



# **TORONTO: DENSITY BONUSES IN EXCHANGE FOR COMMUNITY BENEFITS** - CASE STUDY

**URBAN REGENERATION KSB**



**WORLD BANK GROUP**

Urban, Disaster Risk Management, Resilience & Land



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# 1



## SUMMARY

PROJECT & LOCATION	Toronto, Canada
LAND-BASED FINANCING INSTRUMENT USED	Density bonuses
ECONOMIC & SOCIAL BENEFITS TO THE CITY	Developers are granted additional density bonuses in exchange for cash or in-kind contributions

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## GOVERNMENT OBJECTIVES

In the early 1980s, the Province of Ontario (Canada), sought to improve the quality of life in communities where development and intensification were taking place and to address the need for additional public services and infrastructure that resulted from increasing populations.

To this end, Section 37 of the *Planning Act* was introduced to authorize municipalities in the Province to grant increases in height and density of development which are above the permissible limits, in exchange for developers providing “facilities, services or matters”. The main rationale of the exchange was to compensate neighboring residents for potential negative impacts of added density. The additional (bonus) rights in exchange for additional “facilities, services or matters” would be enshrined in a Community Benefits Agreement – signed between the city and the site developer.

These “**facilities, services, and matters**” in the Act include



Similarly, Section 45 of the *Planning Act* “permits the Committee of Adjustment to make decisions on **minor variances** from the Zoning By-law and to grant permission for altering or changing a lawful non-conforming use of land, buildings or structures” in return for community benefits.

Together, these Sections were aimed at: (i) assisting the City of Toronto to recover, to the extent possible, the cost of facilities and services which are needed as a result of intensified development; (ii) compelling the beneficiaries or developers

of a new project to mitigate the impacts on the existing community; and (iii) improving quality of life in affected neighborhoods by enhancing community amenities.

Section 5.1.1 of Toronto’s Official Plan provides a planning framework for the use of Section 37 in the city. The City Council also adopted detailed “Implementation Guidelines for Section 37 of the Planning Act” and a “Protocol for Negotiating Section 37 Community Benefits” in the fall of 2007.

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## HOW DOES THE DENSITY BONUS PROGRAM WORK?

In Toronto, density bonuses are negotiated between the city and the site developer on a case-by-case basis, as follows:

A developer approaches the City Planning Department to petition to increase the density on a site to greater than that permitted by existing municipal zoning regulation.

The Planning Department deliberates on the petition. If the Department determines the development represents “good planning”, and zoning approval is granted, then Section 37 community benefit agreements are negotiated between the city and developer.

The appraisals section of the city’s real estate services departments estimates the value of the additional proposed density at that site. The value of the additional density is estimated based upon the difference between the value of the property under its current zoning, and what its value could be with the new zoning in place.

The amount of value created, resulting from an increase in height density is negotiated between the planning department and the developer. While the city has not established a desired value capture percentage, the city has been able to secure between 10 and 20 percent of the increase in land value for most developments.

According to local legislation, the individual ward councillor of the development area provides input on how the negotiated amount of community benefits will be allocated. These payments can be made in cash to the city, or as an in-kind contribution of an improved public facility or other community benefit.

If the city collects cash from the developer, the funds could be transferred to a specific city agency depending on the purpose of the funds. For example, if the Section 37 agreement calls for some of the funds to be used for affordable housing, then these funds go into the city's capital revolving fund for affordable housing. This money can be used city-wide. For example, if some of the Section 37 funds are to be used for parks development, then these funds are transferred to the city's Parks Department. The Parks Department would be responsible for utilizing the funds for the specific and local purpose identified in the Section 37 agreement. Table 1 provides a snapshot of the type of community benefits secured for specific purposes, the bulk of which goes towards affordable housing.

TABLE 1

**Section 37 and Section 45 Cash-in-Lieu Community Benefits Secured for Specific Purposes from 2016-2018 in Canadian Dollars**

	<b>Number of Community Benefits Secured</b>	<b>Value of Cash-in-Lieu Contributions Secured</b> (millions of Canadian dollars)
Affordable housing including creation of affordable housing and capital improvements to Toronto Community Housing Corporation buildings	33	\$23.919
Parkland and/or park improvements	33	\$18.050
Streetscape improvements on the public boulevard not abutting the site	24	\$14.125
Public agency space including non-profit arts, cultural, community or institutional facilities	20	\$12.852
Community Centers	8	\$10.344
Public Art	8	\$2.934
Conservation of heritage resources	5	\$1.500
Toronto Public Library capital improvements	6	\$1.395
Road, transportation, and pedestrian improvements	9	\$0.976
Non-profit childcare facilities including start-up funding	3	\$0.780
Bike Share Toronto infrastructure	7	\$0.724
Local improvements of transit facilities including pedestrian connections	1	\$0.140
Special Projects: Redevelopment of the Jack Layton Ferry Terminal	1	\$4.000
<b>TOTAL</b>	<b>158</b>	<b>\$91.739</b>

