



February 23, 2013

VIA E-MAIL: [pgmc@toronto.ca](mailto:pgmc@toronto.ca)

City Clerk  
Attention: Administrator  
Planning and Growth Management Committee  
100 Queen Street West, 10<sup>th</sup> Floor  
Toronto Ontario M2H 2N2

*PG22.1 - Special Public Meeting: February 28, 2013 – Official Plan Review*  
**Proposed Official Plan Amendment to Adopt New Section 37 Policies Related to Affordable Housing**

Dear Councillors:

The *Federation of North Toronto Residents' Associations* (FoNTRA) is an umbrella organization currently representing 28 residents' associations. FoNTRA's interest in this particular matter is based on its long-standing involvement in public policy discussions at the provincial and municipal levels related to planning institutions, processes, and tools. Over many years, FoNTRA was a key partner in the appeal of the new Official Plan to the Ontario Municipal Board, spearheaded by the *Confederation of Resident and Ratepayer Associations* (CORRA) and five Willowdale Ratepayer Groups, and it invested considerable legal fees and volunteer hours in this effort. It resulted in a series of significant settlements reached with the City of Toronto, including the Partial Settlement of the OP-Appeal by CORRA et al. regarding Section 37 Policies which was approved by the Ontario Municipal Board in its decision of November 10, 2006. FoNTRA also participated in the public discourse on the Section 37 Implementation Guidelines, for example with its letter of December 1, 2006, and Official Plan Amendment No. 38 which named Heritage Conservation District Studies an eligible community benefit, to which it objected.

FoNTRA's support of increases in densities and height in exchange for community benefits has always been linked to a basic criterion: the community benefits to be secured under Section 37 of the *Planning Act* must be in the form of specified infrastructure improvements directly related to accommodating the proposed development at a higher intensity. The proposed Section 37 Policies related to Affordable Housing lack this fundamental planning logic: they propose to increase density in exchange for more density. FoNTRA objects to them for the following reasons:

**1. THE PROPOSED OFFICIAL PLAN POLICIES VIOLATE BASIC PLANNING PRINCIPLES:**

The concept of bonus or incentive zoning was pioneered in the City of New York, first in 1961 when the New York City zoning regulations introduced a floor area bonus for the Special Lower Manhattan District in order to acquire open space in a congested commercial district. Eligible community benefits were limited to urban plazas, certified block improvements, subway station improvements, and covered pedestrian space, such as arcades, with the applicable floor area bonus precisely defined in the zoning regulations. Land use designations and implementing zoning regulations are supposed to reflect objective physical planning criteria regarding the compatibility with the existing built form context and the capacity of the related infrastructure, including vehicular and pedestrian transportation, availability of light and air at the street level, or sanitary and storm sewers. Any deviation from these defined zoning limits as a result of density or height bonuses handed out for community benefits which are unrelated to increasing the carrying capacity of the site delegitimizes the entire planning regime.

**2. THE PROPOSED OFFICIAL PLAN POLICIES FAIL TO MEET THE LEGISLATIVE INTENT:**

When incentive zoning was introduced into Ontario's *Planning Act* in the early 1980s, the government limited its intent: "*To enact bonusing provisions in a by-law a municipality will have to set out in its official plan the particu-*

lar objectives being sought, the criteria to be employed, and the areas to which the provisions will apply ... The by-law should specify the incentives to be provided, either in terms of additional density or use, and contain a schedule specifying the particular bonus available in return for providing a defined amenity.” [emphasis added] The underlying theory was summarized in *Background Report 3 to the White Paper on the Planning Act*, as follows: “Land use and density allocations for an area are usually controlled by the capacity of the infrastructure (...) By increasing this capacity, an area can accommodate higher densities ... A Bonus Zoning System, therefore, should relate densities and uses to capacities and amenities.” The provision of affordable housing fails this essential test.

### **3. TORONTO’S USE OF SECTION 37 RESULTS IN A DYSFUNCTIONAL PLANNING PROCESS:**

The *Commission on Planning and Development Reform in Ontario* concluded in 1993: “Ad hoc, site-by-site bonus-ing generally has not worked well, and the public does not like it: it smacks of ‘let’s make a deal’ planning. Planners complain they are put in the unenviable position of being questioned on whether they negotiated a good enough deal. Ad hoc bonusing makes a mockery of certainty in planning, and it should not be allowed.” It makes not only a mockery of certainty of planning; it makes a mockery of planning itself. And yet, this is exactly the process still practiced by the City of Toronto. Although City Council adopted the new Official Plan in 2002 and the Ontario Municipal Board approved most Official Plan sections in 2006, implementing zoning regulations have still not been brought forward, except on a site-by-site basis. In the absence of a clear as-of-right zoning basis, the interpretation of what represents an increase in density and height remains nebulous and is left to the planners and, in many cases, to individual Councillors who have decided to treat their Ward as a fiefdom over which they exercise control. As the Staff Report of 30 January 2013 concedes, strictly speaking, no “amendment to the Official Plan Section 37 policies is actually required in order to secure affordable ownership housing,” since OP-Section 5.1.1.6 is not considered an exhaustive list of eligible benefits but simply a laundry list of suggestions which can be liberally interpreted. FoNTRA sees the Section 37 OP-Policies, the Section 37 Implementation Guidelines, and the Section 37 Negotiating Protocol in serious need of well-articulated limits – precise constraints that reserve the use of Section 37 to defined situations of public benefits that directly support the accommodation of increased height and density.

### **4. MIS-USING SECTION 37 FUNDS FOR AFFORDABLE HOUSING CREATES CONGESTION:**

Toronto’s 1976 Central Area Plan and implementing Zoning By-law offered a 25% residential density bonus related to the provision of “dwelling units for the purposes of any assisted housing program.” The perverse notion inherent in such a planning strategy is the idea that people who rely on assisted housing can accept a level of crowding, evidently, undesirable for people who can find accommodation on the open market. Moreover, while society as a whole benefits from the provision of assisted housing, the immediate surroundings of the project which enjoys an increased density and/or height, inequitably, are condemned to suffer from the congestion created by the intensification without the necessary improvements to the infrastructure. By all indications, the proposed Official Plan policies are designed to repeat the same mistakes.

In conclusion, the provision of affordable housing is an important public policy issue that deserves the attention of all levels of government. A municipal zoning-for-dollars scheme is an entirely inappropriate response.

Sincerely yours,

Peter Baker  
Co-Chair, FoNTRA  
124 Sherwood Avenue  
Toronto, Ontario  
M4P 2A7  
[peterwbaker@rogers.com](mailto:peterwbaker@rogers.com)

Geoff Kettel  
Co-Chair, FoNTRA  
129 Hanna Road  
Toronto, Ontario  
M4G 3N6  
[gkettel@gmail.com](mailto:gkettel@gmail.com)

Copies: Mayor Rob Ford and Toronto City Council  
Ms. Jennifer Keesmaat, Chief Planner and Executive Director  
FoNTRA Members and Others

**The Federation of North Toronto Residents' Associations (FoNTRA)** is a non-profit, volunteer organization comprised of 28 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.