City's precarious zoning regime. However, Filion lauds the NYSCP for generating an alternative to the 'wheeling-and-dealing' approach that takes place between councillors and developers when negotiating Section 37 agreements. He suggests that the city as a whole could benefit from the incentive-for-density approach taken in the NYCSP, but recognizes that "a lot of planning theorists (*sic*) don't like this model because they don't like maximums and they don't like things proscribed this way and that way." (*ibid*).

When I asked Councillor Filion about his thoughts on potential areas of reform for Toronto's Section 37 policies, he spoke of the complexities in using Section 37 funds to generate new social facilities, such as daycares and community centers. As these types of facilities can easily cost tens of millions of dollars due to land acquisition and construction costs, it can take many years before there are enough Section 37 funds allocated for those specific facilities in order to build them. Filion explains that having served as the local councillor for multiple successive terms, he has been able to closely monitor the Section 37 funds generated by new development projects, and engage in longer-term planning around the dispensation

of those funds to ensure that they actually result in new tangible community benefits. He recognizes that the city councillor's office plays a key role in driving forward new projects funded by Section 37 contributions: "The bureaucracy doesn't do it largely because it's complicated and it involves a bit of wheeling and dealing that they the bureaucracy don't do, or don't have enough pieces of the picture to do." (*ibid*). Councillor Filion cites his political experience and long-term relationship with City staff as important factors in being able to plan for providing ambitious new Section 37-funded facilities.

5.2 – Ward 27 Toronto-Centre Rosedale (I)

Ward 27 is a downtown Toronto ward represented by Councillor Kristyn Wong-Tam, who is currently serving her first term on City Council after being elected in the October 2010 election. Ward 27 contains several prominent neighbourhoods, which together represent tremendous socio-economic diversity and income polarity: Rosedale is a primarily low-rise, wealthy neighbourhood of stately heritage homes, which has not experienced intensification and likely will not encounter such pressure into the foreseeable future; Yorkville, a former bohemian enclave of low-rise heritage built form, has gentrified into an upscale neighbourhood that is experiencing a tremendous influx of development pressure in the form of approximately a dozen high-rise tower proposals; Bay-Cloverhill is a concentration of high-rise condo towers clustered around the Bay-Wellesley intersection which continues to receive new development applications for high-rise condos; Church-Wellesley Village, the city's mainstream LGBTQ neighbourhood, is

transitioning from a low to high-rise neighbourhood as a wave of high-rise condo applications sweeps the Church Street corridor, and; the downtown Eastside, a historical neighbourhood containing the city's highest concentration of social services and homeless shelters, which is undergoing significant gentrification and redevelopment. Generally speaking, hardly any part of the southern half of ward 27, or anywhere south of Davenport Road/Bloor Street, has avoided new high-rise development.

Ward 27 has experienced a tremendous amount of intensification and development pressure due to the regional condominium boom, and as a result of the provincial Growth Plan, driving up land prices as high as $30 million per acre (personal correspondence, March 27 2014). As a consequence of this sustained development pressure, ward 27 faces a litany of planning challenges. Despite the addition of tens of thousands of new residents, mostly housed in new high-rise condo towers, there has been a lack of proportional investment into social infrastructure such as daycares, recreational centers, and community facilities (*ibid*). Local utilities such as water mains and electricity lines, which have not received upgrades for decades, are being stretched to capacity; for instance, residents of new condominium towers have complained to City staff of consistently poor water pressure in their new residential units; in the words of Councillor Wong-Tam: "What do you tell someone who has just spent $700 000 on a new condo and cannot get a decent hot shower in the morning?" (*ibid*). Public transportation in ward 27 is overburdened, with subways, buses and streetcars operating beyond capacity at peak travel times. Yet, the Ontario Municipal Board continues to rubber-

stamp developments in the area on the basis that ward 27 is well served by transit. Sidewalks in busy parts of the ward like Yonge Street are simply too narrow to accommodate present-day hordes of pedestrian traffic, literally forcing pedestrians to spill out into the street.

Reflecting the tremendous pace of local growth, since 1998 development in ward 27 has generated $64.5 million in cash Section 37 benefits, more than any other ward in Toronto. In addition, smaller-scale ward 27 development projects have generated a further $9 million in Section 45 benefits – bonusing funds obtained through the granting of minor variances at the City's Committee of Adjustments[8]. In total, nearly 130 separate developments have contributed to more than $75 million in density bonusing revenues since 1998, and most of these funds have accrued within the past few years. As development proposals in ward 27 have grown to unprecedented heights and densities, Section 37 contributions have risen accordingly. A recent proposal by developer Canderel for a sixty-storey condo tower at 460 Yonge Street drew a contribution of $5.5 million – the same amount as the earlier Four Seasons development, also in ward 27, a proposal that was twice as large as Canderel's. As a result of Councillor Wong-Tam's negotiations with local developers, she has been able to secure, on average, a higher amount of Section 37 contributions from new development projects than ever before, in any of Toronto's wards. Wong-Tam cites her past experience as a successful local real estate agent as the source of her negotiating acumen.

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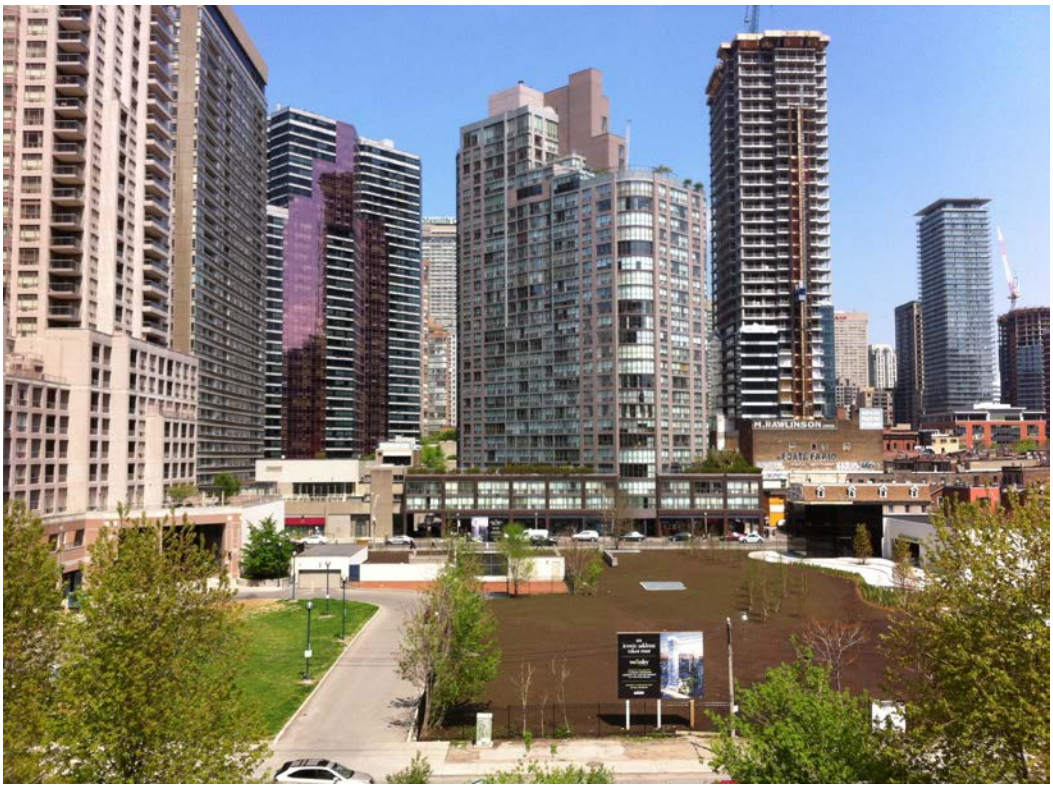
[8] Section 45 of the *Planning Act* contains similar provisions to Section 37, allowing a Committee of Adjustment to require an applicant to provide community benefits or cash-in-lieu in exchange for being granted their desired minor variance.

