

**EFFECTIVENESS OF DENSITY BONUSING
IN SECURING
AFFORDABLE HOUSING
: A STUDY OF
TORONTO DOWNTOWN AND WATERFRONT AREA**

By

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EFFECTIVENESS OF DENSITY BONUSING IN SECURING AFFORDABLE HOUSING:

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Abstract

Today, Downtown and Central Waterfront area (the Area), through density bonusing/Section 37 agreements, has seen many condominium developments. In the situation of limited funding source available to municipalities, Toronto has used density bonusing as an effective incentive tool for securing the most needed community benefits from developers, in exchange for height/density beyond the prevailing by-laws. However, although the priority of density bonusing is to encourage/expand the growth of affordable housing in the City, due to some limitations to the tool, the extraction of affordable housing units from major condominium developments in the Area has been restricted.

Based on literature review, a study of the City's data on projects approved for density bonusing in the Area, and a comparative study with Vancouver Downtown, this paper addresses several concerns about density bonusing. Finally, this paper puts forward a list of recommendations for the City to consider while dealing with the growing issues with the existing density bonusing policies for better inclusion of affordable housing in condominium developments in the Area.

Key words: Affordable Housing, Community Benefits, Condominiums, Density Bonusing, Negotiation, Section 37

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1. Introduction

1.1 Growing Challenges in Toronto Downtown and Central Waterfront Area

In all likelihood, the City of Toronto, especially Downtown and Central Waterfront area (the Area), is growing as a favorable place to work and live. With over 446,000 jobs in 2012, the Area has become the largest employment center in the regional economy (33% of all jobs in the City of Toronto are in Downtown) (City of Toronto, 2014b). Also, vibrant and high-paced lifestyle, easy access to the workplace, recreation and basic amenities (such as grocery store and school), great lakeside views and transit supportive neighbourhoods, is attracting many people, majorly "echo-boom generation"¹, to reside in the Area (City of Toronto, 2014b). These "eco-boom generations" are majorly single and couples without children taking over 54% and 20% of the total population respectively in the Area (City of Toronto, 2014b). Increasing number of small, individual households has resulted in substantial increase in demand for lands for housing needs (City of Toronto, 2014b). Accordingly, the demand for lands has influenced the land price to grow increasingly expensive in the Area. In this case, the City views intensification of available lands in forms of high/dense condominiums as an efficient approach to accommodate growth (City of Toronto, 2002). Private developers support intensification because they can build a high number of housing units and make more profit over a single development. As a result, the Area is absorbing an exceptional number of high-rise and dense constructions, condominium towers increasing its housing stock. However, at the same time, the development of condominium towers is constrained due to the limited availability of land plots (in terms of size/area) where high-rise and dense residential developments are actually permissible under existing bylaws (Drdla, 2010). Further, due to the City's traditional exclusionary zoning practices, the construction of high-rise and dense buildings is restricted through density controls on those lands (Bogart, 1993; Mah, 2009).

¹ "Echo-boom generation" is a group of working class people that are considered to be born between the mid-1970s and mid-1990s. They represented 43% of total Downtown population in 2011 (City of Toronto, 21014b)

Simultaneously, in the Area, where condominium developments are prominently making their mark in the housing market, (City of Toronto, 2014b), the local government, however, is facing extreme difficulties in providing affordable housing² to a significant number of average-income households³, particularly various service workers and low pay workers (ONPHA, 2009; Wellesley Institute, 2014). This situation has further worsened due to offloading of affordable housing responsibilities from senior governments to municipal level, as well as the City's limited funding source and other growing responsibilities for services such as infrastructure and public facilities. While it is identified that production of affordable housing is the primary role of the municipal government (Mekawy, 2014), the increasing land price in the Area also adds up more problems to the City from supporting affordable housing productions and their repairs. Additionally, the density control on lands excludes inclusion of affordable housing in major residential developments in the Area (Bogart, 1993; OHBA, 2014). Consequently, there is an insufficiency in the supply of affordable housing and hence, many households are waiting in the City's list for affordable housing (ONPHA, 2009; Wellesley Institute, 2014).

In the City of Toronto, in all the above situations, density bonusing, an incentive based policy regulated through Section 37 of the provincial *Planning Act* (S37), also known as S37 agreement, has been reasoned to be an effective municipal tool (Moore, 2013a). Contrasting to the City's other approaches such as practices of Section 45 of the Planning Act or Minor Variance⁴ agreement, and Development Cost Charges, density bonusing have the potential to deal with limited, expensive and under-sized land supply and to offset the traditional exclusionary practices to satisfy the growing housing needs in the City. It authorizes additional height and density to developments on (under-sized) land plots that are not otherwise permitted by the established bylaws, facilitating the highest and best use of the lands, and hence, increasing the number of residential units in those developments (Mah, 2009). It may

² The definition of affordable housing in this paper is limited to non-market rental and ownership housing.

³ The scope of average households in this paper is limited to working class low- and medium- income households (such as service workers, low pay workers, and owners of small businesses), not the households in core housing needs.

also facilitate inclusion of affordable housing in major residential developments in exchange for that additional height and density (Moore, 2013a). Whereas, Minor Variance agreements only authorizes a small change in the developments that do not necessarily require changes in zoning by-laws but simply excuses the development from a specific requirement such as minimum side yard setback, addition of rooms, or parking requirements (City of Toronto, 2016). It may include collecting cash contributions for the purpose of affordable housing, however, does not authorize any increase in density to the developments (City of Toronto, 2016). On the other side, Development Cost Charges (DCCs) are imposed on developers to make the development pay for its share of infrastructure use (Slack, 2002). The City collects monies through DCCs from the developers at the time of building permit to spend only for the infrastructure made necessary by the development and also to ensure that those cost of services is not borne by existing residents and business (Slack, 2002).

Density bonusing agreements or S37 agreements primarily attracts private developers to build higher/denser residential developments in the City as incentives in exchange for community amenities. On the other hand, it strives to release the municipal burden in creating and maintaining the most require community amenities such as parks, playgrounds, community centers and affordable housing. As well, it potentially facilitates the City to collect land and in-cash contributions from the developers for the provision of those benefits, as compensations to that incentive. In doing so, only in 4 years' time from 2007, the City through density bonusing has successfully secured many community amenities, many affordable housing units including non-market housing, social and assisted housing, and public housing, and hundreds million in-cash contributions for their developments (Moore, 2013a). Therefore, while density bonusing is deemed to be one of the successful tools in the Affordable Housing Action Plan (2010-2020) by the municipal government to overcome the existing decline in overall housing supply as well as decline in housing affordability in the City, this paper is focused to explore its success in securing affordable housing units in the most expensive and limited lands in the Downtown and Central Waterfront area.

1.2 Purpose and Objectives

In the recent years, Downtown and Central Waterfront Area's housing landscape has become denser and taller, more vibrant, and attractive. High-rise condominiums and official towers dominate the Area's skyline and beautiful parks, streetscape and open and communal spaces enhance its livability. The number of high-rise buildings and their contributions for community amenities is progressing each year and that has been possible due to one of the promising municipal tools, density bonusing (Moore, 2013b). However, while density bonusing has been successfully used in increasing housing supply and other common benefits to the community, the City is still facing rising challenges in satisfying housing that is affordable to many households in the Area, particularly various service workers and low pay workers. There is an insufficiency in the supply of affordable housing units and can be observed in the long list of households for affordable housing (Wellesley Institute, 2014). Therefore, the purpose of this paper is to examine the existing policies and practices, S37, that regulates the implementation of density bonusing in residential developments, and to understand the relevant factors that are limiting the City to provide for affordable housing in those developments. Also, this paper explores an important question which asks if S37 is an effective tool for securing affordable housing in the Area. The final objective of this paper is to provide recommendations to the municipal government to overcome the existing barriers that will help increase the affordable housing stock in the Area. In order to achieve these purpose and objectives, the research will examine following important research questions

1. How has density bonusing or S37 agreements worked in support of inclusion of affordable housing in growing condominium towers in Downtown and Central Waterfront area?
2. Is S37 truly designed for extraction of affordable housing units and/or funds supporting its development from condominium developments in the Area?

1.3 Paper structure

This research paper was prepared during the Winter Term in 2016. This is a secondary research which includes an extensive literature review including research papers, reports, government web pages

and newspapers on affordable housing and its issues, and density bonusing and its role in producing and securing affordable housing in the City. This paper briefly explored how density bonusing policies are outlined and encouraged, and developed at provincial and municipal levels. It highlighted the factors that have caused insufficiency in affordable housing supply while the City is growing with people and housing stock, particularly condominium developments through density bonusing.

The paper includes a study of data from the City of Toronto on high-rise projects that are approved for an increase in height/density than permitted by prevailing bylaws in exchange for some forms of community amenities, within the Area. The data study helped the paper to identify the total number of condominium projects approved, and the total number of affordable housing units secured from those developments, over a period of 32 years from 1983. Further, this data was used to identify the success of density bonusing incentive in securing affordable housing units into high/dense condominiums in the Area against some important indicators such as percentage of S37 agreements that included affordable housing, number of affordable housing units secured, length of affordability of the units, and total cash contributions collected for the affordable housing development. A comparative case study of Downtown Vancouver, an area similar to Downtown Toronto (in terms of strong economy, booming condominium developments, growing affordable housing needs, increasing land values, limited sites for developments) was conducted to compare the two different inclusionary approaches in the country against those indicators. Finally, based on literature review and comparisons between the two approaches, this paper puts forward some important recommendations to the City for better success in its approach to include affordable housing in high-rise residential developments in the Area.

2. Definition

2.1 Affordable housing

Housing affordability is an important component of a vibrant city for obvious social, environmental and economic reasons. However, there is no universal method by which housing affordability or affordable housing is defined. Traditional practices define affordability with reference to the household income. According to Ontario *Provincial Policy Statement* (PPS) (2005), from Section 6, affordable means:

- a) in the case of ownership housing, the least expensive of:
 1. housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income for *low and moderate income households* ; or
 2. housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the *regional market area*;
- b) in the case of rental housing, the least expensive of:
 1. a unit for which the rent does not exceed 30 percent of gross annual household income for *low and moderate income households*; or
 2. a unit for which the rent is at or below the average market rent of a unit in the *regional market area*.

where low and moderate income households mean:

- a) in the case of ownership housing, households with incomes in the lowest 60 percent of the income distribution for the *regional market area*; or
- b) in the case of rental housing, households with incomes in the lowest 60 percent of the income distribution for renter households for the *regional market area*.

Under these practices, households spending more than 30% of their before-tax income on housing are identified to have affordability issues (Mah, 2009). In addition to the housing affordability threshold of 30% to identify households' affordability issues, the Canada Mortgage and Housing Corporation (CMHC) has also developed standards for housing adequacy and suitability issues. By adequacy it means housing that does not require major repair and maintenance, and by suitability it means housing that is sufficient in size and enough bedrooms. However, the ratio of household-income-to-expenses-on-housing may not truly represent the ability to afford a housing unit; it ignores household size and other expenses needs of the households (Hulchanski, 2005).

Over the time, the definition of the affordable housing has changed. The recent definitions are based on existing housing market. In the most recent definition, according to Ontario Human Rights Commission (2012) and Ontario's Ministry of Housing (2011), affordable housing is defined as the availability of housing units below or, at the least, 80% of the average market price as determined by the annual CMHC reports. As well, "[p]rovincial funding streams for construction of affordable housing use the 80% of market rate definition for affordable housing" (Evans, 2007, p. 5).

2.2 Density Bonusing

Today local governments in many cities, in the lack of appropriate funding from upper level governments or to ease themselves from the responsibilities of supplying affordable housing, are using various legitimate tools under their development approval powers to encourage, enable and require private developers to provide and produce affordable housing. The most commonly used tools can be categorized as inclusionary zoning, exaction programs and density bonusing. They are either regulated independently or in combination with each other in a many different ways. However, due to the interest of this paper, the research is focused only on the third category that is, density bonusing.

Density bonusing, a land use planning tool, also known as incentive zoning, encourages developers of new commercial and residential developments to provide for affordable housing and various public amenities on a voluntary basis in exchange for increased developable floor space (CMHC, 1999). Community benefits may be defined as dedicated land/space for various uses (such as affordable housing units, community services and facilities, public art, parkland, childcare facilities, and other public facilities) on or near the development site or elsewhere in the city; and/or in-lieu payments that could contribute to special funds for the construction or maintenance of these benefits (City of Toronto, 2014a).

