

**Amenities for Density: Section 37 of the Planning Act**  
**a presentation by Larry Beasley,**  
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I'm really glad to be here to participate in this event, and I hope that Jane Jacobs' spirit will inspire us all as we have this discussion. I feel a little like what in anthropology is called a "resident stranger". In African villages, when someone comes in who's not really a part of the community, sometimes they can talk about things that people in the community can't talk about, because if you're in the community and you talk about it, you get your head cut off. But if you're coming from outside, you can talk about it. But the other side of the coin is that when you talk about it, it doesn't really matter, because you can leave the next day. And I do believe, fundamentally, that what works in one city doesn't necessarily work in another city. Every city has to do things their own way.

What I'll be offering today are comments about the experience we've had in Vancouver. You'll have to decide what of that is relevant for Toronto and what messages there are for your city.

I'll start by declaring very clearly that I am a strong advocate of achieving public goods and public equity through the development approval process. It's a bias that runs through all the rest of my presentation. And I'm not happy about that, actually. Because I don't believe that we should have a system for funding municipalities that causes us to have to do this. I believe we need a better way to fund things in municipalities across our country. But, unfortunately, history and the wise people of the country are not prepared to give us more ways to fund things. And so until something better comes along, we are going to have to fund public amenities and other public goods that we need through these kinds of mechanisms, because if we don't, we simply won't have those things.

And so I'm an advocate almost by accident, or in spite of my deeper feeling, that there needs to be, as some countries of the world have determined, better ways to bring money to the municipal table so that you don't have to go hat in hand in any process, especially the process that I'm going to talk about.

And while I am a great advocate for the bonusing that we'll talk about, I'll start by also declaring that it's a very tricky business. It's fraught with potential pitfalls, and those really have to be looked at. It's, on the one hand, a very attractive source of income in this world where we have very few other sources. Secondly, it can help to make new development much more palatable to people in a community if you can bring some wealth and equity out of that development and invest it back into the things that are needed in a community. BUT, it's very, very hard to manage and it's subject to both political and bureaucratic abuse if not managed well. It has often been blamed, in reviews and evaluations that have been done, for a diminishment in the quality of cities – and I'll get into why in a few minutes – because of the fundamental thing

that happens, which is in order to get the goodies, where there are a lot of advocates for getting the goodies, there is a trade-off of the quality of the city and of the development that occurs.

Also, developers often feel over a barrel in these kinds of negotiations. They feel like they're being robbed. And I've actually seen cases where they *are* robbed in order for these things to occur. Or they can feel the process is extraordinarily capricious, as it takes and uses the wealth that they are creating through their development.

And the result is that there have been all kinds of positive and negative experiences around North America with bonusing. It's not easy to say that bonusing is the way to go and we're all doing it a certain way and good for us and we've solved the problems. In fact, it's the opposite. These systems tend to be very controversial everywhere, and that makes them very difficult to deal with.

I think I've been asked to speak about this coming all the way from Vancouver because we do have a very rich and full bonusing system in the city that has been in operation for a long time – 35 years or more – and it is essentially not controversial. It's not been debated in a civic election for the last five or six elections, and it's basically accepted as integral to the way we do the business of the city.

I want to give you some facts about the system, and I want to highlight a few issues that we've had to address and a few principles that have come out of addressing those issues in order to make our system work for us along the way.

But first, I'd like to go back to the very basics. The rationale upon which bonusing is based is two-fold. First, the public decision to confer increased development rights increases land values. And it is defensible that there should be some sharing of those increased land values between the public sector and the private sector. I think that it is acknowledged not only philosophically, but also in the law, that it is logical that there should be some sharing, of that land value increase, which is basically a windfall.

The second is when new development occurs, there's no question that there is an obligation to resolve negative impacts of that development in a community. Not just the direct impacts, which are obvious, like managing the traffic or the view losses, etc., but also the indirect impacts, the increased demands that are put on the civic services in a community by virtue of that new development happening. Bonusing is really about the *quid pro quo*. The tender at play is pretty simple and obvious. On the one hand, the developer's tender is cash or in-kind contributions of public goods, and the municipality's tender is density and/or height and/or land use flexibility, all of which obviously have great value to the developer because they create more product to sell.