Shortly after Councillor Wong-Tam was elected to Council in 2010, she set up, on her own initiative, a series of community planning meetings for each neighbourhood in ward 27, where she invited constituents to identify their priorities for local improvements and new amenities. The input that these meetings generated allowed Wong-Tam to create a list of the most-desired benefits in each neighbourhood, which would form the basis for future Section 37 negotiations. For example, residents of the Bay-Cloverhill neighbourhood identified new parks and greenspace as their highest priority, and as a result, Wong-Tam asks for those community benefits first when negotiating Section 37 contributions from nearby development projects. Recently, Wong-Tam was able to pool Section 37 contributions from three proximate high-rise condominium proposals by developer Lanterra, in order to purchase some of Lanterra's massive property at 11 Wellesley Street East to create a new 1.5 acre park. Because Wong-Tam knew that the creation of new park space was urgently desired by the Bay-Cloverhill community, she was able to convince Lanterra to provide Section 37 cash from all three of their nearby developments for the acquisition of the land to create a new park (see fig. on page 72)[9].

Although community members are not typically party to Section 37 negotiations, which usually take place behind closed doors between Planning staff, the ward councillor, and the developer, exercises such as Wong-Tam's community planning meetings allow ordinary citizens and other neighbourhood-based groups

[9] The combined Section 37 funds from Lanterra's three developments (The Britt, 501 Yonge Street, and Wellesley on the Park) were supplemented with 'Section 42' parkland acquisition funds, so the City could buy 1.5 acres of Lanterra's site at 11 Wellesley St. East.

to identify their priorities for community benefits to be obtained through Section 37 contributions from new local development. Although the councillor is in no way bound to negotiate the community benefits requested by their constituents, there is a clear political incentive to do so. When new development takes place, even if the surrounding community is not completely supportive of that development, some of their apprehensions may be laid to rest if they receive Section 37 benefits in return, which had been previously identified by the community as priorities. When a councillor has undertaken some form of a community benefit needs assessment, such as Wong-Tam's community planning meetings, they may be beholden to the community's list of desired benefits, and criticized if they use Section 37 negotiations to obtain other types of community benefits that do not align with community priorities.



Above: Future 1.5-acre park at 11 Wellesley St. Photo by author

For Councillor Wong-Tam, Section 37 negotiations generally do not begin until the file Planner has made some determination of the soundness of the planning rationale for the development. She notes that developers tend to have the opposite approach: "They come in dangling the Section 37 carrot and they want to talk about the quantum for the community benefit contribution right away while glossing over the fact that the building is too large, the performance standards of the tower don't meet the tall building guidelines, et cetera" (*ibid*). If the file Planner advises her that an application is supportable within the context of the Official Plan and other planning policies, she will then begin negotiating a Section 37 agreement before the Planner's final report goes to a Council vote.

However, there are commonly cases where the Planner has indicated a development application is *not supportable*, and will result in a refusal report. As explained earlier, refusal reports can be overturned by councillors when the report comes before the local Community Council, and can be advanced ahead to full City Council approval with a Section 37 contribution. A strong theme that came out of my interview with Councillor Wong-Tam was the tendency for councillors in development-heavy wards to feel pressured to endorse deficient development applications in order to obtain Section 37 benefits, given the possibility that if the development was rejected by Council it could be appealed to the OMB and allowed to proceed, perhaps even with *more* height and density, and without any Section 37 contribution whatsoever. Under such circumstances, Wong-Tam explains, the councillor must make a choice between accepting the advice of Planning Staff and risking the dangers of an ensuing OMB hearing, or overturning the Planner's refusal

report so that the application can be approved at City Council with some Section 37 benefits. She recalls experiencing this dilemma with a condominium development application for 197 Yonge Street, which did not conform to the City's tall building guidelines, resulting in a refusal report from the file Planner. The developer had concurrently offered a generous Section 37 contribution, which included a land conveyance to allow the Massey Hall music venue to expand their facility, and Wong-Tam decided that the benefit to the City was sufficiently positive to justify overturning the refusal report. Discussing her decision to overturn the Planner's report, she affirmed that making such a compromise was a positive city-building decision, and one that she would gladly "wear politically" (*ibid*).

Recognizing that developers are treated differently depending on which councillor's doors they walk through, Wong-Tam expressed a desire for some kind of formulaic approach to calculating Section 37 contributions, which would give surety to developers, councillors, and community members. While rejecting the notion of adopting one city-wide formula for generating community benefits through Section 37, she stated her belief in the need for a mechanism to link community benefit needs to local building, marketing and sales conditions for developers, in order to generate a win-win agreement for the developer, the city, and the community. Wong-Tam opined that a more rigid, formulaic approach to calculating Section 37 contributions would "act as a great equalizer, relieving councillors who are poor negotiators," continuing, "I am confident in my negotiating skills, but I don't think that all Toronto communities experiencing development are getting the [community benefits] they deserve" (*ibid*).

5.3 – Ward 28 Toronto Centre Rosedale (II)

Ward 28 Toronto Centre-Rosedale is represented by councillor Pam McConnell, who has served on City Council for six successive terms. The ward encompasses a number of the city's oldest, as well as newest neighbourhoods: Cabbagetown is an upscale residential neighbourhood with Heritage Conservation District status, which restricts the encroachment of tall buildings and other development that is inconsistent with the neighbourhood's character; St. Lawrence, the 'Old Town' district of Toronto, contains many low-rise heritage buildings and yet has seen a rise in tall building development over the last five years due to its proximity to the central business district; Regent Park is a new master-planned mixed income community that is replacing a failed social housing community with a combination of new mid and high-rise buildings; the West Don Lands, another master-planned mid-rise neighbourhood, is currently under construction in preparation for the 2015 Pan-Am games, and; the Central Waterfront and East Bayfront neighbourhoods, which abut Lake Ontario, are experiencing a very high intensity of tall building development. Most new tall building development that has generated Section 37 benefits is concentrated in the southern portion of ward 28, in close proximity to the CDB and waterfront.

Development activity in ward 28 has generated $57 million in Section 37 funds and another $6 million through Section 45 agreements. Overall, ward 28 has collected the third-highest amount of community benefits funds out of all wards in Toronto, although this number is slightly distorted due to a small number of very large Section 37 agreements, including an $11 million contribution from the Ernst

and Yonge office tower development in 1989, as well as a recent $10 million 2013 agreement for a multi-tower project by developer Menkes, which will occupy an entire city block. Otherwise, individual high-rise developments, mostly condominium towers, yield a general range of $1-3 million Section 37 agreements. For example, '88 Scott', a fifty-eight storey condominium tower proposed by Concert Properties, generated $2.5 million in Section 37 funds for public art, streetscape improvements, and a reserve fund for the upgrading of the St. Lawrence Market. The iconic sixty-storey 'L Tower' condo development by 'starchitect' Daniel Libeskind yielded a $1.2 million Section 37 agreement – a modest contribution for a tower of that size – which will provide funds for a number of community benefits including affordable housing, a seniors facility, heritage lighting, and streetscape improvements.