When density bonusing is granted to private high-rise or dense developments, various community benefits are secured as a consequence of planning impacts due the developments, to satisfy the growing community needs in the rapidly intensifying city (City of Toronto, 2014a). This tool offers an addition of

height and density that goes beyond the permissible Floor Area Ratio (FAR) regulated by zoning bylaw in exchange for amenities or services negotiated by the municipality and developers. The list of community amenities or services varies from municipality to municipality largely depending upon their targets and priorities for their communities, as well as their capacity to respond to these needs. These amenities or services may, however, include parks, day cares, streetscape improvements, community centers, public art and heritage preservation, or housing needs in the community including affordable housing (See Figure. 1 for simple illustration).

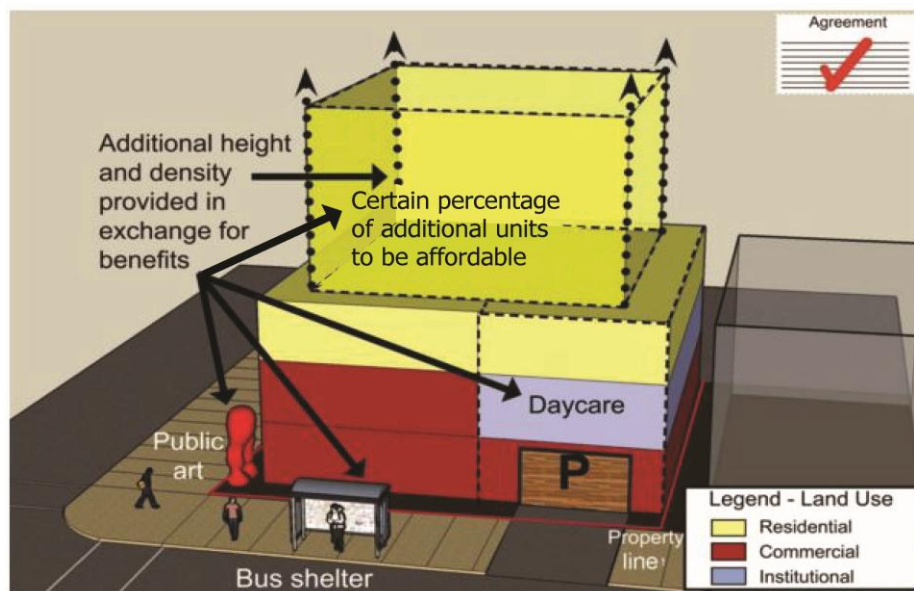


Figure 1: Different types of community amenities that may be secured from density bonusing.
(Modified from: Ontario. MMAH, Provincial Planning Policy Branch, 2009).

This tool is usually appropriate to core areas of the city such as downtown and growth centers where the impact of an increase in building or neighbourhood size is less or insignificant upon the surrounding locality, services and infrastructure (CMHC, 1999). In the City, to use this tool, local authorities must have approved *Official Plan* related to bonusing and the council must authorize the amendment(s) to the existing bylaws that facilitate an increase in height or density of a development (CMHC, 1999; City of Toronto, 2014a).

3. Policy and Legislative Framework

3.1 Policy Documents

3.1.1 Provincial Policy Statement

The *Provincial Policy Statement* (PPS) (2014), authorized under Section 3 of the *Planning Act*, is a policy document that provides direction and sets out regulations for land-use planning in Ontario for the long-term financial well-being of the province and municipalities. Its main objectives are to direct land-use regulations to build strong, healthy, safe and sustainable communities in Province. Accordingly, the policies under its Section 1.4, the PPS requires the planning authorities to provide for a wide range of housing types and densities to meet the needs of current and future communities in the province (Ontario. MMAH, 2005). It also requires the authorities to identify affordable housing needs in those communities and establish affordable housing targets and development standards such that the cost of housing could be minimized and compact form of housing could be facilitated, with no compromise in public health and safety (Ontario, 2014).

Land-use policies are directly related to zoning by-laws and there are several land-use policies outlined in the PPS that are directly or indirectly associated with the provision of affordable housing. Since municipalities in Ontario are granted the authority to pass zoning by-laws under Section 34 of the *Planning Act*, and are "the creatures of the province", they are required to pass by-laws that are consistent with PPS and conform to provincial plans to ensure access of all Ontarians to a healthy and affordable home. The PPS directs municipalities to establish and implement "minimum targets for the provision of housing which is affordable to low and moderate income households" (Ontario, 2014, Section 1.4.3, p. 14). It also requires municipalities to redirect new and dense housing development towards existing built-up locations with appropriate levels of infrastructure and public facilities or has a potential to support the present and future needs.

3.1.2 Growth Plan

The *Growth Plan* for the Greater Golden Horseshoe (2006) is a framework introduced under the Places to Grow Act (2005) "for implementing the Government of Ontario's vision for building stronger, prosperous communities by better managing growth in the region" (Growth Plan, 2006, p. 6). The *Growth Plan* has intensification targets identified for local governments to integrate the projected population and employment growth. It identifies areas for intensification, employment, and urban development across the region such that the need for longer commute times is reduced and modal share of transit, walking and cycling is increased. It includes policies designed for making decisions on a wide range of municipal issues which also includes housing. Further, under Section 3.2.6. of the *Growth Plan*, municipalities are required to develop housing programs that will meet the need of residents from a diverse background with plans for a range and mix of housing types that also includes affordable housing.

3.1.3 Official Plan

Toronto *Official Plan* (2002) is the policy document that is committed to "creating an attractive and safe city that evokes pride, passion and a sense of belonging - a city where people of all ages and abilities can enjoy a good quality of life" (p. 1-2). The vision of the *Official Plan* includes the production of long-term housing (including affordable housing) that meets the need of all the residents in the City. It also requires the City to have fast, convenient and high-quality transit system that links areas of housing to the place of employment, health care, education, and recreation. Moreover, it identifies the best way to move less is to promote mixed-use developments.

3.2 Policies for density bonusing and Affordable Housing

In Toronto, density bonusing is authorized through inclusionary practices that have been generated through S37 of the *Planning Act*, and Section 5.1.1 and Housing Policy 9 of the Toronto *Official Plan* regulated under S37. S37 authorizes municipalities to rezone the developments and grant additional height/density to those developments in exchange for the provision of "facilities, services or matters" widely known as community benefits (City of Toronto, 2014a).

3.2.1 Section 37 of the *Planning Act*

Density bonusing has become an important factor in past two decades of urban development in Downtown and the City of Toronto. Density bonusing policies were first introduced through Section 36 of the Ontario *Planning Act* in 1983 and were initially applied to dense commercial developments (Pantalone, 2014). Since 1983, density bonusing brought out many ad hoc planning practices which were different case-by-case as there were no legitimate regulations 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 [C]ity" (Pantalone, 2014, p. 20). Later in 1990, the *Planning Act* was revised and density bonusing policies were moved to S37 (Pantalone, 2014). Since then density bonusing policies are simply known as S37.

S37 authorizes a local government with appropriate Official Plan provisions to grant density bonusing to eligible developments, in exchange for the provision of "facilities, services or matters" that are set out in the zoning bylaws. According to the *Planning Act*, S37 (1) states that the council of a local municipality may pass a bylaw that authorizes additional height or density to a development which would not be permitted under prevailing municipal bylaws. S37 (2) conditions the use of density bonusing as stated in S37 (1) unless otherwise there is a municipal Official Plan that contains provisions relating to the authorization of bonusing. S37 (3) states that a local municipality may require an owner of land or developer to enter into a S37 agreement dealing with "facilities, services or matters" in order to secure the terms of bonusing. S37 (4) allows a municipality for registration of S37 agreement against the land to which it applies and once it is registered, this section also entitles the municipality to enforce the agreement against all the subsequent owners (if any) of the land, until the terms of the agreement have been fully executed.

The City of Toronto has used S37 as a primary tool to achieve affordable housing on large development sites. " Affordable housing is specifically identified in the City's *Official Plan* as a potential community benefit that may be achieved through S37, and, subject to other relevant policies, as the first

priority community benefit when height and/or density increases are sought in relation to large residential developments" (Ontario. MMAH, 2011, p. 19). However, it is also required that any community benefits obtained must bear a clear 'nexus'⁵, a strong and reasonable planning justification to the increase in the height and/or density of the subject development (Ontario. MMAH, 2011). In some cases where the City does not authorize the request of additional height or density, the developers go for an Ontario Municipal Board (OMB) appeal where they get chance to get approval on their application by forwarding their planning arguments, and in most OMB hearings, developers tend to win over municipal councils' decision on the benefits. Furthermore, some appeals may still get density bonus without any commitments or contributions to community benefits.

3.2.2 Section 5.1.1 and Section 3.2.1 of Toronto *Official Plan*

The *Official Plan* (2002) outlines the policies concerning height and/or density incentives through Section 5.1.1. Through this section, it outlines the "eligible benefits for S37 agreements; the conditions for considering a density bonusing agreement; the minimum development threshold to trigger a bonusing agreement; methodology for identifying and selecting S37 benefits; and quantitative formulations for S37 contributions in Secondary Plan areas" (Pantalone, 2014, p. 31). Further, Policy 9 of Section 3.2.1, widely known as Housing Policy 9, applies to large residential developments on sites greater than 5 hectares (Drdla, 2010). Developments on those sites are required to create a minimum of 30% of the new units to be in forms of housing other than single-detached and semi-detached houses. The housing can be in forms of a series of row housing, townhouses or multi-unit residential buildings, however, when density bonusing is permitted, primary preference must be given to affordable housing production than other community benefits. This policy potentially requires 20% of the resulting additional units to be "set -

⁵ Section 37 is 'a remarkable short and straightforward' section that outlines density bonusing policies in the Planning Act (Pantalone, 2014). However, the OMB has been dealing with several hearings appealed by displeased applicants against the enforced Section 37 contribution by their municipalities. Through those hearings, landmark being the Minto BYG vs Toronto hearing case, the Board has established clearer policies/guides for the proper implementations of Section 37 (Pantalone, 2014). The OMB has recognized and constantly objected to municipalities' improper requirements for Section 37 contributions on the developments seeking additional height or density. The Board has overruled such municipal requirements by stating that any contributions imposed through the Section 37 agreements must demonstrate a clear 'nexus', a strong planning justification that bears real and demonstrable connections to the subject development.

aside" for affordable housing which can be provided within the development, on-site or elsewhere in the City (City of Toronto, 2014a). Further, in the context of development applications involving a rezoning for increased density and/or height, the City recognizes affordable housing to be one of the high-priority planning objectives even where the project size and density increase do not exceed the thresholds outlined in Section 5.1.1.4⁶.

⁶ According to the *Official Plan* (2002), "Section 37 may be used for development, excepting non-profit developments, with more than 10,000 square metres of gross floor area where the zoning by-law amendment increases the permitted density by at least 1,500 square metres and/or significantly increases the permitted height" (p.5-3)

4. Methods

This research provides a qualitative assessment of applications of density bonusing, regulated through policies in S37, in the Toronto Downtown and Central Waterfront area. This research is exploratory and provides a better understanding of existing conditions, and hence, can be used in the direction of future research (Neuman, 2011). It also provides a brief exploration of the benefits of density bonusing to residential developments, as well as the inclusion of affordable housing in those developments in the Area. It answers a few concerns such as, how has density bonusing/S37 worked in favor of affordable housing production (while remarkable community benefits have been secured in the City), how existing practices have limited its potentials to produce affordable housing, does it truly support inclusion of affordable housing in high-rise buildings, and what can be done to overcome the growing shortage of affordable housing in the Area. This is a secondary research and it undertakes a three-step qualitative method to answer its objectives: a review of the previously published literature, an analysis of secondary data and a comparative case study.

The first research method is a literature review approach. This approach is an essential early step in the research process because it provides information on what others have realized and identifies the major issues related to the research interest (Neuman, 2011). This section focuses on the study of existing relevant academic and peer reviewed papers and books; government housing policies, regulations and reports; reports published by non-profit organizations; and newspapers, articles, blogs and popular magazines. The purpose of this approach is to examine both historical and present trends of S37 agreements and housing affordability in the context of the study Area. The academic/peer reviewed papers and books supply invaluable resources from the scholars and experts. These papers and books provide information on consensus among the researchers as well as their critical analysis on the research subject (Jackson & Verberg, 2007). Study of government policies, regulations and reports provide the legal records of government responsibilities and requirements. Reports published by non-profit organizations identify the depth of the issues and offers understandings of what factors can be considered

to overcome those issues. Additionally, newspapers, articles, blogs and popular magazines also provide current, realistic news, outcomes and trends occurring in the Area other than what has been recorded in the aforementioned sources (Neuman, 2011).