So public goods can be leveraged – I prefer to say offered up – by mechanisms within zoning or through rezoning. Mechanisms within zoning generally require specific kinds of legislative authority, such as, in Vancouver's case, our charter provisions that allow us to do discretionary zoning. Rezoning, on the other hand, is often done without that enabling legislation

through common law practice and long practice, and is often not codified in a way that allows most people to really understand what's happening.

I understand you have Bill 51, or there's a bill pending now, that's starting to address that, and it may be one of the first bills to do so. Elsewhere in North America, that moment of rezoning is an open discussion about everything, because municipalities have the right not to allow rezoning. And that powerful right sets up a dynamic of power that allows this open discussion to occur. I'm not going to talk much about rezoning today, but never forget that it is in this area of rezoning where the concept of bonusing really first started to be framed.

In Vancouver, we call those public goods that are achieved community amenity contributions. They are not requirements. They are expectations. There is a fiction that they are free offerings in the same way that the new zoning is a free offering by the municipality. And the public equity is used for a very wide array of public goods: heritage, cultural facilities, social facilities, especially child care, social housing, parks, family housing, transportation improvements, and frankly anything that the community thinks of from time to time that they feel is needed. There is a relationship between that need and that development that's occurring. It is what's needed to cope with that new development.

The circumstance is clearly more constrained and codified when you work within zoning and the mechanisms within zoning because of this enabling legislation. In addition to cash payments and development cost charges (which every developer is paying for and which are being used for things like parks and childcare, etc.), we have a system that enables a minimum zoning to go to somewhere up to a maximum zoning. This is accomplished through the discretionary zoning decision when bonuses are offered. And in that, we can offer extra density, extra height, and different land uses, parallel to the developer offering a contribution of public goods.

We do this really in two ways. One is with several uses that we believe are, in themselves, public goods, like social housing and childcare, we simply allow more density for those than for private developments on the same site. So they can go out and they can buy sites more cheaply than they otherwise might, and that's the benefit. But what's probably more relevant to today's discussion are the specific provisions within the zoning to give more development capacity to a particular site under particular circumstances in exchange for public goods of a particular type that are specifically outlined in that zoning.

In Vancouver, bonusing within zoning is allowed for heritage preservation and for the provision of cultural, recreational and social facilities. That's the way it's stated in the zoning and, as you can imagine, those words allow a pretty wide range of cases, and we push those edges as far as we dare.

A further mechanism within zoning that facilitates the use of bonuses, but often represents a bonus in and of itself, is the transfer of density, whereby you can sell the density from one site to another site, and by virtue of that you can preserve heritage, open up park spaces, or achieve better urban design relationships among buildings.

So, in a nutshell, that is how our system of bonusing works and the extent to which we have bonusing, and in Vancouver the results have been wonderful for us. We have obtained hundreds of millions of dollars of public goods over the last 25 to 30 years: things such as an art gallery, an international film centre, a dance centre, childcare facilities, theatres, upgrading of public spaces, and many, many other things. And we have saved hundreds of heritage buildings that we otherwise would have had no way to offer compensation for – all without the investment of one public tax dollar.

Now, it has taken us a long time to shake down and refine this system, both within the zoning and through the rezoning. It really consolidated for us back in the '80s and it's a constantly evolving system. It is constantly being adjusted for new circumstances, which I think is a benefit, but also can be disconcerting for people that are engaging with the system. But we have found that there are an array of issues that we had to deal with because they were so deterministic in whether or not our system would do what it was supposed to do with a minimum amount of impact, and whether or not the system would stay robust and viable over time. It was out of dealing with these issues that some principles emerged and I want to cover those quickly.

The first, and I think really the most fundamental issue, is that tendency to trade off quality of your city to get the public goods that are so desperately needed. Everyone wants to get those public goods, and there's not enough public money to buy those goods, so it's very easy to talk yourself into trading off the quality of your city. And we all know that even the best efforts – and I'm a great advocate of densification and dense, intensive development – but even the best efforts of density and height can have negative effects on people. And if you open these issues up casually the results, frankly, are that the quality and the character and the liveability of your city can suffer dramatically, and very specifically and very directly. And this creates a clear political vulnerability to bonusing systems and it's this one issue that often causes bonusing systems to be closed down by the next political group that comes in, brought to power to do that very thing, because of those negative impacts.

