

Amenities for Density: Section 37 of the Planning Act
Opening remarks by John Lorinc, Public Affairs Journalist
to the *All About Planning* symposium at the Munk Centre for International Studies
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Thank you for attending this session.

The topic for this panel is the role of density bonus policies -- a.k.a. Section 37 agreements -- in the planning and the evolution of the City of Toronto under the new Official Plan. This is a practise that usually gets everyone's blood boiling and is often referred to as 'lets-make-a-deal' planning. Municipal planners understandably take issue with those criticisms, as Ted Tyndorf will explain in a moment.

I'd like to start with a bit of background. The city has been developing guidelines for the use of Section 37 agreements, negotiated in response to threatened Ontario Municipal Board appeals of new official plan by the development industry and residents associations. The guidelines were also a response to successive OMB decisions that have gradually narrowed the scope of Section 37 agreements. The mayor made it a priority to find a common ground and the proposed policy guidelines -- which have yet to be approved by council as of December, 2006 -- are the result.

I wrote a story on this topic earlier in the fall and everyone was either moderately or very unhappy which, according to one interpretation of the democratic process, is a signal that the legislative sausage has been adequately cooked. But policy is never carved in stone, and I'm hoping this panel can provide an opportunity to shed some new light on the use of density bonus rules in Toronto and Vancouver, as well as the experiences of other jurisdictions.

Let me provide a bit of history. Some of what follows is courtesy of an excellent Masters Thesis by Oren Tamir, now an assistant planner with the City. The emergence of formal density bonusing goes back to early 1960s, and was used in New York City to prevent over-development at expense of the public realm. In Manhattan, density bonuses created

millions of square feet of street-level open space, but much of it appeared to be private and thus missed the mark.

In Seattle, which has evolved a very detailed and formal approach, the reforms date to the 1980s after the municipality essentially doubled the allowable height of a major downtown project, resulting in an \$88 million windfall for the developer but only about \$6 million in new public amenities. Rules were changed because of the mismatch between the two.

Ontario's law dates to 1983. According to Mr. Tamir, there have been two major "eras" – Section 37 agreements negotiated during the office building boom of the 1980s, and those flowing from the condo boom of the past decade.

In preparing for this panel, I asked some of my sources about density bonus policies, and learned there are many variations on the theme. In England, they're called Section 106 obligations, used to pay for libraries, schools, community health centers, etc. These agreements tend to be highly prescriptive, as are Seattle's, where the city publishes a lengthy and detailed list of eligible amenities and sets out formulas that tell developers how much floor space they'll get for each one. It's a kind of menu approach.

New York's latest rules – known as the Unified Land Use Review Procedure – is focused on mitigating environmental impacts, and for those who are exercised about Section 37 deals in Yorkville or Queen West, the negotiations involving the massive Atlantic Yards project in Brooklyn – Frank Gehry is the designer – will bring in tens of millions to the city. Other American cities are implementing so-called "inclusionary zoning" rules requiring developers to provide affordable housing within their projects to encourage the development of mixed income communities.

In all these cities, similar questions arise. What are the eligible public benefits – affordable housing, heritage preservation, community services, environmental benefits, better design? Who decides which benefit to fund? How close to the development should

they be? How do you quantify the bonus – meaning, how much should the developers pay for each additional unit of density? And how should such negotiations be conducted to ensure transparency and accountability?

I'm hoping we'll deal with all these questions and more for the next hour or so.