

Consolidated Clause in Audit Committee Report 4, which was considered by City Council on December 14 and 16, 2005.

3**Let's Build Program – 3810 Bathurst Street and
1555 Jane Street**

City Council on December 14 and 16, 2005, amended this Clause by adding the following:

“That the following staff recommendations contained in the Recommendations Section of the supplementary report (December 5, 2005) from the Chief Planner and Executive Director, City Planning Division, be adopted:

‘It is recommended that:

- (1) City Planning staff be directed to always consult with the Ward Councillor in negotiating Section 37 community benefits with developers/owners; and*
- (2) City Planning staff always be involved in discussing or negotiating Section 37 community benefits with developers/owners.’ ”*

This Clause, as amended, was adopted by City Council.

City Council on December 5, 6 and 7, 2005, postponed consideration of this Clause to its special meeting on December 14, 2005.

Council also considered additional material, which is noted at the end of this Clause.

The Audit Committee recommends that City Council:

- (1) adopt the staff recommendations in the Recommendations Section of the report (October 21, 2005) from the Auditor General subject to clarifying whether there are any inaccuracies in the Auditor General’s attached report (September 30, 2005) respecting the affordable housing project at 1555 Jane Street as it relates to the OMB directed for-profit daycare facility, and the execution and registration of the Section 37 agreement; and**
- (2) receive the report (October 28, 2005) from the General Manager, Shelter, Support and Housing, Administration Division.**

Action taken by the Committee

The Audit Committee:

- (1) referred the following three motions to the Chief Planner and Executive Director, City Planning with a request that he report on these directly to City Council on December 5, 2005:
 - “(a) That City Council acknowledge, as a matter of protocol, that Members of Council are normally involved and consulted in the negotiation of Section 37 agreements;
 - (b) that City Council acknowledge that a Member of Council should not be required to expend personal funds to ensure that benefits, negotiated on behalf of the community and the City with the developer, are secured through an enforceable agreement under Section 37 provided the negotiated benefits are consistent with the City’s Official Plan;
 - (c) that the Chief Planner and Executive Director, City Planning determine why, when a planning application such as the affordable housing proposal at 1555 Jane Street is before Council for further consideration, there is a need for a Committee of Adjustment application when Council is capable of dealing with any variance, minor or major.”;
- (2) requested the Chief Planner & Executive Director, City Planning to prepare a briefing note on the issue of the for-profit daycare facility at the affordable housing project at 1555 Jane Street; and
- (3) forwarded the written submission filed by Mike O’Gorman at the Audit Committee meeting on November 2, 2005, to the Deputy City Manager for information.

The Audit Committee submits the report (October 21, 2005) from the Auditor General:

Purpose:

This report responds to concerns raised over a period of time by certain Council members with respect to the City’s Let’s Build Program and more specifically, with two individual projects within that program. These concerns culminated with a Notice of Motion that was prepared for the November 30, December 1 and 2, 2004 Council meeting. The Notice of Motion was withdrawn after the Auditor General undertook to review the two projects of concern, 3810 Bathurst Street and 1555 Jane Street.

Financial Implications and Impact Statement:

There are no direct financial implications resulting from the adoption of this report. The implementation of certain recommendations contained in this report should result in improved benefits for the City and its communities with respect to affordable rental housing projects supported by the City.

Recommendations:

It is recommended that:

- (1) the following recommendations in the attached Auditor General's report entitled "Let's Build Program – 3810 Bathurst Street and 1555 Jane Street" be adopted:
 - "1. The Deputy City Manager responsible for the Affordable Housing Office, ensure that the evaluation process for projects selected by the Office take into consideration the impact of any existing planning approvals, including Section 37 agreements.
 2. The Deputy City Manager responsible for the Affordable Housing Office, ensure that all issues or concerns raised through the evaluation of affordable housing proposals be appropriately addressed by City staff and that the results of any further analysis or action taken be fully documented as evidence that concerns have been satisfactorily resolved.
 3. The Deputy City Manager responsible for the Affordable Housing Office, ensure that detailed net present value cost/budget calculations are included as a part of the Business Plan and Cost Effectiveness component of the evaluation criteria of all projects selected by the Affordable Housing Office.
 4. The City Solicitor in consultation with the Chief Planner and Executive Director, City Planning Division, report to the first Planning and Transportation Committee meeting in 2006, on any potential concerns associated with the City, in regard to negotiation of Section 37 agreements, preparing general guidelines in relation to the quantification of development height and density increases and community benefits. Such report to include a recommendation as to whether the City should proceed with the formal quantification of these benefits.
 5. The Deputy City Manager responsible for the Affordable Housing Office, be required to prepare appropriate net present value calculations of the benefits accruing to the City for each proposed housing project. Such information be provided to City Council prior to such projects being approved.
 6. The Deputy City Manager responsible for the Affordable Housing Office, ensure that all funding decisions including benefits under Section 37 agreements and the Affordable Housing Office are appropriately coordinated.";
- (2) the Deputy City Manager be requested to report to the Audit Committee by February 22, 2006 on the implementation of the recommendations in the Auditor General's report entitled "Let's Build Program – 3810 Bathurst Street and 1555 Jane Street".

Background:

This review assessed whether the City received an appropriate level of benefits for the funding provided to two Let's Build Projects, 3810 Bathurst Street and 1555 Jane Street. Our review was restricted to these two particular projects.

This encompassed reviews of:

- the project selection / evaluation process;
- Section 37 agreements; and
- net benefits received as a result of Let's Build funding.

This audit was conducted in accordance with generally accepted government auditing standards and we limited our work to those areas specified above.

Comments:

The attached Auditor General's report entitled "Let's Build Program – 3810 Bathurst Street and 1555 Jane Street" contains seven recommendations. Management's response to each of the recommendations contained in this report is provided in a separate report from the Deputy City Manager, which is submitted concurrently with this report.

Conclusions:

This report covers the two Let's Build projects, 3810 Bathurst Street and 1555 Jane Street. Our review identified a number of areas requiring improvement. The City has now created an Affordable Housing Office to undertake, among other things, the activities of the Let's Build Program. Therefore, the recommendations in this report have been directed to the Deputy City Manager responsible for the Affordable Housing Office.

This report contains three major recommendations. Firstly, staff in the City Planning Division needs to apply a consistent cost/benefit analysis to ensure the City receives sufficient and appropriate community benefits from developers in return for increased height and/or density allowed under Section 37 of the Planning Act. The second major recommendation requires City staff to perform net present value calculations of benefits to be received from developers (primarily through rent reductions), compared to federal/provincial/municipal grants, subsidies and allowances provided to developers for each project selected by the Affordable Housing Office. Finally, staff of the Affordable Housing Office should implement a process to ensure they are fully informed on the impact of any existing planning approvals, including Section 37 agreements, with respect to any projects being considered by the Office.

Addressing the recommendations in this report will enhance the benefits received by the City and its communities for funding and incentives provided to promote affordable rental housing.

Contact:

Jerry Shaubel, Director
Tel: (416) 392-8462
Fax: (416) 392-3754
E-Mail: JShaubel@toronto.ca

Pierre Sauvageot, Audit Manager
Tel: (416) 392-8033
Fax: (416) 392-3754
E-Mail: PSauvage@toronto.ca

**Appendix 1 - Let's Build Program – 3810 Bathurst Street and 1555 Jane Street
September 30, 2005**

Background

This report responds to concerns raised over a period of time by certain Council members with respect to the City's Let's Build Program and more specifically, with two individual projects within that program. These concerns culminated with a Notice of Motion that was prepared for the November 30, December 1 and 2, 2004 Council meeting. The Notice of Motion was withdrawn after the Auditor General undertook to review the two projects of concern, 3810 Bathurst Street and 1555 Jane Street.