**Source:** City of Toronto, Chief Financial Officer and Treasurer and Chief Planner and Executive Director, City Planning Division, Planning Act (Section 37 and Section 45) Reserve Funds Statement, 2016-2018

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## PROGRAM OUTCOMES

The city's objective for the Section 37 program – to use density to recover the cost of development impacts on community facilities – has been achieved. Since 1998, the density program has raised over CAD\$240 million for community benefit contributions. In addition to this, a significant amount of additional in-kind contributions (that likely exceed the cash contributions in total value) was created.

From 2016 to 2018 alone, the City granted 146 development approvals with a total of 388 secured contributions. Both

cash-in-lieu contributions and in-kind contributions were valued at approximately CAD\$185 million.

Through this funding, the City of Toronto was effectively able to use a planning mechanism to increase densities in districts where there was real estate market demand to do so, and leverage these densities to create new infrastructure or improve existing infrastructure. This reduced the pressure on city finances, while also allowing for densification.

TABLE 2

**Summary of Section 37 and Section 45 Approvals and Secured Contributions for the Period (2016 - 2018)**

	2016	2017	2018	Total
<b>NUMBER OF DEVELOPMENT APPROVALS:</b>				
Section 37 Approvals	43	44	41	128
Sections 45 Approvals	6	6	6	18
<b>Total Approvals</b>	<b>49</b>	<b>50</b>	<b>47</b>	<b>146</b>
<b>SECURED COMMUNITY BENEFITS:</b>				
Number of Secured Cash-in-Lieu Contributions	77	102	85	264
Number of Secured In-Kind Contributions	36	48	40	124
<b>Total Secured Contributions</b>	<b>113</b>	<b>150</b>	<b>125</b>	<b>388</b>

**Source:** City of Toronto, Chief Financial Officer and Treasurer and Chief Planner and Executive Director, City Planning Division, Planning Act (Section 37 and Section 45) Reserve Funds Statement, 2016-2018

Nevertheless, there has been considerable debate as to how sustainable Toronto's density bonus program has been. Most of the debate relates to the lack of consistency and transparency, and the heavy involvement of the ward councillors in the negotiation process. This is discussed in further detail below.

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## EXAMPLES

Studio and Studio2 on Richmond:

The site is in an emerging area of the city, adjacent to the city's financial district, and designated in 1996 as a priority area for regeneration. The developer proposed the construction of two high-rise condominium towers with a total of 742 residential units and community space, retail, and restaurant uses on the ground floor. The project also includes a total of 536 parking spaces and 557 bicycle parking spaces. The total proposed density is 11 times the area of the lot. The east tower was proposed to be built to 31 stories (94m high), while the west tower was proposed to be built to 41 stories (131m high). Zoning in the area permits a range of uses and a maximum building height of 30 meters.

To approve the increase in height from 30 meters to 90 and 131 meters, the developer agreed to a community benefits agreement that included a cash contribution of CAD\$1,000,000, of which 10 percent will be allocated to affordable housing in the ward. The remainder will be used for the provision of streetscape improvements, a historic preservation study for the King Spadina East Precinct, gallery space for use by the Ontario College of Art and Design, and a public art contribution. The streetscape improvements would be constructed by the developer and maintained by the city.



## 21 Dundas Square:

The site is in the heart of downtown, located within the Downtown Yonge Street Regeneration area, which was designated by City Council in 1996. The developer proposed to restore two historic buildings and retain their use as office and retail space, and to demolish a two-story historic building and replace it with a 39-story mixed-use building, 123 meters high, with five stories of commercial space, 238 residential units above, and six levels of underground parking.

Zoning in the area permits a maximum building height of 61 meters. To approve the increase in height, the developer agreed to a community benefits agreement that included a cash contribution of CAD\$1,000,000, consisting of CAD\$600,000 toward the restoration of one of the three historic buildings and CAD\$400,000 toward capital street improvements within the immediate area. The developer was also required to provide and maintain public art works on publicly accessible portions of the site to a value not less than 1 percent of the gross construction costs of all buildings and structures to be erected on the site.