The second method involves a secondary data analysis of data collected by the City of Toronto. This method "involves analysis of data that have already been collected for some other purpose" but are used to address a different research interest (Jackson & Verberg, 2007, p. 126). The data, originally gathered by the City to record the projects approved for the increase in height/density under S37, was used to identify the efficacy of S37 in securing affordable housing in the condominiums in the Area. The City of Toronto keeps track of all the applications, approvals and construction of condominiums in the City. The City's database is complete and accurate source of information for the purpose of this research. Therefore, the research is limited to the data maintained by the City. The data was requested for all the wards in the area since 1983 (when density bonusing was first authorized in the City), from the City's Planning Department. The data was then sorted and tabulated by through keyword searches such as Section 37, ward numbers, years, affordable housing, and rental units. Through this process, the data for years 1983-2014 was refined (See Appendix 1). Further, the data is closely analyzed and compared to identify the priority community benefit(s) in the Area over the other types, particularly against affordable, non-market housing. For the purpose of this research, this paper considers information on percentage, number, area and/or sum of dollars dedicated for various community benefits and their improvements. The gathered information is represented as graphs and tables (where possible) to give a reader a strong picture of data (Neuman, 2011). However, the confidentiality of data is maintained.

Last, a comparative case study method is used. In this method, many features focusing on several factors of two (or more) cases are parallelly investigated (Neuman, 2011). This method is used to compare the in order to highlight the key different categories (Neuman, 2011). For the purpose of this paper, one of Canada's other most economically strong urban centers, Downtown Vancouver, British Columbia, was selected to illustrate and compare the different types of approaches used for authorizing an

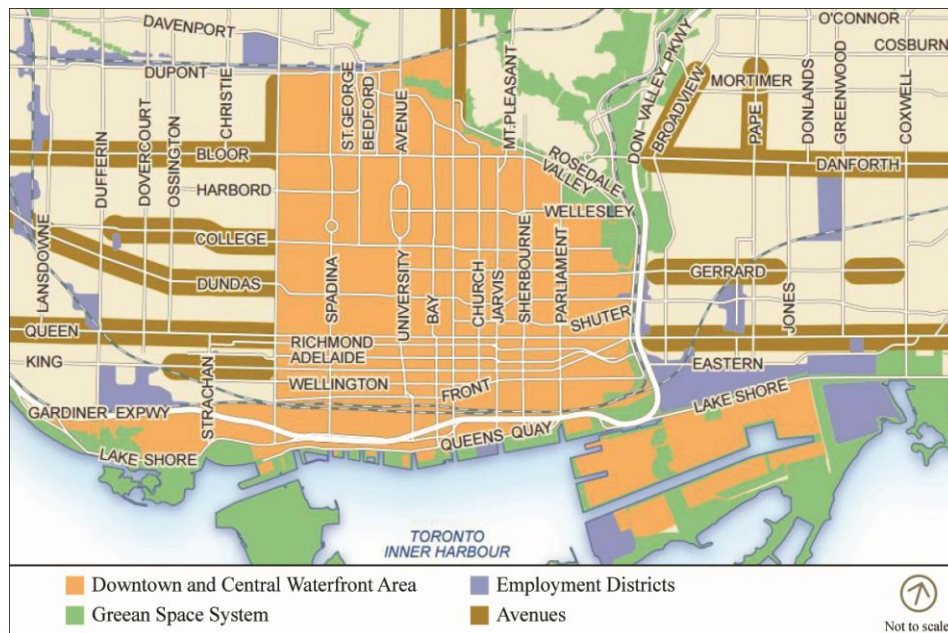
increase in height/density in exchange for affordable housing. Vancouver uses mandatory approach for the inclusion of affordable housing in high/dense developments - that are authorized due to rezoning. Downtown Vancouver is chosen because of its similar geographic settings, development commitments, and housing affordability issues to the Area in Toronto, however, it has a different approach for implementing inclusionary practices (Moore, 2013b). Vancouver adopts an approach where 20% of the additional height or density of condominiums are strictly protected for affordable housing (Mah, 2009). A comparative analysis of the two different practices for density bonusing, against some measurable indicators, gives a good opportunity to examine their effectiveness for the inclusion of affordable housing in high/dense developments. These indicators can be a percentage of projects to include affordable housing, funding sources, and length of affordability (see Table 1). This comparative analysis will be helpful for the City of Toronto to identify the existing shortfall of its current inclusionary practices and to perform the required amendments or changes to them.

5. Literature Review

5.1 Context: Downtown Toronto and Central Waterfront Area

5.1.1 The Study Area

Toronto is the fifth largest city in North America, and the most populous city in Canada. It is located in one of the fastest growing regions, the Greater Toronto Area (GTA), in Ontario, with four other regional municipalities of Durham, Halton, Peel and York. Commonly known as the City of Toronto, with an area of 630 square kilometers and a population of 2.6 million, it is defined as the provincial capital of Ontario and the centre of the GTA, and one of the most important areas in the City of Toronto is the Downtown and Central Waterfront area. The Area, mainly downtown, is known as the "economic powerhouse" of the City. Generating more than \$150 billion GDP (i.e., 10% of the national GDP) in 2013 (Toronto Financial Services Alliance, 2016), the Area has remained a popular residential location among other areas in the City. Besides, it has been noted as the most prominent location for developments with 79,000 new residential units and 2.11 million square meters of non-residential ground floor area (GFA) i.e., 40% of the residential units and 43% of the non-residential GFA in the City (City of Toronto, 2015a).



Map 1: The Area - Toronto Downtown and Central Waterfront

(Source: Toronto, City Planning, 2002).

The study Area (See Map 1) is roughly bounded by Lake Ontario to the South, Bathurst to the West, Dupont Street to the North, and the Don River to the East. The area comes under the jurisdiction of 5 wards in the City of Toronto; wards 19, 20, 27, 28, and 30.

5.1.2 Housing and Population Revival

Toronto Downtown area is "the oldest, most complex and diverse part of the City of a dense concentration of people and activities, rich historic fabric and strong economic core" (City of Toronto, 2013, p. 1). Today, the area is growing as a largest and most accessible place to live and invest in the City. One can experience a prodigious growth in the number of high/dense condominium developments, and in the rate at which applications, approvals and construction of new developments take place in the Downtown. However, this concept of high-paced growth, though seems a new phenomenon, has its roots at the time more than four decades ago when the Downtown experienced a major decline in the population trends. The decline was due to an exodus of baby boomer and working class families to the outer suburban areas for bigger and economical housing which resulted in a very small population in the Downtown (City of Toronto, 2013).

To increase the population and to make downtown attractive, vibrant and suitable for all types of families, the Council adopted the Central Area Plan in 1976 (City of Toronto, 2014b). This was one of the first attempts to introduce the concept of mixed-use to the land-use regulations. According to the Plan, Downtown should promote a successful mix of housing, both in term of size and income level along with employment opportunities. This concept called for a substantial increase in residential developments in Downtown. In the 1970s and 1980s, with the large-scale (re)development of

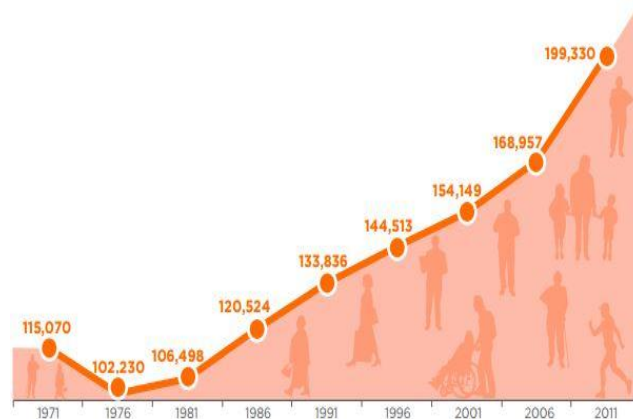


Figure 2: Downtown Population from 1971 to 2011
(Source: City of Toronto, 2014b)

former industrial lands in the Central Waterfront area and the creation of the St. Lawrence, the area witnessed a reversal development in population trends (See Figure 2) (City of Toronto, 2014b). New households, residents were getting attracted to the Downtown core. Moreover, in the mid-1990s, with the developments of two former industrial areas, King-Spadina and King-Parliament (which were previously restricted by Official Plan), and the Railway Lands and Harborfront, which successfully increased employment and living opportunities, ever more people were living in the Area. Also, these projects inspired other major renewal projects and contributed to the continued attraction of the Area for investments, employments, and living opportunities.

The efforts in the late 20th century no doubt brought an increase in the Area's housing and population growth rate, but since 2006, the growth rate took a major pace (City of Toronto, 2013). With a population growth rate of 18% since 2006, by 2011, the residents in the downtown increased more than three times the overall growths in the GTA (TD Economics, 2013) and more than four times the overall growths in the City (City of Toronto, 2014b). While the earlier generation moved to outer suburban areas, the new generation most preferably due to innovative public transits and core transit hubs (for example, union station connecting downtown to various cities), frequent and easy access to public transits, shorter commute time to their basic activities (for example, schools, grocery stores, etc) and proximity to employment areas, were being attracted to Downtown core (City of Toronto, 2014b). In fact, during 2006-2011, with 38% rise in housing completions from the previous five-year period, more than 30,000 new residents moved to the Area (City of Toronto, 2014b). Also, studies show that with approximately half a million jobs in 2012, many "echo-boom generation", workforce have moved in the Area to reside creating more and more pressure in its housing industry (City of Toronto, 2014b). As a result, much of the available lands are being used for residential developments. This has caused a decrease in land supply and increase in land values.

5.1.3 Condominium Developments

The Area is growing along with positive demography, globalization, and migration (City of Toronto, 2014b). 'Location efficient' neighbourhoods, and employment and recreational opportunities in walking and biking distances are attracting more and more people to reside in the downtown core. Studies show that, since 1976, the residential population has doubled, with more than 240000 people living in the Area and the ownership share has increased by almost two times since 1996 (City of Toronto. 2014b). Accordingly, the City's housing market is dealing with more and more housing needs (CHBA, 2012; Landau, 2013). Also, Toronto *Official Plan* identifies the Area, as a place to accommodate significant population growth by 2041 (Ontario. Ministry of Finance, 2014). As a consequence, the value of land in the Area is extensively increasing and discourages the construction of low-rise or less-dense residential developments as it will extremely increase the value of individual units (Burda, 2013). Therefore, the Area has seen major growth in housing units in recent years through multiple housing starts, mainly condominiums (CHBA2012), to accommodate the current and future housing needs. It was recorded that the Area comprised 47% of total housing forms as condominiums in 2011(City of Toronto. 2014b). Also, "According to a recent report prepared for the City of Toronto, just under 50,000 condo units have built, sold, and occupied in the downtown core south of Bloor Street since 2000. Also, in the end of 2011, more than 90,000 additional condo units have been approved to be built within the City of Toronto, the majority of which are planned for the downtown core" (TD Economics, 2013, p. 2).

Where the Area is growing with an incredible number of condominium developments, the supply of large-area lands where officially high-rise developments could be built is getting limited (Drdla, 2010; Burda, 2013). Even if the land is available, the City's zoning bylaws restrictions, which date back to 1970s, do not permit high-dense developments due to density controls imposed on that land (OHBA, 2014). In these cases, the private developers find it discouraging to invest for residential developments on available lands (Lehrer & Wieditz, 2009), which limits the construction of condominiums and hence, limits the overall housing supply in the Area.

To overcome the limitations in land supply, a number of municipal and provincial policies and programs have been initialized to redirect growth, intensification to the existing built-up sites in the Area. These policies promote transforming or conversion of brown-field sites (formerly-deteriorating industrial and commercial sites) as well as improvement of the un-/under-utilized lands and buildings, and at-grade parking lots, for high/dense condominium developments (Pantalone, 2014). The City permits the conversion through re-zoning or re-designating of land from one use to the other (for example, employment or brownfield lands to mixed-use or residential developments), which also overcomes the density controls imposed on those lands. (Lehrer & Wieditz, 2009). The conversion of land from one use to another requires an amendment to zoning bylaws and, sometimes, an amendment to the municipal *Official Plan*. This conversion is possible when the developers make a S37 agreement, density bonusing agreement with the City of Toronto.