In November 2002, City Council adopted a new City of Toronto Official Plan. The Plan highlighted the need for encouraging the development of new rental housing and assisting with the development of affordable rental housing. This initiative continues the policy direction of the (former) Metroplan and the (former) Municipalities now comprising the City of Toronto and was generally prompted by the fact that the building of both rental housing and affordable housing in the City of Toronto had been minimal over the past number of years. In actual fact, there had been almost no development of affordable and rental housing by private sector or non-profit developers in Toronto since the cancellation of the non-profit housing program by the provincial government in 1995. In addition, the private sector has not been developing affordable rental housing since the early 1970s when the Condominium Act made it more profitable and less risky for developers to build apartments and townhouses for sale rather than rental.

The new Official Plan also contains policies to protect the existing stock of rental housing and ensures its replacement if demolition is approved.

The new Official Plan defined affordable rental housing as units with monthly rents at or below the average rents for the City as published annually by Canada Mortgage and Housing Corporation (CMHC). For 2004, the CMHC average rent for a two-bedroom apartment in the City of Toronto was \$1,061 per month.

Various City divisions, initiatives and programs support the affordable housing component of the Official Plan. The most prominent of these supports are through the:

- City Planning Division;
- Let's Build Program;
- Capital Revolving Fund; and
- Municipal Housing Facility by-law.

While the goal of each of these supports is similar, it is often necessary to use them in combination to ensure the development of affordable housing in the City.

A brief description of each of these supports follows with a more complete summary of the City's affordable housing policy framework included in Exhibit 1:

- City Planning Division – One of the primary tools of the City Planning Division is Section 37 of the Planning Act. Section 37 allows the City to require developers to provide public benefits when rezoning land in a manner which increases the height and/or density. While these benefits can include, for example, additional green space, non-profit child care facilities or financial contributions to the City's Capital Revolving Fund, the City is also able to obtain the provision of rental housing and to obtain restricted rents in the resulting developments. These rents are generally linked to the CMHC average City of Toronto rents where the developer is limited to charging a maximum rent, for example, 1.5 times the CMHC average rent. Section 37 benefits are generally negotiated between the developer and City staff and approved by City Council.
- Let's Build Program—Operated within the Shelter, Support and Housing Administration Division, Let's Build is one of the key programs to help the City realize the affordable housing component of the Official Plan. Let's Build staff presently assist applicants in moving through the process from funding application to construction.
- Capital Revolving Fund—The Capital Revolving Fund is available as a source of grants (forgivable loans) and repayable loans (interest rates set at bank prime less 1.0 per cent) to developers in return for rent reductions in related developments. The Fund is replenished through loan repayments and interest earned on these loans. The Fund also receives contributions as occasionally provided through Section 37 agreements with developers in the form of cash in lieu payments where the developer would otherwise be required to replace rental housing to be demolished or where there is an affordable housing contribution required.
- Municipal Housing Facility By-law—The Municipal Housing Facility by-law was established under a revised provincial regulation pertaining to the Municipal Act in order to allow contributions to be made by the City to private sector developments of affordable rental housing and to extend the types of contributions that could be made to non-profit housing developments. It also facilitated the City's participation in the federal government's Community Rental Housing Program—Pilot Component. Under this program, the federal government will contribute up to \$25,000 per unit for affordable rental housing. The federal contribution is further restricted in that it cannot exceed 50 per cent of total government assistance on a per unit basis. As the City has limited funds available to match the contribution made by the federal government, the Municipal Housing Facility by-law allows the City to waive, for example, development fees and property taxes over a period of time. The Province is also a contributor in that it may waive the education portion of property taxes if the City waives property taxes and also offers a partial provincial retail sales tax rebate of up to \$2,000 per unit. All of these waived fees and taxes count as municipal funding for purposes of matching the federal government cash contributions. The agreements written with respect to this by-law are called Municipal Housing Project Facility Agreements.

In May of 2003, the City issued a request for proposals for the development of affordable housing projects in the City. The successful proponents were required to provide affordable rental housing units that would meet the following conditions:

- total monthly occupancy costs (rents plus utilities) must be at or below the CMHC average rent rate for the City;
- future rent increases are to be governed by provincial guidelines for a period of 20 years with a five year phase out for tenants in year 20;
- housing units must be provided exclusively to low to moderate income households;
- housing projects must contain a minimum of seven rental units; and
- at least 25 per cent of the affordable units in any project must be available for rent supplement and for housing tenants from the Social Housing Connection waiting list.

In total, 44 submissions were made in response to the request for proposals with 35 of these qualifying for the formal evaluation process. Out of this total 19 had deficiencies in one or more of the review categories, and were excluded from further consideration. The remaining 16 proposals were subject to the next stage of the review process. At this stage of the process it was determined that six of the proposals should be excluded from further consideration.

At the conclusion of the formal evaluation process, staff recommended, and Council authorized that staff enter into negotiations with the proponents of 10 new affordable housing projects, including 3810 Bathurst Street and 1555 Jane Street. Two projects were subsequently withdrawn by a proponent during the negotiation process and the remaining eight were recommended for Let's Build funding.

These projects would receive in total \$30.25 million in multi-level government assistance – an average of \$35,560 per unit in Capital Assistance (\$25,000/unit Federal Grant, \$2,000/unit Provincial Sales Tax Rebate, and \$8,560/unit Municipal Assistance) as well as \$10,000 per unit contribution as the estimated present values for the property tax exemption. These projects provide 850 units of affordable housing across the City.

Audit Objectives, Scope and Methodology

The audit objectives were to assess whether the City received an appropriate level of benefits for the funding provided to the two Let's Build Projects, 3810 Bathurst Street and 1555 Jane Street. Our review was restricted to these two particular projects.

This encompassed reviews of:

- the project selection / evaluation process;
- Section 37 agreements; and
- the net benefits received as a result of Let's Build funding.

Our audit methodology included the following:

- review of reports related to affordable housing in general and, more specifically, the Let's Build Program;
- interviews with appropriate Let's Build, Planning, Building and Legal staff;
- review of policies and procedures;
- interviews with certain Councillors and their staff; and
- review of other relevant documents, management reports and records.

We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified above.

Findings and Recommendations

Subsequent to the completion of this review, the City created an Affordable Housing Office to undertake, among other things, the activities of the Let's Build Program. As a result of this change, the recommendations in this report have been directed to the Deputy City Manager responsible for the Affordable Housing Office.

A. Review and Evaluation Process – General Comments

All proposals submitted to the Let's Build Program were subject to an independent financial review by an external consultant with development and financing expertise. The proposals were also assessed by a selection committee comprised of staff representing the Let's Build Unit, Shelter, Support and Housing Administration Division and City Planning Division, along with external development experts and a representative from the Province. Recommendations made by the selection committee were submitted to the Capital Revolving Fund Reference Group for further review. The Capital Revolving Fund Reference Group is chaired by a member of Council and made up of professionals with extensive expertise and experience in housing development, operations and finance.

Details of the evaluation and review process for the submissions can be found in Exhibit 2 and a brief summary follows.

At the conclusion of the evaluation process, Council authorized staff to enter into negotiations with the proponents of 10 new affordable housing projects. The Remington Group, for the 3810 Bathurst Street project and Medallion Properties Inc., for 1555 Jane Street, were two of the private sector proposals approved at the conclusion of the evaluation process.

Our review of the evaluation process identified the fact that certain projects contained approved agreements under Section 37 of the Planning Act. Certain other projects did not contain agreements under Section 37. The zoning and Official Plan approval allowing height and/or density exceptions through a Section 37 agreement generally affords advantages to a project and affects the cost-effectiveness of the project. This may allow a proponent to score higher in the business plan and cost-effectiveness criteria of the evaluation process than a project not subject to a Section 37 agreement.

The selection process for the Let's Build Program should be modified to distinguish between projects that have existing planning approvals including Section 37 agreements, and those without such approvals.

Recommendation:

1. The Deputy City Manager responsible for the Affordable Housing Office, ensure that the evaluation process for projects selected by the Office take into consideration the impact of any existing planning approvals, including Section 37 agreements.

A team of staff and third party experts was assembled to complete the evaluation. In addition, City staff engaged a consulting firm with expertise in building development finance to perform an initial financial analysis of each proposal.