Because Councillor McConnell has served such a lengthy term has the elected official for ward 27, she has evolved a consistent approach to how her office negotiates and secures Section 37 agreements (personal correspondence, March 27 2014). An outspoken advocate for community involvement in planning matters, McConnell has established development committees in each ward 28 neighbourhood, comprised of residents, businesses, and other non-governmental actors. These development committees convene their own meetings with local developers when they want to provide input on a new proposal or application, and put forward their own priorities for Section 37 community benefits, which are then shared with McConnell who negotiates with the developer to obtain those benefits on the community's behalf. She insists that she will always allocate Section 37 funds

according to the desires of the local community, and does not have an overriding personal agenda for the bonusing funds that stem from development activity in ward 28 (*ibid*).

In accordance with the City of Toronto Section 37 Implementation Guidelines, Councillor McConnell will not initiate any discussion regarding a Section 37 contribution from a development until the file Planner has concluded that the proposal constitutes good planning. After that has been established, the file Planner obtains an estimate of the value of the developer's uplift, and provides McConnell with a 10-18% portion of the uplift that will form the basis for her Section 37 negotiation; i.e. if the uplift is appraised at $10 million, she will pursue a contribution worth $1-$1.8 million. In general, Councillor McConnell revealed during our interview, she aims to secure 15% of the value of the developer's uplift, and consistently bases her Section 37 negotiations around this figure so that local developers can expect similar negotiating conditions. Consistency of negotiation was a clear theme emphasized by McConnell, who identified that when developers feel subjected to onerous Section 37 demands, they are less willing to negotiate and more likely to appeal to the Ontario Municipal Board than work towards establishing a consensus over the development and the community benefits at the local level.

McConnell's local-centric approach to negotiating Section 37 agreements does not always work effectively. A recent condo development application by Cityzen for 154 Front Street East, which proposed a twenty-six and twenty-two storey tower to be linked by a 'sky-bridge' was strongly opposed by the local

community, Councillor McConnell, and the file Planner. Those in opposition argued the proposal represented over-development of the site, which was situated in the mostly low-rise built form context of the St. Lawrence neighbourhood. According to McConnell, the developer had decided they were going to pursue OMB approval rather than attempt to reach a consensus at the local level. The Board ruled that the development proposal constituted desirable intensification that was consistent with the provincial Growth Plan, and allowed Cityzen's appeal, pending the finalization of a Section 37 agreement with the City. At the time of my interview with McConnell, the Section 37 contribution was still being negotiated; she stated, "The [Section 37] contribution for this development should be $1 million or more, and I will not settle for half a million… at the end of the day if we lose a Section 37 agreement then we lose it, but it's worth really fighting and not caving" (*ibid*). McConnell was emphatic that given the OMB had approved the development in totality, she would not compromise and accept a lowball Section 37 contribution. On June 5 2014, the City settled with Cityzen for a $550 000 Section 37 agreement; McConnell had evidently acquiesced to the developer's offer.

On the subject of Section 37 reform, McConnell asserted her belief that Section 37 contributions should be calculated formulaically, in the same manner development charges are calculated. However, she opined that councillors and communities, rather than City Planners, should retain control over Section 37 negotiations: "Sometimes the needs of the community are not the same as the needs of the city. I think that development and Section 37 should be embedded in the community in which the development is located" (*ibid*). Her argument is that as the

elected representative of the community, she is the conduit for translating her local neighbourhood's priorities for community benefits into tangible Section 37 contributions from area development. The city bureaucracy by contrast is inherently more detached from the neighbourhood level, hence councillor McConnell's comment that 'city needs' and 'community needs' are not always aligned. McConnell rejected the notion that City staff (i.e. planners, lawyers) should take control over Section 37 negotiations, rationalizing that they are not politically accountable to the local communities that they would be negotiating community benefits on behalf of.

6.0 Discussion

6.1 – Disassembling 'Uplift': What is the 'Bonus'?

As I have documented throughout this paper, there is considerable debate over where zoning standards in Toronto should be set in order to accommodate the intensification mandated by provincial planning policy. In Ontario, municipalities are obligated to make planning decisions that comply with higher order laws and policies set out by the province such as the *Places to Grow Act* and *Greenbelt Act*. Although municipalities have the jurisdiction to regulate land use through their Official Plan and zoning bylaws, the Ontario Municipal Board can reverse decisions of local councils that it deems to be nonconforming to provincial policy.

The City of Toronto Comprehensive Zoning Bylaw regulates height, density, and land use for all lands within the city, but large parts of the Bylaw have not been revised for decades. While the provincial Growth Plan clearly calls for increased urban densities in Ontario, much of Toronto's zoning predates the Growth Plan and thus does not allow the degree of intensification envisioned by the provincial government. In order for developers to generate a profit by developing land in Toronto, they must almost always apply for a zoning by-law amendment (ZBA) or Official Plan amendment (OPA) to obtain approval for enough height or density to make a project economically viable. In the downtown core in particular, heights and densities sought by developers through a ZBA are commonly several times greater than allowed under prevailing zoning restrictions. Where the City refuses these kinds of development applications, the Ontario Municipal Board frequently allows

them to proceed following the logic that they represent good planning and desirable intensification.

If so many of Toronto's zoning restrictions are set unrealistically low, or are at least too low for the Ontario Municipal Board to uphold, are developers really receiving a density bonus vis-à-vis Toronto's existing zoning conditions? Or, in other words, how can one objectively quantify a density bonus with so much uncertainty over what constitutes acceptable contemporary baseline zoning? To use a hypothetical example, imagine a parcel of land that is zoned for a maximum height of twenty meters and 1.5x density/lot coverage, that is acquired by a developer who wishes to construct a building of 100 meters and 6x density; the ZBA being sought is for a fivefold increase in height and density compared to what the site is currently zoned for. But if that zoning restriction was enacted in, say the 1970s, is it reasonable to believe the developer is receiving a fivefold density bonus?

Moore (2013a) suggests that City Planners' practice of aiming to capture only 10-20% of the value of the developer's uplift through a Section 37 contribution reflects their attempt to account for the outdated nature of Toronto's zoning by-laws. This uplift capture percentage is significantly less than the 50-80% that is targeted by Vancouver planners through their Community Amenity Contributions (see section 6.4). Thus, Toronto Planning staff calculate a dollar amount equal to 10-20% of the value of the developer's uplift, and convey this information to the ward Councillor to use as a basis for negotiating the value of the Section 37 contribution. From that point onward, the Councillor essentially takes control over

the negotiation and may chose to deviate from the dollar figure provided by the Planner, as well as their suggested list of benefits.