5.1.4 Housing Affordability Issues

The City of Toronto is recognized for its highest market-based economy and housing costs in the country (Wellesley Institute, 2014). In a market-based economy, the market decides the major share of housing. Today, the market of housing is burgeoning on most expensive lands/plots in the City, the Downtown and Central Waterfront area. Private developers, because of the limited availability of lands/plots are least interested in less profitable projects such as detached, semi-detached, and mid-rise housing structures, but, due to the market preference of transit-oriented neighbourhoods, are encouraged to build high-rise condominium buildings. These preferences have resulted in doubling of average housing price and shrinking of units over the period of ten years since 2002, making them less affordable and suitable for average income families (Mcmohan, 2015). As a result, many average income households in the Area, particularly service workers, low pay workers such as clerks, cooks, childcare workers, teachers, cashiers, police officers, waiters, firefighters, garbage collectors, and owners of small businesses such as convenience stores, are facing serious economic pressures to rent or own a house. All These households who must live near or within the walking distance to their work place are required to

reside in the housing they can barely afford, that are very small for their needs, or that requires significant repairs (City of Toronto, n.d.). Also, those who live away from the workplace are required to spend a lot of time and money while commuting to the work in the Area.

In the 1970s and 1980s, when all three level governments were active in the housing industry, the housing market in the Area was principally dominated by affordable mixed-income rental housing (City of Toronto, 2014b). While government funded housing programs supported the production of social rental housing (such as the St. Lawrence), the private sector constructed market rental buildings. The tenure split of all housing in the Area was about 85% rental and 15% owned (City of Toronto, 2014b). However, since 1996, the share of ownership has been growing, particularly due to focus on condominium tenure. In 2011, where the number of condominium developments grew to almost 50% of the total new housing units in the Area, the tenure split of all housing changed to 65% rental to 35% owned (City of Toronto, 2014b). Moreover, the rate of condominium development is increasing, but, the rate of rental housing production is decreasing and hence the rental tenure (City of Toronto, 2015a). This shift in housing market from rental units to ownership units has increased shortage of affordable rental housing in the Area. Consequently, many average income households who cannot rent or own condominium housing units are entailed to live in neighbourhoods with poor housing conditions, risking their health, safety, and dignity (Mcmohan, 2015).

The long-established exclusionary zoning practices in the City of Toronto prevent the inclusion of the average households into wealthy communities by regulating density controls on land (Bogart, 1993; OHBA, 2014). Impacts of these density controls restrict inclusion of below-the-market-price housing units in major residential developments. As a result, the available housing units are rented or sold according to the price prevailing in the market. In addition to that, the capacity of these households to rent or buy a house in the Area, to some extent, has further been affected by rising government mandated costly, complex and constricted regulations (CHBA, 2012; Mcmohan, 2015). Ever increasing government levies, fees, charges and taxes are raising costs of building housing units for developers which have

caused the additional increase in housing prices (see CHBA, 2012). As a result, the available units are beyond the reach of the average income households.

The rising condominium developments, the shift in the housing market, existing density controls and mandatory government regulations and taxes on the housing industry, have highly influenced the housing price to increase exceptionally. These conditions have resulted in a sharp drop in affordable, adequate and suitable housing in the Area. (Mcmohan, 2015), making today's housing affordability insufficient and worse than at any time since the early 1990s (CHBA, 2012). It is noted earlier in this paper that government policies strive to build strong, healthy, safe, sustainable and mixed-income neighbourhoods. However, the existing conditions have not only segregated the average income households from households that are 'better off', but also have widened the gap between the income groups by creating great inaccessibility in employment and progression opportunities for average income households. Therefore, to promote strong and sustainable neighbourhoods in the Area, the inclusion of affordable housing should be focused in the rising condominium developments.

5.2 Role of Government in Affordable Housing Production

During the 1950s and 1970s, federal and provincial governments had a major and active role in affordable housing construction. However, in April 1993, the federal government stopped funding for new affordable housing and downloaded the responsibilities to the provinces without any corresponding subsidies (Hackworth, 2008 cited in Mah, 2009). Soon Ontario, following the federal footsteps, downloaded housing responsibilities⁷ to the municipalities. Consequently, no new affordable housing was built in Toronto from 1996 to 2000 (ONPHA, n.d.). However, in 2001, federal government once again entered the housing field with the announcement of funding for Affordable Housing Program (AHP) to be administered by the province, and soon, in 2002, signed an agreement with Ontario under the Canada/Ontario AHP for 5 years, with a condition that the province would match the federal funds for the

⁷Ontario cancelled the provincial housing program, but continued to provide limited funding for supportive housing (ONPHA,n.d.).

program (ONPHA, n.d.). However, in its agreement with the federal government, Ontario passed a huge portion of matching funds to its municipalities (ONPHA, n.d.). Later, in 2007, Homeless Partnering Strategy⁸, a federal homeless funding, initially meant only to prevent and reduce homelessness in the country, became one of the main sources for the City to employ for building new housing (ONPHA, n.d.). Additionally, in recent years, through other programs such as Social Housing and Retrofit Program, Investment in Affordable Housing, and CMHC's Residential Rehabilitation Assistance Program, senior governments have helped Toronto build new and repair old affordable housing units as well as other services such as accommodating secondary self-contained units and providing social assistance to those who are most vulnerable to homelessness (Evans, 2007).

Although senior level governments have started to invest in affordable housing in the City, however, their role has been limited and unpredictable (Mah, 2009). It is also well-known that most of the financial burden for housing production have been transferred on to the local governments (Mah, 2009; Evans 2009). Also, local governments are facing many different challenges, from social and cultural issues to environmental and transportation issues (Evans, 2007). Therefore, the City has been facing increasing pressure in the production of affordable housing units (Wellesley Institute, 2014). The City has responded to the issues through programs such as Housing First⁹(in 1999), Municipal Housing Facilities By-law¹⁰ (in 2002), Home Ownership Assistance Program¹¹ (HOAP) (in 2010). Moreover, the City established targets of 1,000 new affordable rental homes and 200 new affordable ownership homes annually through 2010-2020 *Housing Opportunities Toronto (HOT) Action Plan*, majorly in the downtown core (City of Toronto, 2009). However, substituting the role of upper level governments in the

⁸ Homeless Partnering Strategy, formerly known as the National Homelessness Initiative, was not regarded as funding for housing before early 2000s (Evans, 2007).

⁹The City's "Housing First" is an approach to end homelessness by assisting people to first find independent and permanent housing and then providing additional supports and services as needed (City of Toronto, n.d.)

¹⁰ In 2000, the City exempted planning and building permit fees as incentives for non-profit/ affordable rental housing, and in 2002, expanded the incentives to non-profit and private sector groups from development charges and property taxes during the period of affordability (City of Toronto, 2015b).

¹¹ HOAP provides loans to assist non-profit organizations developing affordable ownership homes pay the DCCs, planning fees and building permits (City of Toronto, 2015b).

production of affordable housing has not been possible of local government. "Based on current plans and commitments to 2020 using existing resources from the federal and provincial governments, it is projected that the City will continue to be challenged in meeting [its affordable housing] targets. Without a renewed and enhanced effort from all governments and private- and non-profit housing stakeholders, the overall 10-year shortfall will rise to some 6,000 affordable rental homes and almost 600 affordable ownership homes by 2020" (City of Toronto, 2015b, p. 9).

6. Economics of Density Bonusing

In conditions previously discussed, density bonusing regulated through S37 agreements seems fair and equitable; to both municipalities and developers. Through density bonusing, municipalities grant additional height or density to the major residential development in exchange for the provision of "facilities, services or matters" widely known as community benefits. These policies are widely used by municipalities because most of the needed public services could be provided at no direct costs to the government. As well, the City can provide housing units that are affordable for average income households in the growing high/dense residential developments in the Area. Private developer and investors are attracted to this mechanism because they can make more profits from a single development in the area. The developers can maximize their profits by developing additional units gained by contributing a certain percentage of those additional units to in- or off-site affordable housing or supporting other community benefits in the Area.

6.1 General Benefit Analysis

To analyze this section, let's take an example where a private developer seeks to develop a high-rise building on a vacant land that is normally zoned for a maximum of 100 units. He/she intends to develop the building with an additional height that is not permitted under the current zoning ordinance. He/she applies for the bonus with his planning justifications. The City, by means of the City's planners' study and reports, may permit for height increase but as the consequence of the additional developments may impose a requirement of 20% of the additional units as affordable housing. Density bonusing here may also be seen as an incentive for or compensation of decreased revenues, due to the introduction of affordable housing, to the developer (Fox & Davis, 1976; McFarlane, 2009). Therefore, the developer ends in building 120 units building where 116 units are legally allowed to be sold or rented at existing market rate and 4 units that are secured for affordable housing. Because additional units are constructed on land which is serviced for the original development of 100 units, they add relatively few costs for extra services and infrastructure to the developer (McFarlane, 2009). As a result, the developer gains more

returns on his investments than a normal 100 units project, the City gets some affordable housing units without any direct financial burden, and average income households get homes at a below-the-market price.

6.2 Benefits to the Municipal Government

Density bonusing brings in more benefits to the municipal government at no cost of their own. These benefits can be in forms of property tax collections that increase municipal revenue, and savings in municipal expenditures.

6.2.1 Property Tax Collections

The price of housing is associated with two components - the price of land and the cost of building a development. These two components are estimated during taxation process for properties. According to Slack (2012) and Altus Group Economic Consulting (2013), the major source of municipal revenue in Canada is 'property and related taxes' which contributes above half of the total revenue collection and is generally applied to all types of properties. Also, studies concluded that high-density residential developments pay more municipal tax than lower-density developments (Fox & Davis, 1976; Slack, 2012, The Toronto Board..., 2003). Therefore, when more condominium units are built in the Area, more taxes are collected, since the value of lands and number of units are high. The collected monies can be used for other municipal services in the Area

On the other hand, when affordable housing units are included in the high-rise developments, some may argue that, in financial perspective, potentially due to 'NIMBY'¹² approach, the value of developments with affordable housing units may reduce opportunities for the development of taxpaying (Fox & Davis, 1976). Also, in Ontario, a Provincial *Assessment Act* amendment, in the 2000s, permits municipalities to require new affordable housing units in multi-residential developments to be taxed at the

¹² 'NIMBY'-Not in my back yard- generally refers to "concerns about change in the neighbourhood, ranging from expressions about the presumed characteristics of newcomers (in the case of affordable housing)" (ACT, 2009, p. 3). These concerns often creates barriers for people who seek to move into affordable housing in the neighbourhood.

rate equal to the residential class for 8 to 35 years (The Toronto Board..., 2003). Therefore, tax collection opportunities cannot progress. However, this paper disagrees to those opinions by putting forward two important aspects. First, the use of the same development for market-price as well as affordable housing units promotes a social-economic mix of all classes (i.e., employer and employees living in the same community); opens doors for economic expansion of all those classes; and increase the attractiveness of mixed-income developments. All these improvements within a single neighbourhood increase the development of tax base in the City, on both property, and other related taxes and income taxes, and hence, increase municipal revenue (Wellesley Institute, 2011; Bogart, 1993, Slack, 2012). Second, the inclusion of affordable housing is only 20% of the additional height permitted to the developments which is only a low percent when compared to the overall units in a single development (calculated from the previous example). Therefore, the City's tax collection is not much affected.

6.2.2 Increase in Municipal Revenue and Savings in Municipal Expenditures

Fox and Davis (1976) and Slack (2002) argued that higher the density of residential developments higher is the municipal expenditure savings when compared to lower density residential types. According to Slack (2012), the total municipal expenditures in the City on roads and transits is 21%, water, sewers, and garbage is 17%, recreation and culture is 12%, and resource conservation is 2%. All housing units in dense developments utilize common infrastructure amenities such as land, driveways, water lines, sewer lines, roads and transits, recreation, and landscaping and open spaces, whereas low-density developments, mainly single-, detached- or town-houses, require separate areas for similar amenities. The cost for these amenities for low density areas would be far more expensive than for high-rise developments because these amenities are needed to be provided in parts for individual units (See Slack, 2002). To add, high-rise developments, for a particular number of housing units, use up fewer city areas for buildings and parking unlike low-density areas and hence cause savings of considerable amount municipal expenditures in land and infrastructure developments (Slack, 2002). Therefore, this paper

argues that all these savings would cause effective reduction of municipal expenditures, which save most of the total municipal revenues.