We did note that this independent review, while confirming the financial viability of the projects, raised several questions or concerns relating to various projects. For example, for one project the consultant raised a concern that contributions to the capital improvement reserve fund (for future capital repairs on the building) were low based on industry standards. We could find no documentation indicating that the questions or concerns were addressed by City staff.

Recommendation:

2. The Deputy City Manager responsible for the Affordable Housing Office, ensure that all issues or concerns raised through the evaluation of affordable housing proposals be appropriately addressed by City staff and that the results of any further analysis or action taken be fully documented as evidence that concerns have been satisfactorily resolved.

As noted above, the evaluation process was relatively comprehensive. In our view, one aspect of the evaluation omitted throughout the process is the inclusion of a formal quantification of the funding provided to the project compared to the benefits to be received in return. Since parts of both the funding and the benefits are spread over up to 25 years, this formal quantification should be based on a present value analysis. The effect of a present value analysis is to state all of the different cash items, such as property taxes and rent reductions, in terms of present day dollars. Performing such a cost/benefit analysis would allow staff to demonstrate objectively the extent of the funding provided.

The evaluation criteria for Let's Build Project placed significant emphasis on the business plan and the cost-effectiveness component of each proposal. However, it is also important to appreciate the non-financial benefits to the community such as, for example, the appropriateness of property location, and the quality of the building. While the criteria in the evaluation process ascribed 50 per cent to the business plan and cost-effectiveness of the project, the other 50 per cent related to other community benefits.

Recommendation:

3. The Deputy City Manager responsible for the Affordable Housing Office, ensure that detailed net present value cost/budget calculations are included as a part of the Business Plan and Cost Effectiveness component of the evaluation criteria of all projects selected by the Affordable Housing Office.

The final recommendations of the evaluation team were submitted for Council approval in September 2003. Both 3810 Bathurst Street and 1555 Jane Street were recommended for funding giving consideration to the proponents' qualifications as experienced developers, the overall quality of the development proposal and the ability to deliver affordable rental housing quickly. Council approved by-laws and agreements for the recommended projects in July and December 2004.

B. Negotiation of Section 37 Agreements

Under Section 37 of the Planning Act, City Council may pass a by-law to authorize increases in the height and/or density of a building in return for the provision of facilities, services or other items as are set out in the by-law. These agreements are generally negotiated directly between City Planning Division staff and the developer and must be approved by City Council. Where negotiations between the City and a developer are unsuccessful, or where residents or neighbouring property owners are not satisfied with the resulting development, the matter may be taken before the Ontario Municipal Board for a decision.

The increase in height and/or density of a building generally results in benefits to developers in terms of the financial viability of the project. This in turn benefits the City in that new development is promoted and the City is helped further by whatever benefits are negotiated from the developer within the Section 37 agreement. Currently, there are few guidelines setting out the level of benefits required by the City in relation to the benefits received by the developer. This absence of guidelines may result in inconsistencies in benefits received by the City for similar developments.

In addition to the absence of guidelines, City staff does not formally quantify the dollar value of the benefits to either the developer or the City as a result of increases in the height and/or density of a building and terms contained in Section 37 agreements. While City Planning Division staff can estimate the benefits based on their judgment and experience, such estimates are not supported by detailed calculations necessary in a formal quantification of the benefits. A formal quantification would provide important information in allowing staff to more effectively negotiate the terms of Section 37 agreements with the development community. We appreciate in some circumstances that formal quantification of certain benefits is difficult (for example, the preservation of a heritage building). Nevertheless, such a process in our view, would be useful for staff. The appropriateness and applicability of quantifying the increase in value are complex issues requiring further review. As a result, our recommendation calls for a formal review by the City Solicitor prior to implementation of a quantification process.

Recommendation:

4. The City Solicitor in consultation with the Chief Planner and Executive Director, City Planning Division, report to the first Planning and Transportation Committee meeting in 2006, on any potential concerns associated with the City, in regard to negotiation of Section 37 agreements, preparing general guidelines in relation to the quantification of development height and density increases and community benefits. Such report to include a recommendation as to whether the City should proceed with the formal quantification of these benefits.

C. 3810 Bathurst Street

The Let's Build Program, 3810 Bathurst Street, is scheduled to open to tenants in November 2005. It will contain 82 units of rental housing constructed by the Remington Group (also known as VIVA Bathurst Developments Inc.). This six-storey apartment building will contain 44 bachelor and one-bedroom and 38 two-bedroom units. During our review, we identified several issues relating to this project as follows:

1. City Planning Division staff did not quantify height and density increases provided to the developer under the Section 37 agreement. Such a process would have enabled staff to ensure that the increases provided were commensurate to the benefits received.
2. There was a material error in the report to City Council requesting approval for the funding provided to this project.
3. In our view, from a strict financial perspective, the City did not receive value for the Let's Build funding provided to this project.
4. Although this project secured a minimum of 82 affordable rental units, the pre-existing buildings contained 96 affordable rental units for a net loss of 14 affordable units for the City. This course of action, however, was approved by City Council.

C.1. Quantification of Benefits to Developer

C.1.1. Section 37 Agreement

The developer applied for the redevelopment and intensification of a pre-existing site that contained 12, two-storey apartment buildings with a total of 96 rental dwelling units, of which 87 were occupied.

The applicant proposed to intensify this site by demolishing the existing apartment buildings and redeveloping the site with one six-storey and two eight-storey residential buildings with a total of 281 dwelling units. City Council, at its regular meeting held on February 4, 5 and 6, 2003, adopted Report No. 1 of the North York Community Council Clause 13, which recommended the total number of units recommended for the proposed development be amended from 281 units to a total of 301 units. It was proposed and agreed that one of the buildings would contain a minimum of 81 rental units with the balance of the development being condominiums. These conditions, as well as rent restrictions, were included in the City's by-law. In order to achieve this, a Section 37 agreement was required to be negotiated between the City and the applicant and registered on the Title to bind future owners.

The Section 37 agreement negotiated between City Planning Division staff and the developer required the developer to replace the existing 96 rental units with a building containing at least 81 rental units. The agreement also set out detailed requirements on maximum rents to be charged for these units for the first 10 years, with the rents being based on CMHC average rents at the time of application. The agreement also provided for inflation-only rent for tenants in the existing building who decided to take up units in the new building. This will result in rents below the CMHC average for those returning tenants. As well, restrictions on rent and rent increases continued for any tenant who remained beyond the first 10-year period, as long as they occupied the unit.

In regard to this particular development, there is no quantification of the benefits received by the developer and benefits to the City as a result of the Section 37 agreement. In terms of this analysis, we have attempted to quantify the benefits related to this particular project. For purposes of our analysis, we split the Section 37 agreement between the condominium units and the rental housing units. Our analysis is shown in Exhibit 3.

Based on our net present value analysis, the developer would be receiving as a minimum, approximately \$6.0 million net benefits related to the condominium units. With respect to the rental units, the developer will break even, after taking into consideration the costs to build the units. This arises from the fact that rents for new tenants in the new units are approximately 40 per cent higher than rents in the old rental units. Had City Planning Division staff been aware of the actual extent of the benefits received by the developer, staff may have decided to negotiate greater benefits for the Community.

Not included in this analysis, however, are other benefits to the tenants at the time of demolition, such as an extra three months notice of the date required for move out beyond the minimum notice provided for under the Tenant Protection Act or the provision of cash to the tenants in the form of a moving allowance beyond the compensation required under the same Act.

Although not related to the issue of affordable housing, the City would derive increased property tax revenues based on the assessment of the new condominium units. We estimate that the City would derive property taxes of \$390,000 per year yielding a net present value of \$6.0 million over twenty years.

C.1.2. Let's Build Funding

In order to evaluate whether the City received value for subsidies provided to this project we calculated the net present value of funding provided by the Let's Build Program compared to the related benefits, primarily reduced rents, provided by the developer. As a Section 37 agreement was already in place, our calculation of benefits was based only on the benefits received above and beyond what was already in place in that agreement.