To cope with this issue in Vancouver, we decided that all judgements about a potential bonus are made after an urban design assessment determines that there is room comfortably for some extra development on a site. And after that initial urban design assessment is completed – usually by people who are not directly negotiating the bonus – we never revisit that issue in the context of the bonus negotiations, because it's a very slippery slope once you start to talk about those issues, and you will ultimately sacrifice quality. And the principle that has emerged for us is that the urban design considerations come first and they're non-negotiable within the bonus negotiation. We simply will not trade off urban design quality or character or liveability for any public good, no matter how delicious it is.

A second issue – a major administrative issue that if not handled well can strike at the very heart of the attractiveness and viability of bonusing – is how you determine the bonus. In Seattle, for example, they have very set rates. For a defined public good you get a defined amount of extra density or extra capacity, whatever that might be. And this is clearly pretty simple, it's pretty understandable, and therefore it's pretty appealing. But it does hit you with a number of problems that we found were really troublesome. The tendency is to engender – and this has been seen over and over again – huge windfall profits. You end up giving too much

density and extra capacity for the public goods that you get. Or contrarily, and this often happens as well, lots of good developments are foregone simply because the equation becomes uneconomic in the particular sense. Or the developer can feel quite oppressed by the equation.

One of the things that has been noticed, and it was alluded to in New York's case, but also San Francisco's case, you end up often getting too many of one kind of public good that actually people don't want all that much, and not enough of another kind of public good that people need desperately, and you squander this opportunity for something quite modest. The example of tiny open plazas is one that swept North America in the '70s and the '80s, when there were more plazas being offered up than you could shake a stick at, and none of them particularly were very good or very useful, but a lot of density was offered up for those plazas.

The alternative, as we practise it in Vancouver after very hard experience – and which, by the way, when I'm talking to an American audience, gets everyone very upset and very revved up – is that we negotiate every single bonus through an explicit pro forma analysis of the cost of the public good and the value of the extra development allowance that is being given. We sweeten that equation to acknowledge the complicated process and the hassle and the difficulty that the developer is put through in doing this, but at the end of the day, we know exactly what values are at play and this is very important. For us there is no set formula for a bonus.

Secondly, in this pro forma, we never ever touch developer profit, because we know that a project falls apart if the developers do not have their profit. What we share in is the increase in land value that comes from that public decision to densify. And even there, we leave a fair amount of that land value on the table to acknowledge that there are different levels of risk that a developer faces in different projects and different places. So in some cases, we might share about 50% of that increased land value; in other cases where we're sure there's very little risk and the developer will acknowledge that, we might take as much as 90% of that increased land value. And it varies with every project.

This approach does rein in the aggressive bureaucratic demand for goodies. It keeps the developer comfortable because it doesn't endanger the basic economic viability of their project, and it minimizes the giveaways so that you can do more of this across your city for a much wider array of public goods. The principle is that the bonus is based upon a specific economic situation and real costs, tightly calibrating what's given and what's received on both sides of the equation. And we make those numbers available to anyone who wants to see them.

Now, the Americans say, “My God, you're showing my numbers, those are proprietary,” but anyone who really knows anything about this, knows that anyone can do a pro forma of any development at any time; it's not very mysterious. And there is very little that I would call proprietary in the equation.

Of course, a really big question is what do you bonus for? Some systems actually fall apart because cities try to make bonusing an alternative to regular tax income. So the amenities that are being talked about are things either that people don't want or things that really should be paid for in the normal taxing agenda, that is, in the normal budget of the city.

Another big problem is that often things are bonused that people can't even see or can't understand. And other systems are endangered, frankly, because they're driven by the personal tastes and the political needs of a particular politician. And you are in a system, I will say humbly and respectfully, with ward councillors, which is more prone to this than other kinds of systems.

To manage these questions in Vancouver, we've evolved a certain set of attitudes about these discussions. First, for things that we really believe need to be in a development, we make them a requirement. We don't talk about bonusing, or say you might do them or you might not do them. We just say that they are requirements and we don't deal in bonusing. And that's clear for a developer. It goes into the original pro forma which, as you know, is a residual land value analysis that tells them what they're prepared to pay for the land.