Studies also show that lack of affordable housing in the city often leads to many social problems including threats to homelessness, crime and health issues; environmental problems such as traffic congestions, exploitation of open lands for sprawl growths and transportation network; and economic issues posed due to social - costs for shelters, social housing, rent and health subsidies - and environmental problems (Wellesley Institute, 2011). The City spends 9% in social services, 16% in fire and police, 4% in housing, and 3% in health that adds up to 36% of the total municipal expenditures (Slack, 2012). However, developing high-rise multi-unit residences, and introducing affordable housing in those developments would save many billions of municipal expenditures (Fox & Davis, 1976, Slack 2002). And, a cost effective way for the City to save on those expenses would be possible by using existing inclusionary practices, density bonusing regulated under S37.

7. Evaluating Implementation of Density Bonusing in the Area

7.1 General Process for density bonusing/Section 37 Agreement

In the City of Toronto, S37 agreements are negotiated on a case-by-case basis. First, a developer approaches the planning department with an application for additional height or density on a land which is not permitted under the existing zoning bylaw. If the city planners agree that they can require any S37 benefits, they ask the Appraisals Section of the City's Real Estate Services to estimate the value of that additional height or density. After getting the estimates, the City Planner seeks to secure 15-20% of the total value of that additional height or density for S37 benefits from the developer (Moore, 2013a & b; City of Toronto, 2014a). Then, the councillor approaches the developer with the list of community benefits that they would like to secure from the development. This often leads to a negotiation process where the councillor and developer bargain for the middle ground. Finally, with the developer's consent, the councillor secures one or more types of community benefits (Moore, 2013b).

7.2 Measuring Success

Downtown and Central Waterfront area has used density bonusing as a successful incentive tool to secure a variety of community benefits from the developments. According to the estimates provided by the City, from 1984, when the first agreement was negotiated, till 2014, the Area entered into 102 S37 agreements for density bonusing in developments that contained residential and non-residential uses; 11 in Ward 19, 47 in Ward 20, 26 in Ward 27, 16 in Ward 28, and 2 in Ward 30. From those agreements, the local authorities have primarily secured parks (including playgrounds and other open spaces), then public art, roads and streetscapes, community and recreational centres, over other benefits such as community improvements, design project and area studies, heritage preservation arts, affordable housing, cultural facilities, community services and facilities. They also collected cash that totals up to over \$148.8 million for capital improvement and special funds for development of community benefits.

The study of the City's data shows that the trend of S37 agreements in the Area experienced a slow growth rate till 2004 and moderate rate during 2005-2009 (See Figure 3). However, it saw a dramatic escalation in 2010-2014. During this time, 52 agreements (more than 50% of the total) were negotiated and over \$90.5 million cash contribution (more than 61% of the

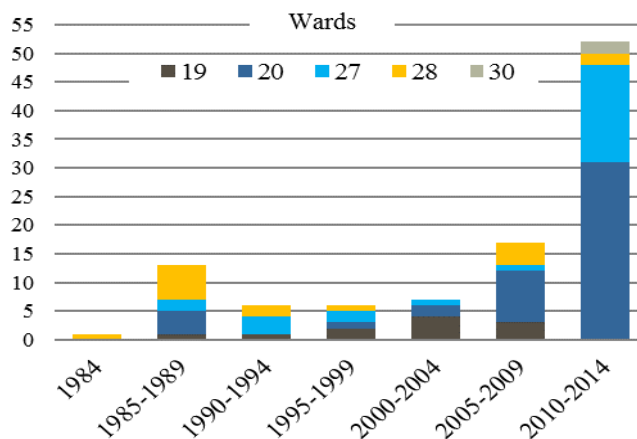


Figure 3: Showing the Number of S37 Agreements in the Downtown and Central Waterfront Area from 1984-2014

total) were secured (See, Appendix 1). It was also estimated that out of the total agreements, about 81 (i.e., 79.41%) supported affordable housing of some form such as new rental and ownership affordable housing, rental replacement units, social or assisted housing, low-end-of-market-housing, offsite land dedicated to affordable housing or contributions to fund for affordable housing development; and secured over \$36.8 million cash contributions (See Appendix 2). However, there were only 34.3% (or 35) of the total agreements that included provisions clearly for affordable housing developments. Those agreements secured 8 new ownership affordable housing units and 501 new rentals units (most of the units were secured affordable only for a minimum "controlled period"¹³ of 20 years) and; 1247 new social housing units and 107 mid-range housing and some "in-kind"¹⁴ contributions (See Appendix 3). However, it was also noted that 12 rental units were demolished and 12 affordable rental housing units were transferred to non-profit housing.

The *Official Plan*, as discussed earlier in this paper, provides priority to the development of affordable housing among other community benefits. The City's legislative framework also supports the

¹³ A "controlled period" means the duration of affordability of the units; this usually ranges from 10 to 30 years depending on the municipality and their programs (Mah, 2009). However, in case of the City, for the first 10 years, the units are rented as affordable rental units and for the next 10 years, rent increases but do not exceed Provincial rent guideline (from the City's Data)

¹⁴ "In-kind contributions are clearly more popular in Toronto, and potentially more lucrative (money). However, the preference for in-kind contributions relative to cash varies significantly by ward" (Moore, 2013b, p. 25).

inclusion of affordable housing in major urban areas (that are targeted in the Growth Plan) such as the Downtown and Central Waterfront area. Also, Section 6 of this paper highlights some major benefits of inclusion of affordable housing in high-rise/dense developments. However, the close study of the City's database finds that the extraction of "desirable visual amenities" such as parks, open spaces, streets and public arts are more prominent than socially needed affordable housing. Also, while some condominiums significantly supported and/or included affordable housing, the study of all the S37 agreements and kind of benefits secured show that the City's S37 has not been very effective tool for generating affordable housing. Where the local government aims annually for about 1200 new affordable housing in the City, the majority of them in the Area (City of Toronto, 2009), existing S37 policies do not seem to be efficient in contributing to that target (Mah, 2009).

7.3 Exploring Limitations

The detailed study of the data from the City on S37 agreements for community benefits in the Downtown and Waterfront area, qualitative academic and peer-reviewed literature, policy documents, and some personal experience including class lectures, seminars, workshops, and internship experience at Affordable Housing Office at the City of Toronto, highlight the fact that there are many factors that hinder the extraction of affordable housing from the high-rise developments. However, this paper focuses on some of the major limitations that hinder the inclusion and development of affordable housing in major residential developments in the Downtown and Waterfront area.

Voluntary Approach

Density bonusing authorized through S37 in the City has a voluntary, incentive based approach. As a voluntary program, it involves a negotiation process between private developers and the City authorities/councillors. Councillors attempt to allure developers to participate in the program and permit for additional height or density to developments, over a list of benefits that that they would like to secure for their community. The local authorities are attracted to this approach because it is less likely to be opposed and legally challenged by the developers (Mah, 2009). The developers are interested in low risk,

high-profit investments which they will get from high-rise developments through density bonusing.

However, Mah (2009) argues that this approach has not been proved to be very effective in producing affordable housing. The study of the City's database on S37 agreements from 1983 to 2014 also supports this argument. Community benefits including parks and recreations, daycares, and funds for streetscape improvements have been mostly secured in the Downtown and Central Waterfront area because most of these benefits are supported by the developers as they enhance the quality and hence, the market demand of living in the Area.

Nexus Requirement

When the S37 agreement is implemented, the City of Toronto requires a reasonable planning relationship between the secured community benefits and the increase in height and /or density authorized to any contributing development (City of Toronto, 2007). OMB also requires the local authorities to demonstrate a clear 'nexus' relation between the development and the community benefits imposed on the developers. Therefore, any imposition of affordable housing contributions (in the form of provision of units or cash), when imposed, should relate to the development. However, the relation may not be easily advocated "unless the site already had some affordable housing" (Mah, 2007, p. 7).

Administration

According to the implementation guide, the city planning staff should always be involved in discussing or negotiating the community benefits with developers (City of Toronto, 2007). However, in practice, while the staff play a key role in analyzing the planning justifications of the developments and value of contributions to be secured against density bonusing agreements (Moore, 2013a), it is the ward councillor who has a very active role in determining the 'wish list' of benefits when negotiating with the developer/owner (City of Toronto, 2011; Planning Act, 1990. s. 37(1)).

This factor highly limits the affordable housing extraction from the developments (Gladki & Pomeroy, 2007) and all other limitations discussed later in this section are more or less associated with it.

Although implementation guidelines for S37 requires that the councillor should always consult with the City's planning staff prior to any negotiations (City of Toronto, 2011), however, a councillor may simply ignore the planners' objections (Campbell et al., 2014). The type of benefits to be secured is entirely at the councillor's discretion and their political interests and priorities for their wards, provided that the developer agrees (Moore, 2013b; Keenan, 2015). It is often argued that if a councillor does not advise for affordable housing, it is less likely to happen (Mah, 2009). The estimate through the City's data finds that many of the agreements contributed for parks and parkland improvements, streetscape improvements and public art and more cash has been "set aside" for their developments. This may be because councillors find it more advantageous to negotiate a facility that benefits the entire community than bargain for a few affordable housing units that benefit a small community (Mah, 2009). Another reason may be because of the biases shared by affected community members and private developers. It is obvious that councillors need public support to continue his/her position in the City, therefore, his/her decision for whether or not to negotiate for affordable housing is also highly influenced by the objections set forth by the community members and the developers. The most common concerns made against the inclusion of affordable housing are fear of property values going down; degradation of the character of the neighbourhood; straining of public services and infrastructure; and will mean more crime in the neighbourhood (ACT, 2009). However, studies across a variety of North American cities concluded that there was no impact on property values; since affordable housing must comply with the same building standards as market price housing, the neighbourhood character did not change or got affected due to the mix of different income groups; intensification of central areas required less extensive services and infrastructure than greenfield developments; and there were no significant evidence that inclusion of affordable housing led to any increase in crimes or disorderly conducts (ACT, 2009).

Broad List of Community Benefits

"The term "community benefits" reflects the City's priority on providing public benefits within the local community in which the contributing development project is located.... at no cost to the City"

(City of Toronto 2007, p. 4). However, according to the study of City's data for S37 agreements, the list of community benefits is very long (See Appendix 4). The *Official Plan* lists 13 categories of benefits (some categories are themselves very broad), and affordable housing is only one of such kind (Moore, 2013b). Moreover, the ward councillors are more focused on securing amenities and opportunities that meet the immediate local needs, and since every community is different and has different priority of needs, the generation of affordable housing may perhaps not be possible and as a result, the extraction is very low (Mah, 2009). Further, not only these benefits largely depend on the interests of councillors and private developers (as discussed earlier), but they may also be influenced by the City planners or representatives from communities who are directly affected by the development, which may not just be limited to affordable housing (Campbell et al., 2014).

Ad hoc Process

The City negotiates the S37 agreements with the developers on an ad hoc, case-by-case basis (Mah, 2009; Moore 2013 a & b). There is no standard logic or practice outlined by the City that could determine what benefits should be secured/expected from which kind of developments (Moore, 2013a, Drdla, 2014). The data study also demonstrates that the distribution of S37 agreements in the Downtown and Central Waterfront area or types of benefits secured through those agreements is not consistent. Also, varying types of benefits secured within the wards show that even the individual councillors do not follow the same logic in every case. The delivery of affordable housing, if included, is different case-by-case and decision to include it in S37 agreements is left to each individual councillor (Mah, 2009).

"The ad hoc nature of negotiations also raises questions about transparency and the potential misuse or abuse of [S37 agreements]" (Moore, 2013, p. 6). It is observed that, in the presence of agreeing on developers, the local councillor is authorized to decide on the type of benefits that are to be secured from the developments (City of Toronto, 2007). However, the undefined rules of negotiation process may leave the door open for political involvement. Because the councillors can win support in their wards when they secure amenities that would be appealing to the community as a whole, the chances of

affordable housing to be included in the 'wish list' may be very less as it would be a benefit only a small portion of the residents (Moore 2013b). Also, this leads to a situation where there is no guarantee that negotiations are according to the needs of the affected community (Campbell et al., 2014).