The result of any net present value calculation is sensitive to assumptions regarding factors such as interest rates and inflation. Our calculations contained in Exhibit 3 show a net present value of the benefits to the City, and the developer, based on an estimated average inflation rate of three per cent. As can be seen from that calculation, the funding provided to the developer under the Let's Build Program provided the developer with net benefits of approximately \$518,000. The City will only realize a net benefit should inflation average 4.2 per cent or higher. Given that

the Bank of Canada has targeted an inflation range of one to three per cent, this would appear unlikely. Consequently, it would appear that the City of Toronto, using a net present value calculation, did not obtain full value for the Let's Build funding provided to this project.

In our view, it is important that Let's Build staff prepare a net present value calculation of the net benefits to the City for each project under the program. This information should be presented to Council in order that they can make an informed decision as to an appropriate level of funding necessary to achieve new affordable housing within the City.

Recommendation:

5. The Deputy City Manager responsible for the Affordable Housing Office, be required to prepare appropriate net present value calculations of the benefits accruing to the City for each proposed housing project. Such information be provided to City Council prior to such projects being approved.

C.2. An Error in a Report to Council

Seven months following Council approval of the Section 37 agreement, City Council at its meeting of September 22, 23, 24 and 25, 2003, approved the affordable housing project at 3810 Bathurst Street. The former Commissioner of Community and Neighbourhood Services was authorized to negotiate a Municipal Housing Project Facility Agreement and any other agreements deemed appropriate with the developer of 3810 Bathurst Street.

The September 2, 2003 report from the former Commissioner of Community and Neighbourhood Services, on which Council approval was based, contained what we consider to be a material error. Appendix A of the report to Council, a summary of the project, indicated that the Section 37 agreement for the project resulted in negotiated rents not to exceed 1.5 times the CMHC average. However, the Section 37 agreement specifically contained a provision stating that rent for the units was not to exceed 1.0 times CMHC rent as of the October 2002 rent market survey and a one time "new building" allowance of 4.0 per cent. This is a significant difference in affordability and thus in the benefits received by the City for the Let's Build funding awarded to the project.

In reviewing this error, we determined that on September 11, 2003, approximately two weeks before the report was in front of Council for approval, City Planning Division staff met with the Let's Build staff seeking clarification on the Bathurst Street funding. City Planning Division staff pointed out that the September 2, 2003 report erroneously cited rents at 1.5 times CMHC average rent. City Planning staff requested funding details for the project and assurances that Let's Build funds were not paying for affordable rents already secured under the Section 37 agreement. Since it appears that Let's Build staff believed the funding provided was reducing rents from 1.5 to 1.0 times CMHC average rents, Let's Build funding did, at least in part, pay for affordable rents already secured under the Section 37 agreement.

Recommendation:

6. The Deputy City Manager responsible for the Affordable Housing Office, ensure that benefits through any existing or contemplated planning approvals, including Section 37 agreements, and benefits through the Affordable Housing Office, are appropriately coordinated.

C.3. Loss of Affordable Rental Units

The redevelopment project at 3810 Bathurst Street resulted in the construction of 301 residential units in the City. Of the 301 new units, 82 were included in the Let's Build Program thus ensuring affordability for 25 years. The Let's Build funding also ensured that these units would be rented to households with low to moderate incomes. However, it should be noted that the demolished buildings previously on the site contained 96 units of rental housing that had affordable rents, although there were no restrictions on tenant's incomes. Thus, while the project had significant other benefits, the City actually lost 14 affordable housing units. It is important to note however, that this project was approved by City Council who were aware of the loss of the 14 units.

While the City's goal under its new Official Plan is to ensure replacement of all rental units being demolished, it is not always possible to secure 100 per cent replacement in the negotiations with the developers. In this case, the new Official Plan was adopted by Council in November of 2002, about six months after the development application for the project had already been made to the City and the new Official Plan was, and still is, under appeal to the OMB.

D. 1555 Jane Street

The Let's Build Project proposed for 1555 Jane Street is to contain 193 units of rental housing constructed by Medallion Properties Inc. It will consist of a nine-story multi-unit residential building with 183 affordable apartments. An additional 10 rental units will be added to the ground floor of an existing apartment building. In addition, the developer will be constructing 20 townhouse units. An 18-storey, 324-unit apartment building and a private for profit daycare facility exist on the site and are to remain.

D.1. Daycare Facility

The 1555 Jane Street affordable housing proposal has been the subject of negotiation between the City and the developer. In 2001, the developer successfully appealed to the OMB regarding the amount and location of amenity space and the separation between the proposed townhouses and the neighbouring residences. As part of the OMB decision, a private for profit daycare facility was to be included in the Section 37 agreement. The OMB withheld its order pending receipt of a copy of the final Official Plan amendment and the zoning by-law.

The Section 37 agreement for this project was executed in February 2003 and registered on title on November 2, 2003. The executed Section 37 agreement did not include a requirement for a daycare facility. City Planning Division staff indicate that the daycare facility was not included for several reasons. First, Council approval for this project did not require, nor refer to, the provision of any daycare facility. Further, an existing daycare that was to satisfy the initial OMB

decision, did not meet City standards and that due to the cost of providing daycare at City standards, they would not be successful in negotiating for such a facility within the Section 37 agreement. But more importantly under Section 37, the City only secures non-profit daycares as required under the Official Plan.

In March 2003, an OMB order brought into effect the Official Plan amendment and zoning by-law. Of significance is that the daycare facility is not mentioned in the March 2003 OMB order indicating that the OMB order did not require the provision of a daycare facility.

D.2. Building Height and the Committee of Adjustment

Official Plan amendment 487 permitted increases in the density and height of development subject to the owner providing mid-range rental apartments to be secured in part through the owner entering into an agreement under Section 37 of the Planning Act. The Section 37 goal for intensification projects like 1555 Jane Street is to try to secure the new housing as rental units if possible, but not if the new building is to be a luxury building with high-end rents. The City established mid-ranged rent limited at 1.5 times CMHC market rents to create a boundary above which rents would be considered high-end, not to be secured with a Section 37 agreement. The maximum height of new development on the site is not to exceed the lesser of 25 metres or eight storeys.

In May 2003, subsequent to the OMB order, the owner submitted an application to the City's Committee of Adjustment to permit a revised development proposal for the subject site. The revisions primarily related to the south apartment building being reduced from seven-storeys to a one-storey commercial retail building and the height of the new north apartment building increased from eight to nine-storeys. The Committee of Adjustment is mandated to deal with minor variances and there was some questions and concerns as to whether such a height increase can be categorized as a minor variance.

In response to this concern, the City Solicitor, at the request of Council, obtained an outside legal opinion concerning the jurisdiction of the Committee of Adjustment to grant a variance that, in effect, amends the zoning by-law and the Official Plan. While the resulting correspondence received indicates that the Committee of Adjustment cannot amend either the zoning by-law or the Official Plan, it also indicates that granting a minor variance does not require an amendment to either the by-law or the Plan.

The correspondence from outside legal council, includes the opinion that, "The legal authorities are quite clear on this point, and the Committee of Adjustment has consistently acted in accordance with this authority." The legal opinion supports the decision made by the Committee of Adjustment. The developer subsequently appealed to the OMB in respect to the site plan which had not yet been approved by the City. Once again, the OMB allowed the appeal and approved the site plan drawings including the increased height of the building.

On June 9, 2005, the City filed a Notice of Application and supporting affidavit of Councillor DiGiorgio in the Ontario Superior Court of Justice, in which the City asks the Court to cease construction of a building greater than eight-storeys or 25 metres, whichever is less. The proposed building is nine storeys.

A basis for such appeal is that the Section 37 agreement which is provided for in the site specific zoning by-law, as varied by the Committee of Adjustment, was not amended to provide for such variance.

Outside legal counsel has been retained by the City in respect of such action. The action has yet to be heard.

D.3. Let's Build Program and Affordability

The Section 37 agreement for the 1555 Jane Street proposal required the developer to limit rents to 1.5 times the CMHC average rent for the City of Toronto. Let's Build staff negotiated rents for 20 years plus five years phase-out at 1.0 CMHC average rent.