The Ontario Municipal Board has consistently rezoned land for greater heights and densities where the City of Toronto has been unwilling to do so, and this pattern will continue as the Toronto region continues to grow and experience a further intensification squeeze. It would seem incumbent on Toronto to update its aging zoning regime in order to more accurately reflect the levels of urban density expected by higher order provincial planning policy. But such a zoning harmonization raises some serious concerns: should the City implement new zoning bylaws for height and density that are more in line with those heights and densities that have been approved by the OMB? Or should the City of Toronto continue its effort to escape the jurisdiction of the OMB, and thus retain sovereignty over its zoning regime?

It is not just the practices of the Ontario Municipal Board that exert an upward pull on urban densities. Property taxation rates, which are calculated by the Ontario Municipal Property Assessment Corporation (MPAC) are based on the highest and best use for a piece of land; in urban areas that are on the tipping point of a wave of intensification, MPAC taxation policies can make it extremely difficult for existing lower-density landowners to retain their properties without pursuing redevelopment. As an example, in 2014 a Toronto building on Yonge Street just north of Rosedale subway station had its appraised value reassessed by MPAC from $3.5 million to $16 million, a 350% increase (Chown-Oved, 2014). Rather than assessing property taxes based on the actual current use of a property, MPAC is

increasingly calculating assessments based on the potential redevelopment value – or so-called highest and best use – for urban properties. Such speculative reassessment of property values generates a drastic upward pull on height and density expectations, induced by external economic forces rather than internal (local) planning policies.

In conclusion, given the tenuousness of Toronto's existing zoning regime, it is difficult to calculate how much of a land uplift a developer is receiving when they are granted a zoning bylaw amendment. The City calculates that uplift vis-à-vis the base zoning of the site, which may be several decades old, and the City accounts for that outdated baseline zoning by only attempting to capture 10-20% of the developer's uplift. However, we know based on decisions of the Ontario Municipal Board that from the province's standpoint, urban height and density restrictions should be significantly higher, and the province, via the OMB, will not hesitate to up-zone land where the City has been unwilling to do so. Toronto has taken steps to reconcile the ambiguity over acceptable levels of urban density, such as exploring the implementation of a Development Permit System which would establish area-specific height and density zoning restrictions that cannot be appealed to the OMB. However, for the foreseeable future there will continue to be conflicting interpretations between the City, development industry and the OMB, over where zoning standards in Toronto should be set, and therefore, how much bonus density is truly being proffered.

6.2 – Legalized Bribery?

Throughout this paper I have documented the growing prevalence of negotiated settlement over contested development applications in Toronto. Rather than enduring a protracted Ontario Municipal Board hearing which poses significant risk and inconvenience to the city as well as the developer, it has become very common for a settlement to be reached that yields some built form alterations and a selection of Section 37 benefits. From the city's perspective, negotiated settlement can prompt enough substantive changes to the application to somewhat mitigate their most salient planning objections, and can secure coveted community benefits. In a settlement, these Section 37 benefits need not be connected to the development by a nexus, as the developer is providing them consensually. Conversely from the developer's perspective, a negotiated settlement precludes the cost and delay of an OMB hearing, will yield an approval for an economically viable project, and may ease relations with the local councillor and community. But fundamental to a negotiated settlement is the reality that both parties have *settled* for a sub-optimal agreement, and from the perspective of the city, which may have harbored legitimate planning objections over a development application, a settlement is unlikely to remediate those planning concerns. The city has accepted development that it has admitted to be deficient, in order to compel some minor changes unlikely to wholly correct that deficiency, and to generate Section 37 benefits that might not even have any reasonable planning relationship to the development.

Given the situation described above, it is reasonable to question whether Section 37 bonusing has become a regime of legalized bribery. Recall the Four

Seasons development that I described back in chapter 3: the parents' council of Jesse Ketchum Public School abruptly withdrew their opposition to the proposal once the developer agreed to provide $2 million for the reconstruction of the children's playground facilities. Their original objection stemmed from the building's shadow impact on the schoolyard, an impact which mortified the parents' council. The developer's response to their concern was not to revise their proposal to avoid shadowing on the schoolyard, but to essentially offer a bribe to the parents' council in exchange for their agreement to withdraw from the Ontario Municipal Board hearing (Moore, 2013b).

While the Four Seasons development was a particularly blatant example of quelling opposition through a generous Section 37 contribution, this sort of trading support for development in exchange for the provision of community benefits has become insidiously woven into urban development politics in Toronto. This is particularly true when the Section 37 benefits being requested or offered have no nexus to the subject development whatsoever, but are instead earmarked for unrelated projects elsewhere in the ward. If those benefits have no clear and demonstrable planning relationship to the development project out of which they originate, it would suggest the councillor is using the opportunity to obtain Section 37 benefits for their own pet projects, or for other benefits that have been requested by some segment of their community. This practice falls outside the spirit and intent of Section 37 of the *Planning Act*, which as the Ontario Municipal Board has proclaimed in several past hearings, is a *planning statute* and not a *general revenue* statute. Yet, bonusing negotiations continue to be used by Councillors to fund

unrelated capital projects in their wards, a misapplication of Section 37 that is only further enshrined when developers agree to play along in order to expedite their approvals.

In a 2012 City Council session, Mayor Rob Ford accused Ward 20 Councillor Adam Vaughan of "shaking down" a developer for an inappropriate Section 37 agreement. The developer was proposing a condominium in Vaughan's ward, which had resulted in a negative planning report that prompted the developer to file an OMB appeal. Councillor Vaughan, who had long since established himself as a foe of the OMB and ardent supporter of generating Section 37 benefits through negotiated settlement, had chosen to ignore the advice of Planning staff and initiate a settlement offer with the developer before the appeal could be heard in an OMB hearing. Mayor Ford, furious that Vaughan would ignore the advice of City Planners, launched a heated hour-long debate over density bonusing practices in Toronto, which Ford repeatedly characterized as "extortion". It is unclear why this particular case elicited the attention of the Mayor, given that such negotiated settlements are frequently rubberstamped by Council with no debate whatsoever. However, Ford's objections, although characteristically belligerent, had underlying merit; legalized bribery has become enshrined in Toronto's density bonusing regime as Section 37 agreements have increasingly become predicated on political, rather than planning criteria. Instead of originating from fair, clear, transparent and predictable criteria, the Section 37 bonus becomes a product of nebulous, politicized negotiations that yields a bonus that is not a *quid pro quo* for extra development rights, but a bribe.

6.3 – Inconsistent Application, Divergent Results

One would be remiss to talk about density bonusing in Toronto without acknowledging how Councillor-driven the Section 37 negotiation process has become. Toronto planning and municipal lawyer John Mascarin agrees that Toronto's governance structure is the fundamental cause of inconsistency in the city's experience with Section 37: "It is an institutionalized and systemic reality in Toronto that the ward Councillor has too much influence in Section 37 negotiations, and until we see a breakdown of the city's ward-based Council system, Section 37 will continue to be fraught with the same problems" (personal correspondence, June 25 2014). When I asked several Councillors about whether Toronto's governance structure was problematic for Section 37 negotiations, they disagreed and defended their jurisdiction over bonusing in their ward. The Councillors invoked the notion that as elected representatives they negotiate first and foremost with the needs of their constituents in mind; but if the Councillor is pursuing community benefits with no nexus to the development from which they originate, they are improperly using Section 37 for political gain, and in doing so damaging the legitimacy of Toronto's density bonusing regime.