In-Lieu Payments and Off-Site Construction

Density bonusing offers private developers a provision of in-lieu payments for affordable housing development and off-site construction of affordable housing as an alternative to their inclusion in condominiums (Pantalone, 2014). The municipality can secure in-lieu payments and redistribute the funds to the most needed neighbourhoods in the City (Moore, 2013a). However, in-lieu payments may not be supportive in the case of achieving the City's goal of building new affordable housing as they may be used for programs other than construction of affordable housing such as rental subsidy programs, special housing needs or other amenities (Calavita, Grimes and Mallach, 1997 cited in Mah, 2009).

The off-site construction means dedicating land near the development plot or elsewhere in the City for affordable housing construction. However, this provision may limit the inclusion and advancement of average income households to major condominiums. The off-site lands may be within the City but may be inaccessible and may lack frequent transit services which are very important to average income households as they may not have access to their own vehicles.

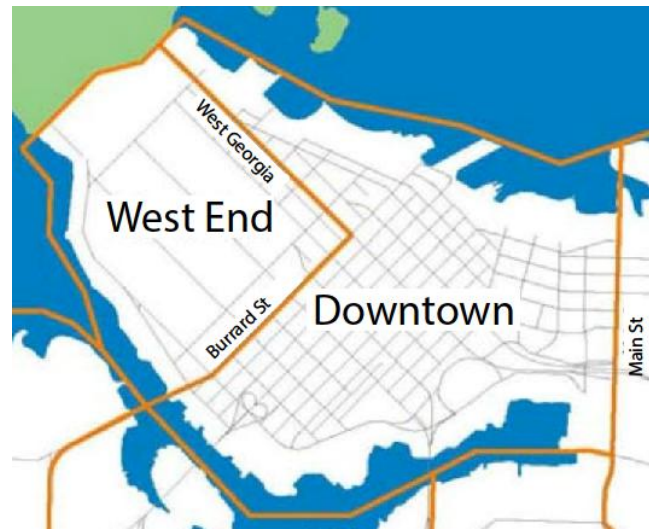
Other factors

First, in the case of *Housing Policy 9 of the Official Plan*, it applies only to lands greater than 5 ha or more, and since there are very few larger sites in Toronto where high-rise developments could occur, there is less likelihood of the growth of affordable housing production (Drdla, 2010). Second, the contributions to community benefits are imposed only on high-rise developments that require an increase in height and/or density beyond existing zoning bylaws. Whereas, in some US jurisdictions, such as Boulder, Colorado, the inclusionary program applies to all major residential developments, which supports more production of affordable housing units in the city (Porter, 2004). In addition to that, in the

City of Toronto, the contribution requirement of affordable housing, if included, is applied only to the additional height/density, and not to the entire development (Ddrla, 2010).

8. The Case of Vancouver Downtown, the City of Vancouver

Vancouver, located in British Columbia (BC), is the fourth most populous city in Canada. Irrespective of its size (115 square kilometers) and population density (603,502), the City of Vancouver, similar to the City of Toronto, is the central city of its metropolitan region and has experienced significant construction booms, led by high-rise, condominium developments in the 2000s (Moore, 2013b). Also, as Toronto's Downtown,



Map 2: The Downtown Vancouver Area
(Source: Yan, 2009)

Vancouver's Downtown¹⁵ has a very active and expensive housing market followed by the limited land supply. Consequently, the area is experiencing increasing number of people seeking housing that is affordable.

As Toronto uses S37, Vancouver uses Community Amenity Contributions (CAC) to negotiate a wide variety of community benefits, including affordable housing, against authorizing density bonusing to condominium developments. However, though some funds from the CAC program go into affordable housing production and repair (City of Vancouver, 2015), the City of Vancouver strictly classifies 'the 20% policy' as its inclusionary housing policy. This policy has a mandatory condition that the developer must set aside a separate site with the capacity for 20 percent of the new units to be for affordable housing (Wellesley Institute, 2010). However, the key aspect here is that "the developer only makes the land available [to the City] and is not obligated" to build any affordable units at their cost (Mah, 2009, p. 24).

¹⁵ For the purpose of this research, the area of Downtown Vancouver is defined as the area bounded by Main, Burrard, and West Georgia Streets, excluding the West End.

8.1 Legislative Framework

The *Vancouver Charter*, the area-specific Official Development Plans (ODPs) and accompanying Comprehensive District ("CD-1") Bylaws are the relevant land-use and housing policies in the City of Vancouver (Chang, 2009). The *Vancouver Charter* (1953), the highest rule of law for the City of Vancouver, sets out regulations for land-use and housing policies, while the inclusionary rules are outlined in the ODPs and CD-1 Bylaws.

Throughout the province, the *Local Government Act* (1996) (formerly the *Municipal Act*) applies to all municipalities, however, the City of Vancouver is governed by its own mandate under the *Vancouver Charter*. It provides the City increased planning and land-use authorization to deal with growing housing issues (Wellesley Institute, 2010). Through Section 565.1, which is similar to Section 904 of the *Local Government Act*, the *Vancouver Charter* authorizes the City to permit higher density to developers that provide affordable and/or special needs housing. The City can mandate developers to set aside a portion of to-be-developed lands for affordable housing against the permit of the rezoning of those lands to residential use. According to the *Vancouver Charter* Section 565.1(3), prior to gaining the permit, the developer is required to enter into a housing agreement with the City. The process of agreement often results in negotiations between the City and developers for setting a reasonable balance between the increased density and affordable housing (Chang, 2009).

"Vancouver is a city of planned neighbourhoods [and each] neighbourhood carries its own vision and community plans" (Chang, 2009, p. 10). When new neighbourhoods are created through rezoning, the City develops specific ODPs and CD-1 by-laws for each neighbourhood. Each neighbourhood ODP requires 20% of all units to be available for affordable housing and the requirements are codified in the respective CD-1 Bylaws (Chang, 2009; Mah, 2009).

8.2 Provision of Affordable Housing: The 20% Policy

In 1988, the City of Vancouver introduced an inclusionary housing program through its '20% Policy', initially known as '20% core need housing policy' (Wellesley Institute, 2010), along with CAC agreements, as a part of the general plan for the developments of the Expo lands in False Creek (Chang, 2009). It was initiated to provide for new parks, affordable housing, and other amenities through the redevelopment of redundant lands (Moore, 2013b). It required privately owned developments on large sites, seeking for rezoning to residential use, to set aside a portion of the site to accommodate a minimum of 20% of the total units for affordable housing for 'core need' and average income households (Wellesley Institute, 2010). The site could be either free lands, or over a parking space or other structures (Mah, 2009).

The policy was designed to work with then current funding from federal government and take advantage of two major changes - "the large and redundant industrial lands that were becoming available as the economic base of the city shifted from resources to services, and the substantial growth and associated rising house prices that created a strong demand for building housing at higher-densities" - in the City (Wellesley Institute, 2010, p. 1). However, at that time, 20% of the households in the City were reported to be in core housing need (Chang, 2009). Therefore, as a general rule, this policy required 20% of the developable land to be set aside for affordable housing when rezoning to residential use was authorized (Chang, 2009). Soon, the policy was required to be modified when federal funding stopped in 1993 and provincial funding started to decline in 1994¹⁶.

In 1993, the City opened the lands to affordable housing (non-market-, social-, and 'low-end-of-market- rental housings) in response to the funding cutbacks (Wellesley Institute, 2010). Other options, such as in-lieu payments, were also considered in cases where the lands for affordable housing could not be developed for a long time or the developments of market housing units could not proceed without affordable housing (Wellesley Institute, 2010). In-lieu payments allow the city to secure "the city-held

¹⁶ Since 1994 to 2002, provincial funding continued, but at lower or limited level (Wellesley Institute, 2010, p. 1).

value¹⁷ of undeveloped optioned sites, and then use the monies to support the provision of affordable housing in other ways"(Wellesley Institute, 2010, p. 3). In response, the City releases the developer from building the affordable units by allowing them to build the equivalent number of market-rate units.

Initially, the policies for CAC agreements was based under fixed value capture system and required developers to pay a fixed rate for each additional square foot that exceeded the permitted density¹⁸, which could also be used for affordable housing developments (Moore, 2013b). In 1999, new policies were adopted in response to senior government's cuts in housing funding which "anticipated that most CAC agreements would continue to be applied under the existing fixed value-capture rate system, but allowed the City to negotiate case specific CACs to capture substantially greater increases in [height or density] when certain circumstances were met" (Moore, 2013b, p. 10). Although the pursuit has been on ad hoc basis, the new policies do not change the actual purpose of the City's 20% policy whose priority was to provide housing for those in core needs (City of Vancouver, 2003; Chang, 2009). However, today, the provision of affordable housing in Vancouver highly depends on the negotiations and partnerships between the City, the province, developers, and the not-for-profit housing providers.

General Process for 'the 20% Policy' Implementation

The City of Vancouver has implemented this policy through a standard set of practice (Wellesley Institute, 2010). First, the developers of a large project, usually 200 or more units, when applies for rezoning of the land from non-residential to residential use, the City identifies the lands and requires the developers to locate them for affordable housing. A legal document is signed between the City and the developer when a suitable land (equal to 20% of the base density of the development before the density bonusing is granted (CMHC, 2016)) is agreed and set aside for affordable housing developments.

¹⁷ The 'city held value' is calculated based upon the difference between the market value of the land set aside for the affordable housing prior to rezoning and the value the City would pay under its agreement with the developer for rezoning (Wellesley Institute, 2010)

¹⁸Since 1999, the City-wide CAC policy requires the developers to pay fixed rate of \$3.00 per additional square foot in the developments allowed by rezoning (City of Vancouver, 2015).

The developer works with a City approved non-profit organization in preparing a proposal and making a submission to the Province for affordable housing funding. Upon approval, the Province contributes 75% of the required fund¹⁹ for the purchase of the land and the remaining is borne by the City. The developer is then responsible for carrying out the provincial requirements which may include finalizing the design or construction contract (CMHC, 2016). The City purchases that land for 80 years at a value²⁰ based on \$ per buildable square feet, when all the provincial requirements are met (Wellesley Institute, 2010). The purchased land is leased to the non-profit organization known as 'sponsors' for at least 60 years (originally at 75% of freehold market value (Mah, 2009). The City then builds partnerships with developers and not-for-profit organizations, to build the units (Chang, 2009). Developer builds and transfers the building to the non-profit organization, which will then bear all its future management responsibilities. However, in a situation of no available provincial funding, "the developer must continue to submit the site to every subsequent proposal call until they are either granted funding or the City chooses to proceed with an alternate use of the site" (CMHC, 2016, n. p.). The City holds this option on a particular site for 80 years.

8.3 Condominium Projects and Affordable Housing Developments

Condominium developments in Downtown Vancouver did not flourish until the late 1980s, however, over the past two decades, the area has experienced a great rise in high/dense developments, particularly due to the rezoning of sites to residential use (CMHC, 2016). It was reported that, in 2009, in the downtown area there were about 27,000 condo units (approximately 1/3rd of the City of Vancouver) and 3630 under construction units (Yan, 2009).

¹⁹ Before 1993, the federal government provided 2/3rd of the provincial share (Wellesley Institute, 2010)

²⁰ The land value is "based upon the difference between the maximum cost ceiling permitted under the current subsidy program and the total development costs for the project"; and is about 60% of the market value (Wellesley Institute, 2010, p. 3).

During the end of 1980s, a number of private large redevelopment projects were introduced in Downtown Vancouver such as Expo site, Station/Lafarge and Coal Harbor²¹, where, the City through 'the 20% Policy' secured about the capacity of 2,200 affordable units that worth about 10-15 years of non-market housing (CMHC, 2016). Later, the area experienced an increase in a number of projects such as Bayshore, Coal Harbor, International Village and Concord Pacific. However, due to lack of federal and provincial funding, the City has started to accept in-cash contributions and permit alternate use of the secured affordable housing lands (CMHC, 2016). Reports show that till April 2008 a total of only 2037 affordable units could be built through all those developments (Mah, 2009).