VIEW OF DUNDAS SQUARE, IN THE  
YONGE AND DUNDAS INTERSECTION

**Photographer/Author: Leslie Mateus**

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## LESSONS LEARNED

Several challenges have emerged over the years regarding the use of Section 37 for community benefit contributions. Because of criticisms of the Section 37 program, the city commissioned Gladki Planning Associates to provide recommendations to improve the clarity and transparency of the Section 37 process for obtaining community benefit contributions from the city. The consultant conducted background research, individual interviews with councillors and staff, and ran a series of workshops. The city issued a report with the consultant's recommendations in 2014. The concerns and recommendations are outlined below and serve as some of the lessons learned during the course of the program.

**Lack of clarity over benefits.** There have been complaints that community benefits in the form of "facilities, services or matters" in the Planning Act are vague, resulting in various contradicting interpretations of what constitutes Section 37 benefits. A standardized, more codified approach would provide greater certainty for all participants. It would allow purchasers of land for development to factor in the additional cost of rezoning to increase height and density as a component of their land negotiation process.

**Inconsistent community benefits.** Another complaint has been that the value of the contribution toward community benefits negotiated between the city and developers has not been consistent. The value of contributions received from developers for comparable developments could vary. It was determined that this variation was caused by the differing skill levels of the city negotiators when striking deals with developers. Negotiations between the city and developers also consume a considerable amount of city staff time and effort, with developers often not clear about what is expected of them.

The report recommended exploring options for establishing a standard per-square-meter charge for additional

height and density based on appraised land values, and a percentage target for capturing the increase in land value that determines the amount of community benefit contributions for developments in different areas. It also recommended that a "reasonable planning relationship" as stated in the Planning Act should be clearly established between the additional height and density and the community benefit. The planning relationship is usually interpreted as reflecting geographic proximity of the development project to the proposed community benefits, but this needs to be clarified.

**Money was left unspent.** The city has been criticized for not adequately and timeously spending the cash received from developers through the density bonus program. CBC News reported that of the US\$137 million in cash benefits committed to the city from 2007 to 2011 by developers, only US\$63 million had been received, and only US\$11 million of that had been spent. Funds for specific community benefits are committed at the time of by-law approval but are not actually paid until a building permit is issued.

In a number of instances, councillors have found that by the time the funds are available, the specific community benefits that were identified and embedded in site-specific zoning by-laws were no longer appropriate for a number of reasons and that more relevant, alternative priorities have emerged.

The consultant's report recommends that funds intended for specific community benefits should be redirected if they remain unspent for a three-year period after receipt, without requiring an amendment to the site-specific by-law. The benefits toward which the funds are redirected should continue to represent a reasonable planning relationship to the original application. Additionally, there should be dedicated staff resources to address, on an ongoing basis, the timely implementation of community benefits and payments to the city as specified in Section 37 agreements.

**Power was concentrated in the hands of the ward councillors.** Another complaint is that the spending decisions of the ward councillors lack oversight by the Planning Department. The decisions of ward councillors are not governed by a defined process and are not linked to a policy that addresses larger planning goals. City staff have tried to standardize the community benefit decision-making process by creating a set of guidelines. The Ontario Municipal Board, which has ruled on a number of cases involving Section 37 issues in Toronto, determined that there must be a connection, or nexus, between the contributing development and the community benefits.

The problem, however, is that some councillors choose not to follow this. Ward councillors decide whether or not to take the advice of the Planning Department and whether to consult with the public after the benefits have been negotiated. In this context, a councillor can establish personal priorities for amenities and insert them into negotiations. Although the development process within the city is fairly standardized, with clear regulations and transparency on the part of the city, the Section 37 process is characterized by a more ad hoc approach.

To ensure a consistent, meaningful use of Section 37, it has been proposed that all development decisions be approved by city-wide committees and, from there, at the council level. The consultant's report also recommended that at the beginning of each council term, elected councillors should undertake an assessment to establish a set of potential community benefit contributions on a neighborhood-by-neighborhood basis, in consultation with communities and already existing departmental service plans.

**The public was not sufficiently involved.** Another lesson learned is that public information on Section 37 should be improved to gain the trust and support of the public. The report recommended that the city provide public education information explaining the city's process for securing Section 37 community benefit contributions. It should also produce annual reports that summarize the previous year's achievements regarding the benefit contributions.

The council accepted the report conducted by Gladki Planning Associates. For instance, the City Planning Division reports annually to the council on the value of community benefits secured during the preceding financial year.

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## SOURCES

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- » Raja Moussaoui, "Dealing with Developers: Municipal Bonusing Spurs Debate," CBC News, April 25, 2013, <http://www.cbc.ca/news/canada/toronto/dealing-with-developers-municipal-bonusing-spurs-debate-1.1382669>



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