Because each ward Councillor has their own approach to negotiating community benefits from local developers, density bonusing policy has been inconsistently applied across the forty-four wards of Toronto. Some Councillors who self-identified as skilled negotiators are able to routinely obtain the higher end of City Planner's recommended 10-20% uplift capture, and in exceptional circumstances succeed in securing an even higher value of community benefits.

Other Councillors are less aggressive in their Section 37 negotiations, and tend only to secure the lower end of City Planners' recommended 10-20% uplift capture. Thus, in some instances developers have had to pay, relatively speaking, more for their density bonus than in other cases. This weakens the City's bonusing regime overall, as developers, who naturally want to minimize their costs, will attempt to undercut more-aggressive Councillor's Section 37 requests, arguing that in other circumstances with different Councillors they faced less-stringent Section 37 requirements. As Councillor McConnell remarked in our interview, developers monitor Section 37 trends very closely, and where developers become attuned to inconsistencies in Councillors' negotiating preferences they will invoke the claim that they are being treated unfairly.

Negotiating a Section 37 agreement is merely the first half of the process of generating community benefits; after the agreement is registered and the funds are collected by the City, it can take years before they are spent to obtain the intended community benefit. Section 37 funds can only be released by a City Council vote, thus the ongoing disbursement of density bonusing revenues relies on Councillors to continuously monitor and liaise with various staff divisions to ensure that bureaucrats are planning and budgeting for Section 37-related projects. Bureaucrats alone cannot and will not allocate and dispense Section 37 funds to ensure they are spent as intended. As Councillor Wong-Tam commented, "Councillors need to drive the political initiative to bring all the divisional staff together to execute the community benefit, and this takes time and a willing workforce" (personal correspondence, March 27 2014). Where Councillors do not

keep a close eye on funds from Section 37 agreements in their ward, Wong-Tam noted, funds may languish unspent in city accounts.

The issue of unspent Section 37 funds was highlighted in the Gladki Planning Associates 2014 audit of Section 37 policies that was commissioned by the City Planning Policy Division, where concerns were raised over funds being spent on their intended community benefit in a timely and efficient matter. The report identified that where there is turnover for a local ward Councillor, Section 37 projects are forgotten about, momentum is lost, and the subsequent Councillor's office does not have the wherewithal to mobilize staff resources to dispense Section 37 funds (Gladki, 2014). I asked several Councillors about their experiences with institutional memory and Section 37, and received some different accounts. Rookie Councillor Mike Layton informed me that he honours all Section 37 commitments from the previous Ward 19 Councillor Joe Pantalone, and checks in with City Planning every six months to monitor the dispensation of those funds (personal correspondence, March 12 2014). Councillor Wong-Tam remarked that running a city is an ongoing business that transcends the election of new Councillors:

> "if you have an underperforming Councillor that doesn't know how to drive the Section 37 benefits, the community will not get the benefit the money was directed for. If you have a civil service that decides they don't want to do the work, and acts in an obstructionist way, the community, who had to go through 3-5 years of construction and now has to live with awful shadows, might not ever see those community benefits they were promised" (personal correspondence, March 27 2014).

Thus, being a Section 37-rich ward does not guarantee that all community benefits generated through density bonusing will materialize. If the presiding Councillor's office does not diligently monitor their Section 37 funds, and coordinate the

appropriate divisional staff to budget and plan for Section 37 projects, those community benefits may never be delivered.

6.4 – Lessons from Vancouver's Community Amenity Contributions

In the City of Vancouver, City Planners use a tool called the Community Amenity Contribution (CAC) to capture a percentage of the developer's uplift which is generated through rezoning of land. For the purposes of this comparison, the CAC is essentially the functional equivalent of a Section 37 agreement in Ontario. CACs are statutorily enabled through Section 565.1 of the *Vancouver Charter*, a provincial law that governs land use planning for the City of Vancouver. Like Section 37 of Ontario's *Planning Act*, Section 565.1 of the *Vancouver Charter* permits the City to require community benefits from developers in exchange for granting additional height or density beyond the prevailing zoning allowance (Vancouver Community Services, 2011).

Compared to the 10-20% of the developer's uplift that usually is captured through a Section 37 agreement in Toronto, Vancouver Planners strive to secure about 70% of the developer's uplift, and on extreme occasions have secured 90% of the uplift through a CAC (Moore, 2013b). As a result, on an individual project basis CACs are much more valuable than Section 37 agreements; for example, a recent development application in downtown Vancouver located at the north side of Cambie Bridge resulted in an approval for two 28 and 30-storey towers containing 620 residential units. As a condition of rezoning approval, the developer agreed to provide a CAC of $19.6 million which would be earmarked for a new dragon boat

racing facility and the acquisition of a vacant parcel of land for a new social housing facility (Lam, 2014). Given that the going rate for a Section 37 agreement for a fifty-storey tower in downtown Toronto is between $1.5-$3 million, clearly Vancouver is able to obtain significantly more valuable density bonusing contributions through CACs than Toronto can through Section 37 agreements.

As former Vancouver Chief Planner Larry Beasley explains (2006), several key distinctions differentiate Vancouver's bonusing regime from Toronto. First, in Vancouver, bonusing is always conducted after an urban design assessment has determined that there is room for extra development on a site, and the built form of the development proposal has been finalized. Because of Vancouver's robust design review process and lack of an OMB-like appeal board, Vancouver Planners have much greater leverage to require the developer to revise their proposal because the city has final authority over development approvals. Secondly, it is standard practice in Vancouver for developers to reveal their *pro forma* to City Planners in order to establish the exact value of the uplift that they will receive through rezoning. This creates consistency across all bonusing negotiations and makes developers more inclined to agree to Vancouver Planners' CAC requests. In Toronto, by contrast, City Planners must rely on estimates from the city's Appraisals Division in order to generate a dollar amount they will attempt to capture in a Section 37 contribution. Thirdly, CACs are negotiated by Planning staff and *not* Vancouver Councillors; as Beasley observes, "Taking bonusing negotiations out of the hands of politicians helps maintain the focus on corporate policy and the management of equity among all kinds of public goods, while depersonalizing the negotiation and,

frankly, cutting down on abuse" (Beasley, 2006). Vancouver's at-large Council allows its Planners to circumvent the Councillor-driven urban development politics endemic to Toronto's ward-based Council.

Another difference between the bonusing regimes of Toronto and Vancouver is the types of community benefits secured; whereas in Toronto Section 37 agreements tend to secure funds for community benefits which are spread thinly over a large variety of benefits that can be described as 'desirable visual amenities', in Vancouver CACs secure a much less diverse array of community benefits but result in a greater allocation of funds to heritage preservation and social facilities (Moore, 2013b). In fact, funds for heritage preservation, community services, and new affordable housing account for 68% of all community benefits generated through CACs in Vancouver (*ibid*). This would suggest that Vancouver Planners are less concerned about policing a nexus requirement for their community benefits, and more committed ensuring that the wealth created through new development is more broadly shared.