One issue raised in discussions regarding this project is that average rents in the neighbouring buildings are well below this amount. Staff contend that it is true that the developer would unlikely be successful in setting rents as high as 1.5 times the CMHC average in today's rental market. However, staff also assert that exact condition has precluded builders from constructing rental housing in the area. It is not possible for us to predict whether or not this building would have been built without Let's Build funding.

Based on our net present value calculations, the City did receive value for money of approximately \$10.7 million when comparing rent levels allowed under the Section 37 agreement (1.5 times CMHC average rent in Toronto) to the rent levels secured with Let's Build funding (1.0 times CMHC average rent).

However, market rents in this area, based on information provided by CMHC, are approximately 10 per cent lower than the CMHC average rent in Toronto. As new buildings would likely be able to charge more than the City's average rent, it would be more appropriate to compare the rents at 1.2 times CMHC average rent, as shown in Exhibit 4. Based on this comparison, the City did not receive value for money. However, the lack of construction of rental housing in the City over the past several years suggests that the building would not have been constructed given the market rents in the area. Therefore, the Let's Build funding has served its purpose and encouraged the construction of this rental housing development

While the Municipal Housing Project Facility Agreement funding for both, 3810 Bathurst Street and 1555 Jane Street, did not provide value for money based on our net present value calculations, there are other community benefits which must be taken into consideration. The Municipal Housing Project Facility Agreement requires that affordable units be provided only to tenants in need, as established through an income test. Under Section 37 agreements, the selection of tenants is entirely at the discretion of the landlord. In addition, the City reserves the right to require that units be made available to Rent Geared to Income waiting list households, a requirement not included in the Section 37 agreement.

E. Conclusion

The audit objectives were to assess whether the City received appropriate benefits for the funding provided to the two Let's Build projects, 3810 Bathurst Street and 1555 Jane Street.

The key issues identified in this report are the need for a consistent and objective cost/benefit analysis on Section 37 agreements, the advantage of performing present value calculations of benefits received versus funding provided under Let's Build, and the importance of Let's Build staff being aware of existing or potential planning approvals, including Section 37 agreements.

The Audit Committee also submits the report (October 28, 2005) from the General Manager, Shelter, Support and Housing Administration Division:

On behalf of the Affordable Housing Office and Shelter, Support and Housing Administration please find attached the Management Response to the Auditor General's Review of the Let's Build Program. Please ensure that this is attached to the Auditor General's Report for Audit Committee's consideration.

Please note that the response to Recommendation #4 is from the Chief Planner.

Recommendation	Response
<p>1. The Deputy City Manager responsible for the Affordable Housing Office, ensure that the evaluation process for projects selected by the Office take into consideration the impact of any existing planning approvals including Section 37 agreements.</p>	<p>Agree. City Planning staff are part of the evaluation team that selects transitional and affordable housing projects. Planners from the Policy and Research section co-ordinate feedback on housing applications from area planners and provide comments on a range of planning considerations including Section 37 agreements. Given that the negotiation of Section 37 agreements are carried out by City Planning staff as part of the planning process and are independent of any affordable housing funding application to the City, it is important to take all aspects of the agreement into any funding consideration.</p> <p>With the establishment of the new Affordable Housing Office and the Affordable Housing Committee, a range of recommendations have been approved by Council that will result in a more co-ordinated approach to developing affordable housing. An inter-divisional team of senior staff from the Affordable Housing Office, Shelter, Support and Housing Administration, Planning, Building, Legal and Real Estate, working under the direction of the Deputy City Manager, has been established to co-ordinate the City's response to new funding opportunities under the Federal/ Provincial Community Rental Housing Program.</p>

Recommendation	Response
	<p>Council, through its Purchasing Policies, has directed that the selection criteria for RFPs over \$2.5 million be determined by Council. Staff will develop selection and evaluation criteria for Council consideration in anticipation of issuing future RFPs under the new federal/provincial Community Rental Housing Program.</p> <p>In addition, the Affordable Housing Office will be working with City Planning staff to develop guidelines for affordable housing applications from proponents that have already secured Section 37 agreements on development sites. The guidelines and any related criteria will be clearly stated in future Requests for Proposals for affordable housing.</p>
<p>2. The Deputy City Manager responsible for the Affordable Housing Office, ensure that all issues or concerns raised through the evaluation of affordable housing proposals be appropriately addressed by City staff and that the results of any further analysis or action taken be fully documented as evidence that concerns have been satisfactorily resolved.</p>	<p>Agree. With the establishment of the Affordable Housing Office, systems are being put in place to ensure that the appropriate level of administrative support is provided to selection teams to ensure that the evaluation process is fully documented. This will include any questions of clarification that are required of applicants on aspects of their proposals as well as questions that are raised during independent financial reviews.</p> <p>The evaluation process for the Community Rental Housing Program for private sector proponents described in the Auditor General's report was a first for the City of Toronto. As the Auditor's report notes, the evaluation process was comprehensive. A selection team included experts in housing development, management, financing as well as urban design and planning. An independent financial analysis was undertaken for each project on the short list. Projects recommended for Council approval were also carefully scrutinized by the Capital Revolving Fund reference group which was comprised of highly experienced members from the real estate, financial and development community.</p>

Recommendation	Response
	<p>Council has approved the establishment of a new advisory group that will replace the CRF reference group and provide expert advice to staff of the Affordable Housing Office.</p>
<p>3. The Deputy City Manager responsible for the Affordable Housing Office, ensure that detailed net present value cost/budget calculations are included as a part of the Business Plan and Cost Effectiveness component of the evaluation criteria of all projects selected by the Affordable Housing Office.</p>	<p>Agree. However, it should be noted that Net Present Value analysis is not the sole determinant of value. Net Present Value can be of assistance in a cost/benefit analysis if assumptions about inflation, rent increases, vacancies, utilities, property taxes and other costs are accurately projected. NPV analysis is limited in that it does not fully capture the complete extent of public benefits derived from a particular housing development. As the Auditor's report points out, there were a number of important non-financial community benefits secured from the 3810 Bathurst Street and 1555 Jane Street projects such as the appropriateness of the locations for affordable housing, the quality of architectural design, the speed of development, and the competence of the development team to deliver good quality housing and manage it effectively. All these factors must be considered to ensure that new affordable housing projects funded by the City and other levels of government are good value and provide good quality housing for their tenants, the respective neighbourhoods and are viable over the long term.</p>
<p>4. The City Solicitor in consultation with the Chief Planner and Executive Director, City Planning Division, report to the first Planning and Transportation meeting in 2006, on any potential concerns associated with the City, in regard to negotiation of Section 37 Agreements, preparing general guidelines in relation to the quantification of development height and density increases and community benefits. Such report to include a recommendation as to whether the City should proceed with the formal quantification of these benefits.</p>	<p>Agree.</p>

Recommendation	Response
<p>5. The Deputy City Manager responsible for the Affordable Housing Office, be required to prepare appropriate net present value calculations of the benefits accruing to the City for each proposed housing project. Such information be provided to City Council prior to such projects being approved.</p>	<p>Agree. See comments also under Recommendation #3</p> <p>It must be noted, however, that an NPV analysis in the case of 3810 Bathurst and 1555 Jane must be considered within the context of private sector, for-profit development. City Council, by enacting the Municipal Housing Facility By-law, expanded its current range of assistance for the production of new affordable housing to the private sector. The report to Council on the By-law noted the significant advantages that private partnerships can offer. These advantages include equity, land, and the capacity to deliver significant volumes of housing quickly. The private sector operates on a for-profit basis and it is unrealistic to expect that affordable housing development will be undertaken by the private sector on a revenue neutral basis. In furthering the objectives of the City's Official Plan in promoting purpose-built rental housing as a community benefit, City incentives were required that get the private sector back into the business of developing rental housing. Grants, low interest loans, tax and development charge waivers are all required to make rental housing affordable.</p>
<p>6. The Deputy City Manager responsible for the Affordable Housing Office ensure that all funding decisions including benefits under Section 37 agreements and the Affordable Housing Office are appropriately coordinated.</p>	<p>Agree as noted in our response to the Auditor's Recommendation #1. Negotiation of Section 37 agreements and funding decisions are separate processes. The negotiation of the Section 37 agreement for 3810 Bathurst, as part of the review of the planning application, was completed and approved by Council before the Request for Proposals for the Community Rental Housing Program was issued.</p> <p>As noted in our response to Recommendation #1, with the establishment of the new Affordable Housing Office and the Affordable Housing Committee, a range of recommendations have been approved by Council that will result in a more coordinated approach to developing affordable housing.</p>

(The following submissions were forwarded to all Members of the Audit Committee with the agenda for its meeting on November 2, 2005, and copies are on file in the City Clerk's Office:

- Communication (November 2, 2005) from Mike O'Gorman; and
- Paper copy of PowerPoint Presentation given by Jerry Shaubel, Director, Auditor General's Office and Pierre Sauvegeot, Audit Manager, Auditor General's Office.)