8.4 Evaluating 'The 20% Policy'

Mandatory Approach

The mandatory approach of this policy strictly requires private developers to set aside a portion of land for affordable housing component, basically 20%, when they seek to develop high/dense residential developments. The local governments purchase the land by contributing 25% of the total purchase cost and lease that land to non-profit sponsors at a price 25% below the market value. Here, the developers are attracted to this policy because they can increase the density of their projects and also receive the amount for the land that is based on "the difference between the cost ceiling under the Provincial program and the total cost of construction including land" (CMHC, 2016, n. p.). The City bears no cost in affordable housing production.

Nexus Requirement

The City of Vancouver requires the land for affordable housing component to be located on the site or in areas surrounding the proposed project, something similar to a 'nexus' requirement in the City of Toronto (Moore, 2013b). The location and nature of housing units are often determined by the City, prior to the agreement with developers; hence, there is no or less possibility of the developers to influence the

²¹ Only in affordable housing component of the Coal Harbour area, also known as the Coal Harbour Co-op, 99 units were built on top of a parking garage that serves a nearby marina (CMHC, 2016).

setting and size of affordable housing units while developing projects. However, the City must examine the designated lands as well as constructions on those lands for the suitability of affordable housing (Chang, 2009).

Administration

Institutionally, Vancouver is different than Toronto. "Vancouver has a council elected at large, and an active party system" (Moore, 2013a, p. 6), hence, the councillors must have a vision for the City as a whole (not to a particular neighbourhood like in Toronto). Therefore, "parochialism" does not exist (Moore, 2013b). Also, BC has no authority equivalent to the OMB as in Toronto for the developers to appeal against the City's requirements of affordable housing or CACs (Moore, 2013a). Therefore, the City is relatively free to practice its policies and modify them according to the City's interest.

Ad hoc Process

Similar to Toronto, in Vancouver, the negotiation of affordable housing components in major residential projects varies from case-to-case; however, the City of Vancouver follows a rather systematic approach when exchanging affordable housing, for density bonusing (Moore, 2013b). The City uses a fixed rate target of \$3 per square foot for increased density for all "standard rezonings", except for those neighbourhoods identified as a unique neighbourhood under the City's CAC policy (City of Vancouver, 2015). However, in the case of Downtown or large sites, where non-standard rezonings are applicable, the city planning staff requires developers to provide proformas²² and identify a site for affordable housing component, when they apply for rezoning (Moore, 2013 b). Despite the developers are hesitant to such requirement, these proformas help the city planning staff to determine the increased value of the additional density and what portion should be contributed for affordable housing components and/or CACs for each project (Moore, 2013 b). After the location and portion of the contribution are agreed, then rezoning is permitted and hence, density bonusing is authorized.

²² "[a] proforma analysis determines the increase or decrease in profit resulting from the bonus density agreement. It is a standard technique that developers use to estimate returns on factors such as construction and borrowing costs, and expected market value" (Jenset, 2012 cited in Moore, 2013b, p. 11).

In-Lieu Payments and Other Options

A private developer transfers the site to the City at a value below the market price in exchange for density bonusing. With the funding from the senior level government, the developers are required to build affordable housing on that particular site. However, due to cuts in federal and provincial funding, the City needed to become more flexible and modify the policy to decide the best use of that site (CMHC, 2016; Moore, 2013b). Though it is stated that affordable housing is their first priority, in cases where they cannot agree with the developer on a particular site or the availability of provincial funding for affordable housing construction is absent, they may decide for the alternate use of the site (Mah, 2009). The City may consider cash-in-lieu on a site-by-site basis where the cash is used for developments of affordable housing in other sites; alternative non-market housing options such as non-subsidized life-lease housing; permit additional density to developers in exchange for affordable housing, especially on smaller plots; or lease the set aside land to the non-profit organization at no cost (CMHC, 2016).

9. Comparing Toronto's Section 37 to Vancouver's 'The 20% Policy'

Based on understandings of literature and practices of density bonusing regulated through S37 in the City of Toronto, the study of Toronto's database for S37 agreements, and a brief study of the 20% policy and its practice in the City of Vancouver, this section provides a comparative analysis of voluntary and mandatory approaches used for authorizing additional height/density to the major residential developments in the country. This paper understands that although the selected policies support high/dense residential developments, they are different in many aspects - Vancouver's policy is strictly used for inclusion of affordable housing, whereas Toronto's S37 is used not only for affordable housing but also for varieties of other communal benefits. However, these policies are used to examine the success of two approaches for inclusion of affordable housing in high/dense residences. Both the policies are examined against some assessable categories (such as threshold size, tenure types, and length of affordability), measurable outcomes that define how well the objectives have been achieved (such as the total number of affordable housing units and in-lieu contributions) as follows:

Table 1. Comparing Policies for Density Bonusing and Inclusion of Affordable Housing to High/Dense Residential Developments in Downtown Toronto and Downtown Vancouver		
POLICY CATEGORY	SECTION 37-TORONTO	THE 20% POLICY-VANCOUVER
Approach	Voluntary	Mandatory
Study Period	1983 - 2014 (32 years)	1988 - 2009 (21 years)
Threshold Size	Projects that require rezoning for density bonusing	Major Projects ²³ (due to rezoning to residential use)
Tenure Type	Rental and Ownership Units	Rental Units
Process of Negotiation	Ad hoc. Uses no standard logic for community benefits extraction. (See Section 7.3 of this paper.)	Ad hoc but uses standard approach when securing affordable housing. (See Section 8.4 of this paper.)
Funding Source	Developers are required to build the units; and sell or transfer the units to non-profit organizations for renting, at a below-the-market price.	The City contributes 25% of land costs (remaining by the Province); Developers get funds from the Province for affordable housing constructions and, after completion, transfers them to non-profit organizations or 'sponsors' for further administration.
Length of Affordability	At least 20 years	At least 60 years
POLICY OUTCOME	SECTION 37-TORONTO	THE 20% POLICY-VANCOUVER
Percentage of Projects that included Affordable Housing	34.3% (35/102)	100%. However, in projects where there is no possibility of senior government funding, some affordable housing sites may be lost against in-lieu payments.
Number of Affordable Housing Units Secured	501 rental units, 8 home ownership and 107 mid-range housing	More than 2,200 units which calculated to be worth about 10-15 years of non-market housing units.
Success rate in inclusion of affordable housing	Very low (from data study)	High. Affordable housing component is for core need households and low- and medium- income households.
Possibility of No or Less Production of Affordable Housing	Yes. <ul style="list-style-type: none"> Highly subjective to Councillors' discretion OMB may overrule the affordable housing requirement when appealed by developers if the requirement does not show any clear 'nexus'. 	Yes. <ul style="list-style-type: none"> When there is no funding available from senior government
Provision for In-lieu Payments and Off-site Production	Yes. However, the money may be used for other community benefits or amenities.	Yes, only when the development of affordable housing is not possible due to lack of government funding, the land is sold back to developers for market-price housing.
Provision of In-kind Contributions	Yes.	No. All the developments must set aside lands for affordable housing component. While, in the smaller sites, the units are included within the developments.

²³ There is no strict definition of "major projects" but the term generally refers to fairly large projects that create a new neighbourhood (City of Vancouver, 2009 cited in Mah 2009).

From the comparative analysis, this research finds that it is difficult to choose whether Toronto's voluntary approach or Vancouver's mandatory approach is more efficient for the production of affordable housing in City of Toronto since the designs of the policies for the two approaches are very different. However, the analysis has highlighted some very important features as follows:

Classification of Benefits

Where Vancouver's policy strictly secures affordable housing from all the rezoned residential developments, it is one of many types of benefits that are secured from developers in Toronto (See Appendix 4). Since the classification of benefits is not limited to affordable housing in Toronto, the first indicator of policy outcome in the above table shows that there was only 34.3% of total S37 agreement that generated affordable housing of some form. Whereas, in Vancouver, all the developments contributed for affordable housing. As a result, even after three decades of its implementation, S37 locked less than one-third of the total affordable units than Vancouver achieved in two decades.

Key Player(s) for Funding of Affordable Housing and Their Roles

Key players who fund for the development of affordable housing and their role are dissimilar in two cities. While in Toronto the production of affordable housing is borne by the developers, funding from the upper level government is a key component for Vancouver (Mah, 2009). However, analysis of the policies identifies that both the policies have some possibility of no or less affordable housing production. In the case of Toronto, it was found that most of the S37 agreements chose visual amenities and/or in-lieu payments over affordable housing and hence, the production was a smaller amount. This may be probably because visual amenities and cash contributions are easily negotiable and are in best interest of developers (as well as local authorities) (Moore, 2013b). Or, as noted earlier, developers are less likely to support affordable housing due to their concerns (or misconceptions) if councillors do not strictly advise for it. As well, if the developers are strictly advised for inclusion and if they estimate that the costs of inclusion would reduce the returns on investment or if the estimated government incentive is not sufficient to overcome anticipated reduction in the returns, they would rather sacrifice the project

altogether (Evans, 2009; Chang, 2009). Further, upon their appeal to OMB, if the City's affordable housing requirements do not bear a clear 'nexus' to the development, the developers may not be required to build or contribute to the affordable housing production. Whereas, in Vancouver, the province does not have an authority equivalent to OMB, hence, the developers are strictly required to set aside the lands for affordable housing component. As a result, the City locked plots for more than 2,200 affordable housing units in the downtown core. However, in the absence of senior government funding, some of those units could not be built (CMHC, 2016). In addition to that, Vancouver lost some of the affordable housing sites to developers for market housing developments when funding was not available, in exchange for some in-lieu payments. (Mah, 2009).

Administration and Monitoring of Agreement Process

Institutionally Toronto lacks a party system and elects its councillors by ward (Moore, 2013a). Therefore, ward-based councillors play an active role in administering and monitoring the agreement process and how the contributions should be allocated (City of Toronto, 2011). Although the implementation guides to S37 agreements requires councillors to consult with the city planning staff, councillors in their authority to decide the potential list of community benefits from developers, may simply ignore the staff's objections, as a result, it is argued that most of the time, S37 agreements highly depend on councilors' discretion and political interests (Mah, 2009; Moore 2013b). Also, the contributions are locked on a case-by-case basis but there is no standard logic the councillors are required to follow for securing a type(s) of benefit from a particular category of developments and hence, production and contribution for affordable housing is not consistent (Mah, 2009; Moore, 2013a & b). For example, a condominium tower may include some affordable housing units but a similar may not even have a single unit. On the other hand, Vancouver has an active party system and council elected at large. Councillors and the staffs are largely insulated from any political involvements (Moore, 2013a). Further, the process of negotiation in Vancouver is also on a case-by-case basis; however, the City uses a systematic approach for estimating contributions from the major residential developments in the downtown core based on

proforma submitted by the developers. The City determines the increased value of the development based on proforma analysis and seeks to secure 70-80% of the increased value for affordable housing and/or CACs through negotiations (Moore, 2013b).

Provision and Management of In-Lieu Payments and Off-Site Land Dedication

Developers often have the option to negotiate imposed community benefits for in-lieu payments or off-site land dedications in Toronto. Where it limits the inclusion of affordable housing units into high-rise developments in the Area (Mah, 2009), it also raises the controversies on the actual use of the monies collected (Keenan, 2015). While some argue that the collected funds should be pooled and spend across the City in areas of need, others disagree to it saying that using the funds towards neighbourhoods other than the one where they were collected would misguide the actual logic of the policy (Keenan, 2015). (The whole logic of S37 agreements is to compensate for the changes brought in due to a specific development in a neighbourhood (Keenan, 2015; McFarlane, 2009)). However, whatsoever would be the case, Moore (2013a) argues that from the total cash payments that are pooled to the City's Capital Improvement Funds, only 6% have gone toward affordable housing in different parts of the City. Whereas, in Vancouver, provision of in-lieu payments exists only when the development of affordable housing is not possible due to lack of senior government funding (Mah, 2009). In this case, the land is sold back to developers for development of market-price housing.

Provision for Affordable Housing Ownership

The comparative analysis shows that both the policies, voluntary or mandatory, support inclusion of affordable rental units in rezoned residential developments for average income households in the study areas. However, only Toronto's policy secures affordable ownership housing, albeit the ratio is very small. Where the Area is growing with the ownership share, from 19% in 1996 to 35% in 2011 (City of Toronto, 2014b), the data study raises an important question that will it be possible for these household to own a house, suitable and adequate, in the Area in upcoming years? A similar question can be posed for Vancouver Downtown since there is no provision for affordable housing ownership at all.