Recall chapter 3 of this paper, where I examined the Section 37 agreement for the Toronto Shangri-La Hotel and Condominium tower. The final value of the community benefits secured through that agreement was $2.45 million although Westbank, the Vancouver-based developer, was prepared to ante up a $13 million Section 37 contribution. Westbank's Vancouver iteration of the Shangri-La, which was extremely similar to the Toronto building in terms of height, density, material finishing, and sales costs, elicited a Community Amenity Contribution of $14 million. Because of Vancouver's corporate policy-driven approach to density bonusing, CACs

capture a dramatically greater percentage of the developer's uplift than Section 37 agreements and as a result, Vancouver has collected more bonusing revenues in total than Toronto, despite being a city of a fraction of the size.

6.5 – Implications for Policy and Practice

Since the city's amalgamation in 1998, Toronto has amassed over $350 million worth of Section 37 benefits, as well as a potentially equal value of community benefits provided in-kind by developers (Moore, 2013b). Over the course of the development boom, Section 37 has been the primary vehicle for generating funds to offset the impacts of new tall building development in city's urban growth centres, as identified in the provincial Growth Plan. As housing market observers are increasingly forecasting an end to the building boom, will these Section 37 benefits prove to be too little too late, to noticeably mitigate the effects of hundreds of thousands of new condominium units and millions of square feet of new office space? Has Toronto squandered a huge opportunity to leverage a greater social benefit out of this private development frenzy? In this final subsection I will highlight the most significant pitfalls of the city's Section 37 practices, and then suggest some policy reforms that could strengthen density bonusing in Toronto.

First, there should be changes to the protocol for negotiating Section 37 agreements. Peter Langdon, the manager of Toronto's City Planning Policy Division, identified in our interview that because the city's implementation criteria and negotiating protocol for Section 37 agreements are mere *guidelines*, which do not have full policy status, they can be ignored by Councillors who prefer to negotiate

their own way with developers (personal correspondence, March 4 2014). Councillors do have a legitimate right to participate in bonusing negotiations, as they will consult with their constituents regarding which benefits to negotiate from developer. However, these benefits are too often unrelated to their originating development, and mere wish lists put forward by particularly vocal and powerful segments of the local community. When Councillors negotiate Section 37 benefits that are unrelated to the development from which they are yielded, in order to appease the local community, the resulting Section 37 agreement is predicated on political, rather than planning criteria. If City Planners retained more control over the negotiations, this would depoliticize the process and bring more stability and consistency across the city. Developers will be able to better predict what they will be required to provide by way of a Section 37 contribution and factor these costs into their *pro forma*, allowing the City to gradually increase the percentage of uplift that they retain through the agreement.

Secondly, it would be wise for the City to introduce a quantum into its Official Bonusing policies, requiring developers to provide, at minimum, a specific fixed percentage of their uplift, ideally higher than the 10-20% that is currently targeted. Although development-sector organizations like the Building Industry and Land Development Association and the Ontario Homebuilders Association have proclaimed that any attempt to adopt a formulaic quantum approach to calculating Section 37 benefits would be akin to levying an illegal tax, this perspective is merely a legal opinion that has never been proven in an Ontario court. All the city stands to lose by attempting to adopt a Section 37 quantum is a single legal battle, but

Toronto stands to gain dramatically if such a charge was upheld by the courts. Development lawyer John Mascarin agreed that it would be unlikely the city could successfully adopt a quantum, given that the Ontario Municipal Board has proclaimed in past hearings that the *Planning Act* is a *planning* statute and not a *revenue* statute. However, the *City of Toronto Act* confers enhanced revenue-generating powers on Toronto City Council, and a Section 37 quantum could conceivably be legislated through that statute.

Thirdly, the City should adopt a policy that allows unspent Section 37 funds to be reallocated if their intended community benefit proves impossible to provide. Because oftentimes Section 37 funds are spread so thinly across multiple smaller projects, a significant overall sum of unspent money has accumulated and become, as Moore (2013b) describes, "frozen in bureaucratic process". A more flexible approach to freeing up unspent bonusing revenues would allow divisional city staff to respond more quickly and efficiently to new opportunities for more-urgently needed community benefits. Of course, there will be occasions where developers have a strong interest in seeing the particular community benefits they agreed to fund come to fruition. However, enhancing the flexibility of how Section 37 funds are spent will expedite the provision of new community benefits, rather than letting money languish for years in city bank accounts.

Fourthly, the city needs to deeply consider whether its increasing tendency to enter into negotiated settlements over new development applications is beneficial and sustainable to the city in the long term. Councillors argue that negotiated settlement, which results in some design revisions and the provision of

Section 37 benefits, is a necessity given the (supposed) likelihood that if the development was fought at the OMB, it could be approved for an even greater height and density and without any Section 37 benefits. This line of reasoning is somewhat of a red herring; Councillors use the rhetorical threat of an OMB loss to legitimize striking a negotiated settlement, which will yield Section 37 benefits which may or may not be related to the originating development. But in endorsing a negotiated settlement, Councillors may be trading off the city's quality of life, as large development applications with significant planning impacts get approved, often without the support of City Planning staff.

My last point concerns the nexus requirement that was established by the OMB in the landmark *Minto BYG v Toronto* hearing in 2000. The nexus requires any Section 37 benefits to bear a clear and demonstrable planning relationship to their subject development, which entails, at minimum, a close geographical proximity between the community benefit and the development site. In the 2005 *Sterling Silver Developments v Toronto* OMB hearing, the Board rejected the city's request for the developer to include social housing units as a Section 37 benefit, applying the logic that there was no nexus between the development proposal and affordable housing. This logic is troubling, given that there is certainly a correlation between new urban development and a changing socioeconomic composition of the city. Lehrer & Wieditz (2009a) refer to this phenomenon as "new-build gentrification", where affluent residents move into newly constructed condominium buildings and gentrify the surrounding area. The nexus requirement must be broadened conceptually to account for more complex and insidious relationships between new

urban development and geographies of displacement, and to acknowledge the obligation of developers to compensate those who are displaced through new development projects. The vast majority of Section 37 funds generated in Toronto have been allocated for what Moore (2013b) calls “desirable visual amenities”, and as City Planner Peter Langdon points out, those particular funds are accumulating fast than city staff can budget for them. Thus, bonusing revenues languish in city accounts while other social services and facilities desperately await new funding sources to alleviate astonishing wait times and service gaps.

7.0 Conclusion

For the last decade, Toronto has been mired in nonstop tall building construction, wreaking havoc on vehicular traffic, blocking sidewalks, inundating residents with noise and dust, exacerbating the strain on the city's already-overburdened public transit network, and placing further stress on an aging network of utilities infrastructure. The demand for construction materials such as concrete has prompted unprecedented levels of environmentally destructive aggregate extraction, while the glass panels used to clad many of the city's new high-rise buildings is shipped to Canada from Chinese manufacturers. Once residents and employees begin to occupy newly-completed buildings, there is additional added demand for nearby facilities, services and amenities. The political lean of the constituent community gradually changes, resulting in new preferences for local governance that may deviate from what existed beforehand. The cycle of urban development has impacts before, during, and after the buildings are completed, which irreversibly alter the social, economic and political dimensions of urban communities.

In this paper I have considered Toronto's current development boom through the lens of height and density bonusing, a planning tool intended to ensure that some degree of public gain is secured when new private development is approved. This *quid pro quo* – the provision of community benefits in exchange for the conferral of bonus development rights – has become an entrenched and normative part of Toronto's development approvals process. But at a macro level, has Section 37 truly generated enough community benefits, or public good, for

Toronto's communities to cope with the impacts of billions of dollars worth of new private development? Does a smattering of 'desirable visual amenities' truly offset the gamut of planning externalities attributable to these new high-rise buildings and their occupants?

