

From: Peter Tomlinson

To: Public Finance Scholars

Date: December 10, 2019

Re: **HAS LAND VALUE TAXATION GAINED A TOE-HOLD IN ONTARIO?**

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The Ontario government's Bill 108, the *More Homes, More Choice Act 2019*, aims at making the housing supply more responsive to increased demand. Technically speaking, an increased supply elasticity would mean added housing units – and less dramatic price increases – when demand goes up.

The most important of the bill's many changes may be the creation of Community Benefits Charges (CBCs), which will usually be levied on land value. They will replace developer payments currently authorized by the *Planning Act's* Section 37, as well as some payments currently authorized by the *Development Charges Act*. (To keep the focus on Section 37, development charges will be a subject for another time.)

Section 37, on its face, gives a developer two options. The first option is to apply for rezoning to allow more density than permitted as-of-right, in which case a negotiated quid pro quo – possibly a tangible public benefit but usually cash-in-lieu – will be required by the municipality. The second option is to build the as-of-right density, with no rezoning and thus no quid pro quo.

At least in Toronto's precincts with strong residential demand, the first option has become the only option – with a predictable result: expectations of up-zoning are embedded in land values, rendering as-of-right development uneconomic. The resulting flow of Section 37 revenue has enabled the city to acquire assets at no cost to taxpayers ([pedestrian bridges](#) for example).

In some cases, a developer's requested density will have no impact on the density permitted by a municipality or the Local Planning Appeal Tribunal (LPAT). In these cases the impact on housing supply is due to the planning decision, not to a Section 37 payment. In other cases, however, Section 37 functions as a tax on density, meaning that a negative impact on potential housing supply is likely.

How will the new CBC compare with Section 37? One key difference will be evident in places affected by another provision of Bill 108 – creation of mandatory development-permit precincts near higher-order transit stations. Development-permit precincts are “pre-zoned” to densities above current as-of-right densities. Site-specific rezoning, on which Section 37's existence depends, has no role in these precincts. CBCs will be levied, but unless a developer chooses a lower density than is pre-zoned (not a likely scenario), the CBC will have no impact on density. If the CBC has an impact on housing supply, it will result from a charge high enough to delay or deter development.

A CBC payment will be determined by applying a prescribed percentage to a site's appraised land value, unless a lower payment would cover the cost of public benefits funded by the developer's project. Where land value is the basis for determining the payment, Bill 108 states that the value of land to be used is value on the day before the building permit is issued.

Outside the pre-zoned precincts, successful rezoning applications will still occur and still increase the value of development sites. The more permitted density a rezoning achieves, the more valuable the site will be when the rezoning is approved, and later when the application for a building permit is submitted. A CBC tied to that value could, like Section 37, function as a tax on density thus reducing density and potential housing supply.

But that negative impact on density is avoidable. It can be avoided by appraising each site as if its permitted density were the average permitted density on rezoned sites. The resulting notional value, while not a conventional market value, will be seen by developers as a given rather than going up if their planned density goes up.

Would the resulting neutrality approximate the neutrality of land value taxation? Only to a degree, because a land value tax is the same whether a site is developed or not. But the CBC could approximate the land tax's density-neutrality if based on the notional land value described above. Otherwise, the CBC will simply replicate Section 37's negative impact on potential housing supply, albeit with greater transparency.

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