Length of Affordability of Rental Units

The affordable housing units secured in condominiums in Toronto and Vancouver has a limited duration of affordability. While Toronto had a period of 10-20 years of affordability for the secured units, Vancouver's affordable housing units were affordable for 60 years. In other words, the length of affordability of secured rental units in Vancouver is at least equal to 3 times of that in Toronto.

Voluntary Approach or Mandatory Approach?

Where Toronto's voluntary approach does not seem to be successful in working in favor of affordable housing inclusion in growing condominium developments in the Area, Vancouver's mandatory approach has also not been able to meet its growing affordable housing needs in the downtown core (Mah, 2009). Therefore, to choose one approach over another, for affordable housing, will not be rational. From the comparison of the policies, it can be supposed that the mandatory approach proves to be more efficient than the voluntary approach because, at the least, it secures affordable housing component in each development. Vancouver's mandatory policy seems to promote and protect the general concept of the inclusionary housing policies (which is the social inclusion of diverse income groups), provided that the policy is supported by senior government funding (Mah, 2009).

10. Conclusion and Recommendations

Production of housing units that are in a long run easily accessible and affordable to all its residents is a major focus of Canadian land-use policies and legislative framework. With the unpredictable and inadequate role of senior governments in housing production, followed by limited available funding sources, the City of Toronto is continuously exploring many different types of programs to address its growing needs for affordable housing in its major urban centers, particularly Downtown and Central Waterfront area. One of such inclusionary provisions is density bonusing policies regulated under S37 that permits additional height/density to developments and, at the same time, promotes mixed-income neighbourhoods. Although the Area is growing with various "desirable visual amenities" by reason of S37 agreements (Moore, 2013a & b), however, these policies have not fundamentally worked for the affordable housing delivery (Mah, 2009; Gladki & Pomeroy, 2007; Keenan, 2015). While the City's Official Plan gives first priority to affordable housing among the other benefits (Ontario. MMAH, 2011), this research finds that it has not been the case in actual practice. The delivery of affordable housing in the Area has been very low when compared to the demand, and only one-third of the total agreements for density bonusing, since 1983, have included affordable housing in some forms. As well, the policy, S37 has many limitations in itself and also when it is compared to a similar case, Downtown Vancouver. Therefore, this paper views that the current status of S37 is perhaps not designed for securing of affordable housing units in (and from) high-rise residential developments. In the situation of no other strong source for affordable housing production, the City must explore long-term feasible and practical alternatives for developing, improving or replacing the existing practices of S37, so that continuous production of affordable housing could be achieved (Mah, 2009, Keenan, 2015, Moore, 2013b).

Based on the research understandings and findings, this paper suggests a few recommendations that are needed to be considered by the City while reforming or replacing its existing inclusionary policies for affordable housing developments as follows:

Standard/Pre-defined Process for Community Benefit Analysis

While the City defends S37 as a valuable tool, many would criticize that its efficiency actually depends on councillors' discretion and their political interests (Moore, 2013b; Keenan, 2015). This is a lot due to the fact that the City does not have a standard or pre-defined baseline for S37 agreement (Moore, 2013a & b; Keenan, 2015). There is no legitimate description for how the process should work, and what and how much of the benefit(s) should be expected from a particular type or size of development (Mah, 2009; Moore, 2013a & b). Including a standard description of baseline for the participation of developers and the City, as well as a negotiation between them would then increase the transparency in the agreement process and limit the role of councillor as a dictator for the 'wish list' of benefits. It would also enhance the roles of planners and communities - that are directly affected by the development - during the process for securing benefits from the developers.

Funding Source

Finding a funding source is another biggest challenge to the City. As mentioned earlier in comparison analysis, the production of affordable housing in both the approaches is not possible when there is insufficient funding from senior government (see second analysis - key players for funding- in Section 9 of this paper). Vancouver, in the absence of government funding, per chance loses the affordable housing land to the developers against some in-lieu payments. While this is not the case in Toronto, however, the City is likely to lose the overall housing project in the region when developers do not recognize the desired investment returns. Therefore, for a new improved policy, to deal with such cases, the City is required to develop lasting partnerships with private developers, or demand appropriate funds from senior governments for the provision of more incentives to those developers (Evans, 2009).

Limit Provision of In-lieu Payments or Off-site Production

Density bonusing gives developers/the City an opportunity to make/accept in-lieu payments or off-site production of affordable housing (or any other benefits) during the negotiation process, which is another factor of S37 for criticism. The funds collected are pooled to the City's Capital Improvement

Funds where there is possibility that the funds are spent in other parts of the City than in the area where the development is happening (Moore, 2013a), and off-site production of affordable housing also mitigates the chances of its inclusion in the development as well as the neighbourhood where it is occurring. This is not the actual logic/purpose of the S37 or density bonusing (Moore, 2013a). By purpose, S37 agreements are made to deliver community benefits including affordable housing as a consequence planning impacts due the developments and are required to be provided in the vicinity or near the development site. Therefore, the improved policy is required to strictly support the use of funds in the surrounding areas of the developments and limits the possibility of off-site production, in more systematic ways, to support the production of affordable housing.

Revision of Approach

It is recognized in the literature, as well as supported by this research through data analysis and comparative study, that the mandatory approach proves to be more efficient than voluntary approach when it comes to generating affordable housing (Mah, 2009; Moore, 2013b). Toronto's voluntary approach can only attract private developers, (and to some extent, councillors), to participate in the density bonusing program, whereas Vancouver's mandatory approach strictly requires their participation and contribution to affordable housing when there is an application for rezoning to residential use (for additional density). However, revising the tool for a mandatory purpose may not possible because institutionally Toronto is different from Vancouver, and there are a lot of chances that the City would have to deal with OMB when developers disagree to the City's requirements. Therefore, a strong policy framework needs to be built, revised or reformed for the City such that any requirement imposed would not be challenged by the provincial board.

Replacing S37 with Alternative Inclusionary Policies?

One of the most promising tools to replace S37 in Toronto for the production of affordable housing is Inclusionary Zoning (IZ) (Mah, 2009). IZ is an inclusionary policy that has been widely adopted for production of affordable housing in U.S. municipalities for more than 30 years (Clayton and

Schwartz, 2015; Lerman, 2006). Similar to S37, IZ can be a mandatory or voluntary process which requires production of affordable housing units from private high/dense developments in exchange of density bonusing. It also requires those units to be maintained affordable for a certain period of time. However, IZ places deed restrictions on a portion of the total units in new residential and commercial developments strictly for affordable housing (Lerman, 2006), while S37 considers extractions of many other community benefits than just affordable housing. Therefore, in the context of Toronto, particularly the Area, where residential and commercial constructions are rising, IZ is deemed to be a potential tool that could help improve the current situation of the affordable housing crisis in the City (Mah, 2009).

Currently, the provincial government in Ontario is authorizing municipalities to mandate private developers set-aside certain percentage of new residential units for affordable housing (Monsebraaten, 2016). However, in some U.S. cities where IZ has efficiently produced affordable housing, in others it has been very less effective (Clayton and Schwartz, 2015). The efficiency of IZ in any municipality totally depends on the cities' existing housing market, the regulatory administration, and the design of the IZ policies (See Clayton and Schwartz, 2015). Studies also show that, in some cities, the production of affordable housing through IZ has not been possible without any additional subsidies from government (Clayton and Schwartz, 2015). Therefore, in the context of the Area, where the City is experiencing deficit in funding from senior level government and increase in other local needs, future research should be done to examine the efficiency of IZ as a tool for affordable housing production.

Appendices

Appendix 1: Details of Section 37 Agreements in Different Wards in Toronto Downtown and Central Waterfront Area that supported Affordable Housing of Some Form (1984 to 2014)

Wards	Year	Section 37 Agreements		Affordable Housing (Rental and Ownership)			Social or Assisted Housing		Capital Improvements to TCHC	Capital Improvements to Public Housing
		Total	Contribution to Affordable Housing of Some Forms	%** from Number of Projects	Units	Cash	Units	Cash		
19	1984	0								
	1985-1989	1	1				200			
	1990-1994	1	1					120,000		
	1995-1999	2	2	30% from 2	248					
	2000-2004	4	2							
	2005-2009	3								
	2010-2014	0								
20	1984	0								
	1985-1989	4	4		10		109	200,000	120,000	200,000
	1990-1994	0								
	1995-1999	1	1							
	2000-2004	2								
	2005-2009	9	6			495,000				110,000
	2010-2014	31	29		7	8,041,950		100,000	1,320,000	830,000
27	1984	0								
	1985-1989	2	2				124	1,360,000		
	1990-1994	3	3			1,385,000				
	1995-1999	2	2			200,000	225	1,000,000		
	2000-2004	1	1		27					
	2005-2009	1	1			610,709				
	2010-2014	17	10		8	6,656,800			440,000	
28	1984	1	1				163			
	1985-1989	6	6	30% from 1			531	11,630,000		
	1990-1994	2	2				46	1,080,000		
	1995-1999	1	1	30% from 1	182					
	2000-2004	0								
	2005-2009	4	4			500,000	2,083			
	2010-2014	2	1		11					
30	1984	0								
	1985-1989	0								
	1990-1994	0								
	1995-1999	0								
	2000-2004	0								
	2005-2009	0								
	2010-2014	2	1			500,000				
Total		102	81		493	18,389,459	3481	15,490,000	1,880,000	1,140,000

** See Appendix 3 for Details

Appendix 2: Section 37 Agreements and Cash Contributions for Affordable Housing of Some Form*
(1984-2014)

Years	Total Section 37 Agreements with Affordable Housing of Some Form	Total Section 37 Agreements	Cash Contributions for Affordable Housing of Some Form	Total Cash Contributions
1984	1	1	0	0
1985-1989	13	13	13,510,000	16,335,000
1990-1994	6	6	2,585,000	3,700,000
1995-1999	6	6	1,200,000	2,331,440
2000-2004	3	7	0	6,694,534
2005-2009	11	17	1,715,709	29,071,840
2010-2014	41	52	17,888,750	90,721,765
Total	81	102	36,899,459	148,854,579

* May include Social Housing, Subsidized Housing, Low-end-of-market Housing and Assisted Housing

Appendix 3: Section 37 Agreements for Affordable Housing with Description of Benefits

Description of Benefits	Ward - Year	Affordable	Mid-range	Others*	Total Affordable Housing Units	Cash
Rental Replacement Units for at least 20 Years	27-2004	7			7	
	27-2004	27			27	
	28-2005	10			10	
	27-2012		100	90		
	27-2013	5	7		5	
	28-2014	10			10	
	28-2014	11			11	
	20-2014				517	
Total		70	107	607	70	
Ownership Housing	27-2013	8			8	
Rental Units Demolished	27-2005			12		
		Cash-in-lieu (CPR for Affordable Housing)				\$310,709
Conveyance of Condo-registered Affordable Rented Units to Non-profit Housing	20-2013			12		
Conveyance of land to the City for Social Housing Units & Payment for Construction	20-2013			109		
		Payment for Construction				\$200,000
30% for Low-end-of-market Housing for a Minimum of 20 Years						
21 Grand Magazine, FYN Block 5 (formerly 620 Fleet St)	19-1996	(325 X .30)			98	
38 Grand Magazine, FYN Block3A (formerly 620 Fleet St)	19-1996	(502 x .30)			151	
30, 33 Bay Street, 10 Yonge St	28-1986			(1771 x .30) = 531		
7-25 Queens Quay East	28-1996	(607 x .30)			182	
Total			107	716	509	\$510,709

* May include Social Housing, Subsidized Housing, Low-end-of-market Housing and Assisted Housing

Appendix 4: List of Community Benefits Secured by the City of Toronto in the Downtown and Central Waterfront area

1	Parks (including related benefits such as playgrounds and other forms of open spaces)
2	Libraries
3	Community improvements (a generic term used on occasion by the City)
4	Roads and streetscapes
5	Community and recreation centres
6	Public housing improvements
7	Affordable housing
8	Design project and area studies
9	Community services (including seniors' centres and daycare)
10	Three-bedroom units
11	Environmental improvements
12	Heritage preservation and related benefits
13	"Underground" benefits (PATH system, or improvements to subway stations)
14	Rental replacement
15	Arts and cultural facilities
16	Public art
17	"Others"

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