Over the course of this development boom, Toronto City Planners and some local Councillors have made the most of what limited planning tools they hold, including the ability to leverage height and density bonusing through Section 37 of the *Planning Act*. But, as my paper has shown, the bonusing regime that has evolved since Section 37 first appeared in the 1990 *Planning Act* has been fraught with controversy and dubious results. Some Councillors have skillfully negotiated with developers to obtain a high value of Section 37 benefits, while other less-experienced Councillors have supported large development applications without being as stringent in their Section 37 demands. Consequently, Toronto's experience with density bonusing overall has been underwhelming, and will continue to be unless reforms are implemented to standardize the process for securing community benefits. But by the time a political consensus around the need to improve the city's bonusing regime can be reached, the development boom feeding those Section 37 benefits may begin to dwindle.

It remains to be seen what the long-term impacts of Toronto's glossy new high-rise edifices will be. However, if their short-term impacts are any indication, there is cause for concern. Several condo towers have experienced systemic exterior cladding failure, resulting in massive panels of glass crashing down onto sidewalks. A high proportion of short-term renters have resulted in transient and

alienated condo populations with little attachment to their place of residence, let alone engagement with their broader communities. Inner-city gentrification is sapping entire neighbourhoods of the vitality and allure that initially made them appealing to developers, giving rise to a blandly corporate and sterile street-level retail culture in many of the new condo neighbourhoods. And the wind and shadow impacts compounded by clusters of new, proximate tall buildings have created highly inhospitable ground-level pedestrian conditions. Of all of these varied impacts, how many have been effectively mitigated through Section 37 contributions, the city's primary tool for generating community benefits to offset negative planning impacts from new development? By now, the answer to that question should be glaringly apparent to the reader.

Because of Toronto's limited planning toolkit, and particularly the weakness and inconsistency of the city's height and density bonusing regime, Toronto has squandered a significant opportunity to leverage greater public benefit from more than a decade worth of private development. Almost no progressive dialogue has taken place around this issue, but polemic discussions on the subject have been ubiquitous among developers, planners, councillors and community actors. I have put forward some recommendations for how Section 37 bonusing practices might be reformed to secure a greater percentage of developer uplift, and to channel the wealth created by new development toward social justice-oriented public benefits rather than 'desirable visual amenities'. What is needed now is a broader reconsideration of the connection between new urban development and its impacts, and a new consensus that Section 37 bonusing as currently practiced mitigates only

the most superficial impacts of new development, and pushes the pernicious impacts aside.

Works Cited

Altus Group Economic Consulting. 2013. *Government Charges and Fees on New Homes in the Greater Toronto Area*. Prepared for the Building Industry and Land Development Association.

Artscape. 2010. *Artscape Triangle Lofts*. http://www.artscapediy.org/Case-Studies/Artscape-Triangle-Lofts.aspx

Bain, A. 2006. Resisting the creation of forgotten places: artistic production in Toronto neighbourhoods. *The Canadian Geographer* 50(4); 417-431.

Beasley, L. 2006. Amenities for density: section 37 of the Planning Act. *All About Planning Symposium*: Munk Centre for International Studies. December 6 2006.

Brook McIlroy Planning, Urban Design/Pace Architects, E.R.A. Architects, Quadrangle Architects Limited and Urban Marketing Collaborative. 2010. *Avenues and Mid-Rise Building Study*. Prepared for Toronto City Council.

Chief Planner of Toronto. February 24 2012. *Response to Auditor General's Report: Section 37 and Section 45 Funds Not Received in 1998-2007 Approvals*. Agenda Item PG12004, Planning and Growth Management Committee.

Chipman, J. 2002. *A Law Unto Itself: How the Ontario Municipal Board has Developed and Applied Land Use Planning*. University of Toronto Press.

Chow-Oved, M. April 7 2014. Massive property tax hike forces Yonge Street mom-and-pop store out. *Toronto Star*.

City of Toronto. 2007. Implementation guidelines for section 37 of the *Planning Act* and protocol for negotiating section 37 community benefits.

Dale, D. 20 June 2014. How would you spend $500,000? Big money at stake in participatory budgeting exercise. *The Toronto Star*.

Devine, P. 2007 An update on "let's make a deal" planning. *Fraser Milner Casgrain LLP*.

Devine, P. 2013. Section 37 – a further update and a question: "is it a tax?". *Dentons LLP*.

Evans, P. January 21 2014. 130 high rise building projects in Toronto lead North America. *CBC News*.

Foad, L. 23 August 2007. Selling off Queen West. *NOW Toronto*.

Gladki Planning Associates. 2014. *Section 37 Review: Final Report*. Prepared for the City of Toronto.

Kipfer, S. and Keil, R. 2002. Toronto inc? Planning the competitive city in the new Toronto. *Antipode* 34(2); 3-17.

Kuitenbrouwer, P. 12 May 2014. Rising to new heights: Toronto's Yorkville neighbourhood undergoing significant redevelopment. *The National Post.*

Lee, J. April 24 2014. Vancouver reviews developers' fees for community amenities. *The Vancouver Sun*.

Lam, R. 12 June 2014. Vancouver council approves two residential tower north of Cambie bridge. *The Vancouver Sun.*

Lehrer, U. 2008. Ch 15: Urban renaissance and resistance in Toronto. in L. Porter and K. Shaw. *Whose urban renaissance? An international comparison of policy drivers and responses to urban regeneration strategies*. London: Routledge, 147-156.

Lehrer, U. and Wieditz, T. 2009a. Condominium development and gentrification: the relationship between policies, building activities and socio-economic development in Toronto. *Canadian Journal of Urban Research* 18(1); 140-161.

Lehrer, U. and Wieditz, T. 2009b. Gentrification and the loss of employment lands: Toronto's studio district. *Critical Planning*; 138-160.

Lehrer, U., Keil, R. and Kipfer, S. 2010. Reurbanization in Toronto: condominium boom and social housing revitalization. *disP The Planning Review* 46(1); 81-90.

Logan, J.R. and Molotch, H.L. 1987. *Urban Fortunes: the Political Economy of Place*. University of California Press.

Ministry of Infrastructure. 2006. *Places to Grow: Growth Plan for the Greater Golden Horseshoe.* Government of Ontario.

Moore, A. 2013a. *Planning Politics in Toronto: The Ontario Municipal Board and Urban Development*. University of Toronto Press: Toronto.

Moore, A. 2013b. Trading density for benefits: Toronto and Vancouver compared. *Institute on Municipal Finance and Governance* Paper No. 13. Munk School of Global Affairs: Toronto, ON.

Moussaoui, R. April 25 2013. Dealing with developers: municipal bonusing spurs debate. *CBC News*.

Morgan, E. 2013. The sword in the zone: fantasies of land use planning law. *University of Toronto Law Journal* 62(2); 163-199.

Ontario Home Builders' Association. 2014. *Land Use Planning and Appeal System Response to the Consultation Document*. Submitted to Linda Jeffrey, Ontario Minister of Municipal Affairs and Housing.