Mike O'Gorman appeared before the Audit Committee.

City Council – December 5, 6 and 7, 2005

Council also considered the following:

- *Report (November 29, 2005) from the Auditor General [Communication 24(a)]:*

*Subject: Let's Build Program – 3810 Bathurst Street and 1555 Jane Street
– Additional Information*

Purpose:

This report provides additional information to the report entitled "Let's Build Program - 3810 Bathurst Street and 1555 Jane Street" as tabled at the Audit Committee meeting of November 2, 2005.

Financial Implications and Impact Statement:

There are no financial implications resulting from the receipt of this report.

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting of November 2, 2005, in considering the Auditor General's September 30, 2005 report, "Let's Build Program – 3810 Bathurst Street and 1555 Jane Street", the Audit Committee recommended that City Council:

"adopt the staff recommendations in the Recommendations Section of the report (October 21, 2005) from the Auditor General subject to clarifying whether there are any inaccuracies in the Auditor General's attached report (September 30, 2005) respecting the affordable housing project at 1555 Jane Street as it relates to the OMB directed for-profit daycare facility, and the execution and registration of the Section 37 agreement."

This report provides the clarification requested by the Audit Committee.

Comments:

We have determined that the original report contained a registration date for the Section 37 Agreement for 1555 Jane Street which was inaccurate. The fact that the registration date was inaccurate has no impact on the recommendations contained in the report.

In addition, we have also amended the financial analysis provided in Exhibits 3 and 4 of the report by including the financing costs avoided by the developer as a result of the Let's Build funding and the benefits relating to the townhouses proposed at 1555 Jane Street.

A summary of the clarifications to the report are as follows:

Date of Registration of the Section 37 Agreement

In Section D.1 Daycare Facility, the first sentence of the second paragraph indicated that the Section 37 Agreement for 1555 Jane Street was executed in February 2003. In consultation with Legal Services, we have determined that it would have been more correct to indicate that the agreement was executed some time between December 2002 and February 2003. The exact date is not known as the signing parties did not indicate the date the agreement was signed. We have also determined that the agreement was registered on title on February 11, 2003 rather than November 2, 2003, as originally reported.

Additional Information in the Exhibits to the Report

Exhibit 3 – 3810 Bathurst Street

In Revised Exhibit 3, we have provided information on the additional benefits to the developer related to interest on capital borrowing of \$189,079.

The net effect of this addition increases the final line in the Revised Exhibit 3, labelled “Net Benefit (Cost) to the City” to the following:

<i>Let's Build Program</i>	<u>Revised</u> <i>(\$707,469)</i>
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As a result of this change to Exhibit 3, the third sentence of the second paragraph of Section C.1.2, Let's Build Funding should indicate that the Let's Build Program provided the developer with net benefits of approximately \$707,000 (previously \$518,000). In the next sentence, the City will only realize a net benefit should the inflation rate average six percent (previously 4.2 percent) or higher.

Exhibit 4 – 1555 Jane Street

In Revised Exhibit 4, we have provided information on additional benefits to the developer and the community related to the following:

Benefits to the Developer

<i>Increased density and height</i>	\$459,515
<i>Interest on capital borrowing</i>	\$490,006

Benefits to the Community

<i>Property tax increases</i>	\$3,740,497
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The net effect of these additions increases the final line in the Revised Exhibit 4, labelled “Net Benefit (Cost) to the City” to the following amounts:

	<u>Revised</u>	<u>Original</u>
<i>Section 37 Agreement</i>	\$3,288,120	\$0
<i>OMB</i>	(\$6,688)	\$0
<i>Let’s Build Program</i>	(\$1,235,357)	(\$745,351)

As a result of these changes to Exhibit 4, the first sentence of the third paragraph in Section D.3, Let’s Build Program and Affordability, should indicate that the City received value for money of \$10.2 million (previously \$10.7 million) when comparing the reduced rents to the rent levels allowed under the Section 37 Agreement.

Conclusions:

This report clarifies the registration date for the Section 37 Agreement for 1555 Jane Street in the original report dated September 30, 2005, “Let’s Build Program – 3810 Bathurst Street and 1555 Jane Street.” This report also provides additional information relating to the financial analysis presented in Exhibits 3 and 4 of that report. While these changes do not impact the recommendations of the report, they provide additional information for Council for consideration in the adoption of the report’s recommendations.

Contact:

Jerry Shaubel, Director
Tel: (416) 392-8462
Fax: (416) 392-3754
E-Mail: JShaubel@toronto.ca

Pierre Sauvageot, Audit Manager
Tel: (416) 392-8033
Fax: (416) 392-3754
E-Mail: PSauvage@toronto.ca

List of Attachments:

Revised Exhibit 3 – Let’s Build – 3810 Bathurst Street – Analysis of Benefits and Costs
Revised Exhibit 4 – Let’s Build – 1555 Jane Street – Analysis of Benefits and Costs

REVISED EXHIBIT 3

*Let's Build – 3810 Bathurst Street
Analysis of Benefits and Costs*

<i>Estimated Developer Benefits</i>	<i>Section 37 Agreement</i>	<i>Let's Build Program</i>
- <i>Amendment to Official Plan Density</i>	301 units (original site 96 units)	Same as Section 37
- <i>Amendment of Zoning Height</i>	Building A (17.5 metres/ 6 floors) Building B (23.5 metres/ 8 floors) Building C (23.5 metres/ 8 floors) (original site only 2 floors; and 12 buildings)	
<i>Estimated Dollar Benefit of Increased Density and Height</i>	Building A (Rental) \$ 0 Building B (Condo) \$3,000,000 Building C (Condo) <u>\$3,000,000</u> Total <u>\$6,000,000</u> [see note (1) below]	
<i>Capital Funding</i> Federal – \$25,000/unit Grant Provincial - \$2,000/unit PST Rebate Municipal – Capital Revolving Credit		\$1,775,000 – (\$25,000 x 71) \$ 142,000 – (\$ 2,000 x 71) \$ 581,864
<i>Interest on Capital Borrowing</i> Federal – \$1,775,000 Capital Provincial - \$142,000 Capital		\$ 189,079 [see note (2) below]
<i>Municipal Housing Facility By-law</i> i) Exemption - development charges ii) Waive Municipal Property Taxes a) Municipal b) Education		\$ na (i) \$ 675,012 (ii) a) \$ 344,431 b) [see note (3) below]
<i>Total (1)</i>	\$6,000,000	\$3,707,386

Notes:

(1) Net Present Value calculations of revenues less costs based on the following assumptions:

6% Present Value factor / 2005 base year / 20-year time frame

Construction Costs as per Toronto Real Estate Board's 2003 Rough Guide to Construction Cost; plus an additional 10% inflation for each year starting in 2003

Soft Costs (Architect, Legal, Marketing) 11% of construction costs (industry standard is 10%)

Land Costs 33% of construction costs (industry standard)

Financing Costs 6% (conservative for 2 years)

Revenues as per brochures at VIVA Sales Office

(2) Interest on Capital Borrowing based on the following assumptions:

9% Present Value factor / 2005 base year / 20-year time frame

Mortgage Interest Rate at 6%

Return on Equity to developer at 9% / 20-year time frame

(3) Waive Municipal Property Taxes

6% Present Value factor / 2005 base year / 20-year time frame

\$615.98 per unit for municipal portion and \$314.29 per unit for education portion