So, for example, we don't bonus for good design. We have a few exceptions to that early in the system, but by and large we don't. We don't want to bonus for green building construction. We're saying that, by this time next year, every building will be a green building in the city. And we don't bonus for things like public art. If we want these things, we simply make them a requirement.

Secondly, we bonus from a set of standards and policies for public amenities and public goods, so that we're always working from a very clear corporate perspective, that is, a municipal corporate perspective, to define what we negotiate for. So we don't say, I think we want this, or something else, and maybe it's a party in the park or something like that. We're talking about what this delivers in regard to one of many strategies to deliver all the public goods that are needed to handle growth, and that's what we target in the negotiations.

Thirdly, within City Hall itself, we broker among all the demands for public goods to make sure that there is a relative equity among all the needs that are out there and we have a very strong, important staff committee that's always checking: are we putting a little bit too much into heritage? Should we put some more into social housing facilities, or something else?

Fourthly, we always listen carefully to what the developer would prefer to invest in. Sometimes there's a natural fit between a public amenity and a particular kind of project. For example, childcare with family housing, or in one case a symphony school next door to a symphony hall. And then we like to enjoy those natural associations, and of course, that fosters more enthusiasm by that developer when they make that contribution.

Fifthly, we try to listen carefully to what nearby community needs and preferences are, through a process of talking with community people early on about what amenities are necessary in the community. We ask what's most desirable for investment in this community. And we try to then put the focus there, because it helps people in the community see that there can be some positive impacts from a development, not just the negative impacts that they're trying to cope with on a day-to-day basis.

And lastly, we bonus for public goods with what I call a long-term quality, because the greater development allowance certainly has a long-term quality. So, we seldom bonus for

programming. We have a bias for capital projects. Sometimes we associate that with an operating or programmatic endowment. We avoid tiny things that get lost in the shuffle. And all the public goods that we bonus come clearly and firmly into public ownership and public control, so that, over the long run, if that public use falls by the wayside, doesn't work, or is not needed, the public can use that public equity for something else that is needed. And the principle of all this is that there is an explicit agenda of public expectations that guides the process, not freestyle negotiations.

And then we get to the somewhat contentious question of who should do the negotiations. Who and how this happens can foster or endanger the credibility of a system and it affects its sustainability. In the jargon of the street, people would say, "Is it a clean system?" Respectfully, to any elected official that's here today, we in Vancouver responded to this concern by keeping negotiations strictly out of the hands of politicians. The council sets the policies and they approve finally, in public session, all of the bonuses; but they're not a part of the negotiations. We try to avoid those intimate, personal negotiations that have, frankly, plagued many of the systems around North America. This helps to maintain the focus on corporate policy and the management of equity among all kinds of public goods, but it also depersonalizes the system which cuts down, frankly, on abuse.

It also moderates the sense of this being about buying and selling density. Because councillors focus on the zoning question, all the pros and cons of that zoning, and the negotiations on the bonuses are done separately, ultimately bringing that in as a package for the council to take it or leave it. And the principle of all of this is that government leads the negotiations, not individuals. It's a very important difference in style between many systems.

One sees a lot of academic debate about whether or not bonusing is about requirements or about a free offering of public goods. I've come to the conclusion that, if your system is designed well, this is a bit of a red herring. A good bonus system is about a balanced and positive *quid pro quo* where everyone feels that they have achieved something positive in the process. The city gets the public goods and amenities that it has few other ways to pay for; the developer enhances his or her private market offering with a community infrastructure which is very attractive to consumers, but which, frankly, can't often be provided by that developer independently; the community gets some of its deficiencies dealt with. And we've found that there is genuinely a partnership that does have to come together to deliver a quality community by government and the developer and the community participants, and this partnership creates genuine value in the development pro forma that then gives the developer the ability to offer something up to the public through the system.

People will pay more for a whole community, for a complete community. They don't like it when they are in an office or a retail outlet or a home that's isolated from the things that are needed, in support terms, by them on a day-to-day basis. So if the process doesn't rip off developers, then they can reap its benefits and they become its supporter. If the process is not a give-away to developers and protects the quality of the community, then citizens can enjoy its benefits and they become its supporters. And if the process yields valuable results without political fallout, then the municipality and the political leadership can enjoy the benefits and they

can become its supporters. And then you have a sustainable system with the kind of equilibrium that is the envy of any government program, anywhere, at any time. Thank you.