Perkins, T. April 24 2014. The new way Toronto condo developers are saving space. *The Globe and Mail*.

Pigg, S. April 8 2013. Toronto office developers launch projects early in face of high demand. *Toronto Star*.

R.E. Millward & Associates Ltd. 2013. *Securing cultural benefits: Approaches to the use of Section 37 for arts and culture facilities*. Prepared for City of Toronto Cultural Services.

Sandberg, A., Wekerle, G. and Gilbert, L. 2013. *The Oak Ridges Moraine Battles: Development, Sprawl and Nature Conservation in the Toronto Region*. University of Toronto Press.

Slack, E. 2002. Municipal finance and the patterns of urban growth. *CD Howe Institute Commentary*. Urban Paper no. 160.

Slinger, H (Dir.). 2013. *The Condo Game*. Canada: Canadian Broadcasting Corporation. http://www.cbc.ca/doczone/episodes/the-condo-game

Smith, N. 1979. Toward a theory of gentrification: a back to the city movement by capital not people. *Journal of the American Planning Association* 45; 538-48.

Soknacki, D. 2013. Reforming city revenues: opportunities for development-related income. *Novae Res Urbis* 17(13); 3.

Sudjik, D. 2005. *The Edifice Complex: How the Rich and Powerful Shape the World*. The Penguin Press, HC.

Vancouver Community Services. 2011. *Community amenity contributions through rezoning*. Land Use and Development Policies and Guidelines, City of Vancouver.

Vancouver Community Services & Finance Services. 2012. *Administrative report: 2011 annual report on public benefits secured through approvals of additional density*. City of Vancouver.

Ontario Municipal Board Hearings Cited

1640840 Ontario Inc v. City of Toronto, [2007] O.M.B.D. No. 914 (OMB).

205994 Ontario Ltd., Verdiroc Development Corporation & Landmark Developments Inc. v. City of Toronto, [2007] O.M.B.D. No. 0053 (OMB).

584952 Ontario Ltd. v City of Toronto, [2007] O.M.B.D. No. 827 (OMB).

Dun West Properties Ltd. v City of Toronto, [2014] O.M.B.D. Case No. PL121287 (OMB).

Dunpar Developments Inc. v City of Toronto, [2008] O.M.B.D. No. 61 (OMB).

English Lane Residential Developments v City of Toronto, [2011] O.M.B.D. No. 974 (OMB).

FMC Front Street Developments Inc. v. City of Toronto, [2014] O.M.B.D. Case No. PL111300 (OMB).

Menkes Church Street Holdings Inc. v City of Toronto, [2012] O.M.B.D. Case No. PL120119 (OMB).

Re City of Toronto Official Plan Residential Development Application, [2000] O.M.B.D. No. 1102 (OMB).

Re City of Toronto Official Plan Residential Building Amendment, [2003] O.M.B.D. No. 926 (OMB).

Sterling Silver Development Corp v City of Toronto, [2005] O.M.B.D. No. 1313 (OMB).

Sunny Hill Gardens Inc v City of Toronto, [2006] O.M.B.D. No. 1313 (OMB).

Personal Correspondences

Filion, John. 2014. City Councillor, Ward 23 Willowdale, City of Toronto. Interview by author (5 March).

Wong-Tam, Kristyn. 2014. City Councillor, Ward 27 Toronto Centre-Rosedale, City of Toronto. Interview by author (27 March).

Layton, Mike. 2014. City Councillor, Ward 19 Trinity Spadina, City of Toronto. Interview by author (12 March).

Mascarin, J. 2014. Planning and Municipal Lawyer, Aird & Berlis LLP. Toronto, ON. Interview by author (25 June).

McConnell, P. 2014. City Councillor, Ward 28 Toronto Centre-Rosedale, City of Toronto. Interview by author (27 March).

Langdon, Peter. 2014. Manager, Acting Manager Strategic Initiatives, Policy & Analysis, City Planning Division, City of Toronto. Interview by author (4 March).

APPENDIX I: Citywide list of Section 37 benefits secured since amalgamation

WARD	COUNCILLOR	NUMBER OF S37 AGREEMENTS	TOTAL SUM OF S37
1. Etobicoke-North	Vincent Crisanti	0	$0
2 Etobicoke-North	Doug Ford	3	$344,132
3. Etobicoke-Centre	Peter Leon	2	$1,850,000
4. Etobicoke-Centre	Gloria Lindsay Luby	6	$950,000
5. Etobicoke-Lakeshore	Peter Milczyn	21	$5,612,116
6. Etobicoke-Lakeshore	Mark Grimes	17	$6,105,840
7. York West	Giorgio Mammoliti	4	$895,000
8. York West	Anthony Perruzza	0	$0
9. York Centre	Maria Augimeri	5	$1,659,677.82
10. York Centre	James Pasternak	17	$2,538,000
11. York South-Weston	Frances Nunziata	6	$2,086,860.68
12. York South-Weston	Frank Di Giorgio	2	$75,000
13. Parkdale-High Park	Sarah Doucette	11	$6,285,000
14. Parkdale-High Park	Gord Perks	4	$2,378,882
15. Eglinton-Lawrence	Josh Colle	7	$499,300
16. Eglinton-Lawrence	Karen Stinz	8	$1,906,000
17. Davenport	Cesar Palacio	6	$954,400
18. Davenport	Ana Bilao	17	$5,340,000
19. Trinity-Spadina	Mike Layton	28	$24,630,973
20. Trinity-Spadina	Adam Vaughan	64	$59,431,693.52
21. St. Paul's	Joe Mihevc	4	$2,650,000
22. St. Paul's	Josh Matlow	38	$18,382,878
23. Willowdale	John Filion	37	$51,063,172.15
24. Willowdale	David Shiner	14	$12,246,808
25. Don Valley West	Jaye Robinson	7	$2,632,882.02
26. Don Valley West	John Parker	5	$1,104,130
27. Toronto Centre-Rosedale	Kristyn Wong-Tam	78	$64,535,785.81
28. Toronto Centre-Rosedale	Pam McConnell	47	$56,739,929.78
29. Toronto-Danforth	Mary Fragedakis	2	$300,000
30. Toronto-Danforth	Paula Fletcher	9	$1,500,000
31. Beaches-East York	Janet Davis	1	$300,000
32. Beaches-East York	Mary-Margaret McMahon	6	$705,000
33. Don Valley East	Shelley Carroll	6	$4,605,000
34. Don Valley East	Denzil Minnan-Wong	5	$4,788,940
35. Scarborough Southwest	Michelle Berardinetti	14	$3,298.958
36. Scarborough Southwest	Gary Crawford	3	$1,688,198.20
37. Scarborough Centre	Michael Thompson	13	$4,704,800
38. Scarborough Centre	Glen De Baeremaeker	14	$6,757,680
39. Scarborough-Agincourt	Mike Del Grande	4	$3,110,000
40. Scarborough-Agincourt	Norm Kelly	9	$3,317,100
41. Scarborough-Rouge River	Chin Lee	11	$3,420,700
42. Scarborough-Rouge River	Raymond Cho	5	$851,058.38
43. Scarborough East	Paul Ainslie	4	$756,000
44. Scarborough East	Ron Moeser	3	$195,770
total		**563**	**$299,235,813.44**

Source: City of Toronto Planning Policy Division