<i>Estimated Community Benefits</i>	<i>Section 37 Agreement</i>	<i>Let's Build Program</i>
<i>New Rental Housing Units</i>	<p>82 new units To remain as rental with no demolition or condominium conversion applications for at least 20 years (original site 96 older units)</p>	<p>82 new units</p>
<i>Rent</i>	<p>CMHC (City of Toronto average - base year 2002) 82 units with rents not exceeding CMHC average market rent (as of October 2002) and annual inflators for 10 years after initial occupancy. Plus annual inflators for as long as they remain in their unit. All tenants who move in during the first 10 years will have rent protection as long as they remain in their units. After 10 years, new tenants pay "market rents" (original site units at rents lower than Canada Mortgage and Housing Corporation's average rent in the City of Toronto; and unit rents covered under Tenant Protection Act (TPA))</p>	<p>CMHC (City of Toronto average - base year 2002) 11 Units rents covered under TPA (after 10 years to be market rent if tenant move out) CMHC (City of Toronto average - base year 2004) Less: Estimated Hydro Less \$25 (separate negotiation) 71 units rents covered under TPA (25 years after at market rent)</p>
<i>Tenant</i>	<p>Landlord must rent to returning (existing) tenants below CMHC average rent and to other tenants at CMHC average rent plus 4%. Landlord permitted to rent to any prospective tenant regardless of income at market rent (exceeds CMHC average rents and does not include hydro) (original site landlord permitted to rent to any prospective tenant regardless of income)</p>	<p>Landlord must rent to returning (existing) tenants or first tenants below CMHC's average rent 11 units Landlord is required to rent to only low and moderate-income tenants. 71 units As units become available reserve for Rent Geared to Income (RGI) on waiting lists</p>
	<p>NPV Rent Increase \$ (0)</p>	<p>\$2,595,647 NPV Rent Reduction \$ 404,270 NPV of Loan Repayment \$ Rent to only low and moderate income tenants</p>

<i>Estimated Community Benefits</i>	<i>Section 37 Agreement</i>	<i>Let's Build Program</i>
<i>Total (2)</i>	\$ (0)	\$2,999,917
<i>Property Tax Increases (3)</i>	\$6,000,000 <i>[see notes (4) & (5) below]</i>	\$ 0
<i>Net Benefit (Cost) to City (1,2,3)</i>	\$ (0)	\$ (707,469)

Notes: (4) Municipal Property Taxes

6% Present Value factor / 2005 base year / 20-year time frame

\$23.0 million value of each Condominium Building (City tax rate of 0.8889546% for New Multi-Residential)

(5) Estimated average inflation of 3%.

REVISED EXHIBIT 4

Let's Build – 1555 Jane Street Analysis of Benefits and Costs

<i>Estimated Developer Benefits</i>	<i>Section 37 Agreement</i>	<i>OMB</i>	<i>Let's Build Program</i>
<i>- Amendment to the Official Plan Density</i>	<i>Gross Floor Area 47,988 sq.m. (original gross floor area-29,383 sq.m.)</i>	<i>Gross Floor Area 51,348 sq metres (all buildings)</i>	<i>Same as OMB</i>
<i>- Amendment of Zoning Height</i>	<i>Permit two additional rental apartment buildings (original local shopping centre) Height of new Development - the lesser of 25 metres or 8 storeys</i>	<i>Permit one additional apartment building Height of new Development - 9 storeys (October 4, 2004)</i>	
<i>Estimated Dollar Benefit of Increased Density and Height</i>	<i>\$483,700 – 20 townhouses</i>	<i>\$(24,185) – 19 townhouses</i>	
<i>Capital Funding Federal – \$25,000/unit Grant Provincial - \$2,000/unit PST Rebate Municipal – Capital Revolving Fund</i>			<i>\$ 4,600,000 – (\$25,000 x 184) \$ 368,000 – (\$ 2,000 x 184) \$ 810,119</i>
<i>Interest on Capital Borrowing Federal – \$4,600,000 Grant Provincial - \$368,000 PST Rebate</i>			<i>\$ 490,006 [see note (1) below]</i>

<i>Estimated Benefits</i>	<i>Developer</i>	<i>Section 37 Agreement</i>	<i>OMB</i>	<i>Let's Build Program</i>
<i>Municipal Facility By-law</i>	<i>Housing</i>			
<i>i) Exemption</i>	<i>- development charges</i>			<i>\$ 418,772 (i)</i>
<i>ii) Waive</i>	<i>Municipal Property Taxes</i>			<i>\$1,829,240 (ii) a)</i>
<i>a) Municipal</i>				<i>\$ 933,364 b)</i>
<i>b) Education</i>				<i>[see notes (2) & (3) below]</i>
<i>[I] Total</i>		<i>\$483,700</i>	<i>\$(24,185)</i>	<i>\$ 9,449,501</i>

Notes:

(1) Interest on Capital Borrowing based on the following assumptions:

9% Present Value factor / 2005 base year / 20-year time frame

Mortgage Interest Rate at 6% / 20-year time frame

Return of Equity to the developer at 9% / 20-year time frame

(2) Waive Municipal Property Taxes

6% Present Value factor / 2005 base year / 20-year time frame

\$644.08 per unit for municipal portion and \$328.64 per unit for education portion

(3) Estimated average inflation of 3%

<i>Benefits to the Community</i>	<i>Section 37 Agreement</i>	<i>OMB</i>	<i>Let's Build Program</i>
<i>New Rental Housing Units</i>	<i>Up to 225 new rental units</i>	<i>Up to 220 new rental units</i>	<i>184 new rental units</i>
<i>Rent</i>	<i>CMHC (below 1.5 times the average City-wide rents by type)</i>	<i>CMHC (below 1.5 times the average City-wide rents by type)</i>	<i>CMHC (below 1.0 times the average City-wide rents by type)</i>
<i>Tenant</i>	<i>Rents for the additional dwelling units are not be increased beyond the normal rent control guideline for a 5-year period</i> <i>No application for condominium conversion or for demotion for 25 years.</i>	<i>Rents for the additional dwelling units are not be increased beyond the normal rent control guideline for a 5-year period</i> <i>No application for condominium conversion or for demotion for 25 years.</i>	<i>Rents for 20 years with a 5-year phase out.</i> <i>Landlord is required to rent to only low and moderate-income tenants.</i> <i>Reserve 25% of the units for Rent Geared to Income (RGI) waiting lists households.</i>
			<i>\$7,616,682 NPV of Rent reduction (1.2 to 1.0 CMHC)</i> <i>\$ 597,462 NPV of Loan Repayment</i> <i>\$ Rent to only low and moderate income tenants</i>

<i>Benefits to the Community</i>	<i>Section 37 Agreement</i>	<i>OMB</i>	<i>Let's Build Program</i>
<i>[II] Total</i>			<i>\$ 8,214,144</i>
<i>[III] Property Tax Increases</i>			
<i>Townhouses</i>	<i>\$ 617,450</i>	<i>\$(30,873)</i>	
<i>Apartments</i>	<i>\$3,154,370</i>		
	<i>[see note (4) below]</i>		
<i>Net Benefit (Costs) to the City [I]+[II] + [III]</i>	<i>\$3,288,120</i>	<i>\$ (6,688)</i>	<i>\$(1,235,357)</i>

Notes:

(4) Municipal Property Taxes

-6% Present Value factor / 2005 base year / 20 years time frame

-\$24.95 million value of apartment buildings ((City tax rate of 0.8889546% for New Multi-Residential)

-\$ 4.50 million value for 20 townhouses (City tax rate of 0.8889546% for residential)

- *Report (December 5, 2005) from the Chief Planner and Executive Director, City Planning Division [Communication 24(b)].*

Subject: Audit Committee's referral of three motions for a report, arising from consideration of the Auditor General's report on the Let's Build Program- 3810 Bathurst Street and 1555 Jane Street

Purpose:

To respond to the Audit Committee's referral of three motions arising from consideration of the Auditor General's report on the Let's Build Program - 3810 Bathurst Street and 1555 Jane Street, with a request for a report thereon directly to City Council.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that:

- (1) City Planning staff be directed to always consult with the Ward Councillor in negotiating Section 37 community benefits with developers/owners; and*
- (2) City Planning staff always be involved in discussing or negotiating Section 37 community benefits with developers/owners.*

Background:

At its meeting of November 2, 2005, the Audit Committee had before it a report dated October 21, 2005 from the Auditor General regarding the Let's Build Program – 3810 Bathurst Street and 1555 Jane Street. Together with other recommendations, the Audit Committee:

“referred the following three motions to the Chief Planner and Executive Director, City Planning with a request that he report on these directly to City Council on December 5, 2005:

- ‘(a) That City Council acknowledge, as a matter of protocol, that Members of Council are normally involved and consulted in the negotiation of Section 37 agreements;*
- (b) that City Council acknowledge that a Member of Council should not be required to expend personal funds to ensure that benefits, negotiated on behalf of the community and the City with the developer, are secured through an enforceable agreement under Section 37 provided the negotiated benefits are consistent with the City’s Official Plan;*
- (c) that the Chief Planner and Executive Director, City Planning determine why, when a planning application such as the affordable housing proposal at 1555 Jane Street is before Council for further consideration, there is a need for a Committee of Adjustment application when Council is capable of dealing with any variance, minor or major.’ ”*

This report responds to the Audit Committee’s request for a report on the above three motions.

Comments:

- a) “That City Council acknowledge, as a matter of protocol, that Members of Council are normally involved and consulted in the negotiation of Section 37 agreements;”*

While there is no formal or written protocol for City Planning staff in the negotiation of a Section 37 agreement to consult with the Councillor on the appropriate community benefits to be secured, such consultation usually does occur. The standard practice is for City Planning staff to lead the negotiations, in consultation with the Councillor, and in consultation as necessary with other City staff and staff of City agencies, boards and commissions, and taking into account relevant public comments received in the course of processing the application.

In the past, not all Councillors have expressed an interest in such negotiations. More recently, as the use of Section 37 has become better understood across the City, Councillors are now more interested in contributing to the negotiations on behalf of their constituents.

City Councillors should always be consulted with respect to the Section 37 negotiations, and this report includes a recommendation to that effect.

Some Councillors undertake negotiations with the owner without staff advice. Staff is of the view that City Councillors should always involve City Planning staff in Section 37 negotiations. City Planning staff will advise how the policies of the Official Plan can be implemented appropriately and consistently. In some circumstances, such as when existing rental housing units are being demolished and replaced, the Section 37 agreement is the primary tool for securing the often complex provisions required to implement the relevant Official Plan policies.

The determination of community benefits and securing those benefits in a Section 37 agreement should be a collaborative effort between City Council and Planning Staff.

- b) *“that City Council acknowledge that a Member of Council should not be required to expend personal funds to ensure that benefits, negotiated on behalf of the community and the City with the developer, are secured through an enforceable agreement under Section 37 provided the negotiated benefits are consistent with the City’s Official Plan;”*

City Planning staff consulted with Councillor Di Giorgio (who had requested that the motion be considered at Audit Committee), on the background and rationale for the motion. He advised that when the owner of 1555 Jane Street made an application to the Committee of Adjustment for minor variances. In 2003, the Councillor negotiated additional benefits with the owner, over and above the original Section 37 agreement, on behalf of the City and the community. He advises that he requested the Committee of Adjustment to impose conditions relating to the additional community benefits he had negotiated, and that the owner agreed in writing to the new community benefits and that City staff did not express any concerns. However, the Committee of Adjustment did not impose the conditions requested by the Councillor, and the Councillor feels that he should not have to take legal action at his own expense in an effort to alter the Committee decision.

In situations where a Councillor feels that a Committee of Adjustment decision is inappropriate or inadequate, the Councillor has the option of putting forward a report or motion at Community Council or at City Council recommending that the Committee of Adjustment decision be appealed. The report or motion would state the reasons for the recommended appeal, set out the position or decision that the Councillor would like to have implemented by the OMB, and direct the City Solicitor to seek the approval of the preferred position or decision before the Board. If the Committee or City Council schedule would not permit the appeal to be endorsed by City Council within the statutory appeal period, then the Councillor can request the City Solicitor to launch an appeal, with the continuation of the appeal contingent upon the appeal being supported by City Council.

Provided that Council endorses the appeal and the recommended position, City Legal staff would then undertake to implement the Council-endorsed position through the Ontario Municipal Board. In that situation, costs would be borne by the City of Toronto. If City Council did not endorse the appeal the Councillor would have to decide if she or he, as a citizen of the City, would appeal such a decision and assume any financial obligations. As this process is currently available to all Councillors to address the concern underlying this motion, staff do not recommend any changes.

- c) *“that the Chief Planner and Executive Director, City Planning determine why, when a planning application such as the affordable housing proposal at 1555 Jane Street is before Council for further consideration, there is a need for a Committee of Adjustment application when Council is capable of dealing with any variance, minor or major.”*

In the case of 1555 Jane Street, the Ontario Municipal Board approved the Official Plan and Zoning By-law amendments by way of an Order dated March 14, 2003. Subsequently, in May, 2003, the Committee of Adjustment approved minor variances to the zoning by-law previously approved by the OMB. The owner had submitted an application for minor variances to the Committee following the Board Order approving the zoning. Although City Council may have been in the process of considering Let's Build funding for the new project and Site Plan Approval, at the time of the minor variance application there was no rezoning application before Council. City Council could not have implemented zoning changes as apart of its decisions on let's Build funding or in relation to the Site Plan Approval.

Any owner has the right to apply to the Committee of Adjustment for minor variances at any time, and if City Council, an individual Council member or City staff have concerns with the proposed minor variances, then such concerns can be communicated to the Committee of Adjustment for consideration in their deliberations. Such submissions could even recommend that certain variances should more appropriately be dealt with by Council through a zoning amendment process, but it remains the Committee's decision as to whether or not to approve the application. Council cannot make a decision on a minor variance application that is duly before the Committee of Adjustment, nor can it direct the Committee to make a particular decision on the application. As discussed earlier, the Ward Councillor can initiate an appeal of the Committee's decision.

Council has the ability to initiate changes to the zoning on a property should it choose to do so. The statutory rezoning process set out in the Planning Act, including proper notice, a public meeting, and conformity with the Official Plan must be followed.

Conclusions:

In considering the report from the Auditor General on Let's Build Program funding of two projects at 1555 Jane Street and 3810 Bathurst Street, the Audit Committee, among other actions, referred three motions to the Chief Planner and Executive Director for a report directly to the December 5, 2005 City Council meeting.

The Ward Councillor should always be consulted by staff during negotiations regarding Section 37 community benefits. At the same time, City Planning staff should be included in Section 37 negotiations that may occur between the Ward Councillor and the owner/developer. This report contains recommendations for Council direction to achieve more consistent implementation of these principles.

A Councillor who is not satisfied with a Committee of Adjustment decision may request the City Solicitor to appeal the decision, with the continuation of the appeal contingent upon Council authorization. The Councillor would need to forward a report to Community Council or make a motion at Council to have Council continue the appeal. Upon Council endorsement of the appeal, Legal staff would then have proper instructions to advocate Council's position before the OMB with any financial obligations falling to the City.

City Council cannot effect a zoning change, minor or major, without following the public process stipulated in the Planning Act. Such a process can be initiated by Council or through a rezoning application by an owner. An owner also has the right to apply for minor variances to the Committee of Adjustment. Council, a Councillor and/or staff can make any concerns known to the Committee of Adjustment regarding the minor variance application but the decision remains with the Committee. At the time of the minor variance application for 1555 Jane Street, there was no ongoing rezoning of the property in process.

Contact:

*Barbara Leonhardt, Director
Policy and Research
City Planning Division
Tel: 416-392-8148
Fax: 416-392-3821
Email:bleonha@toronto.ca*