

**Passing The Buck:  
The Ontario Municipal Board and Local Politicians in Toronto, 2000-2006**

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**Paper presented for the Canadian Political Science Association 2009 Annual Conference  
Ottawa, Ontario, 27-29 May**

## Introduction

The Ontario Municipal Board is an extraordinary gift to politicians. Though never designed for the purpose, it now has the role of deciding many of the difficult planning issues which elected representatives are glad to shirk. (Cullingworth 1987, 436)

J.B. Cullingworth (1987) made this comment, concerning the effect of the Ontario Municipal Board (OMB) on Ontario's municipal politicians, in his survey of Canada's planning institutions. He also added that the Board "nicely allows politicians to abrogate the responsibilities which properly fall on them" (Cullingworth 1987, 440). Cullingworth is not alone in suggesting that local politicians in Ontario will use the Board as a means to avoid decision-making on land-use issues. Toronto's media increasingly has identified such behaviour among the city's local politicians. For instance, John Barber (2005), a Globe and Mail columnist, argues that city councillors in the City will inevitably give in to residents' opposition to a development, even if all planning rationale suggests otherwise, because the OMB "allows local politicians to pander to their constituents without doing serious harm to the future of the city. As long as the provincial tribunal is there to make the tough decisions, local politicians can be as irrelevant as they want" (M2). In a similar vein, Kerry Gillespie (2007), for the Toronto Star notes, "[c]ouncillors have been known to vote against a development that fits the city's official plan but that local residents don't want just so they can get re-elected, knowing the OMB will later approve the project" (F4). Even former councillor Paul Sutherland suggests that "many councillors have complained about the OMB, even though when they have finished complaining, they are wink-winking: 'Thank God, it was there'" (quoted in Rusk 2005, A26). If such anecdotes are true, then local politicians in Canada's largest city may be using the existence of the Board to negotiate what Paul Kantor describes as the "explosive dilemma," a political system increasingly open to citizen input in conjuncture with an erosion of municipal governments' leverage over businesses (Kantor 1988, 5). This paper examines whether and how the OMB influences the behaviour of local politicians in Toronto.

My analysis draws on a database comprising all OMB appeals in Toronto resulting in decisions, settlements, and withdrawals, and concerning Official Plan amendments (OPA), zoning by-law amendments (ZBLA), and interim control by-laws (ICBL), between 2000 through 2006. In addition, I conduct two in-depth case studies of OMB appeals, One Sherway and Lowe's. I draw on the notion of unequal resource distribution as first articulated by Dahl (1961, 226), and as later expanded on and incorporated into local political economy literature. I hypothesise that the OMB erodes a vital resource for local politicians by removing their power of final decision-making on planning issues, but in so doing, actually allows local politicians more flexibility in tackling what Kantor so ominously calls the "explosive dilemma." The OMB allows local politicians in the city to avoid making a decision between the wealth of developers and the support of the electorate.

## Resource Distribution in Urban Politics

In his seminal book *Who Governs?*, Robert Dahl introduces the notion of an unequal distribution of resources among actors engaged in urban politics. In *Who Governs?*, Dahl (1961) limits his definition of resources to "anything that can be used to sway the specific choices or strategies of another individual" (226). Since then, the notion of resources and their use in urban politics has expanded significantly. Clarence Stone (1980, 1989) adopts Dahl's (1961) notion of slack in resources available to actors (access to unused resources) as being a major source of political action. However, he also suggests that the distribution of resources influences what he calls systemic power "in which durable features of the socioeconomic system (the *situational* element) confer advantages and

disadvantages on groups (the *intergroup* element) in ways predisposing public officials to favor [sic] some interests at the expense of others (the *indirect* element)” (Stone 1989, 980, emphasis in original). In Stone’s (1989) account of politics in Atlanta, resources available to business in the city—wealth and organizational skills—appeal to local government, which lacks both, while local governments’ monopoly on decision-making and democratic legitimacy appeal to business. According to Stone’s theory of regimes, neither group uses the power to induce behaviour in the other. Rather, their respective resources complement one another, as do their mutual interests, resulting in a durable coalition (Stone 1989). Thus, actors do not use resources solely to induce behaviour in other actors. They can also use them as lures to attract other actors, and to implement policy.

In emphasizing the unequal nature of resource distribution, Dahl (1961) recognises that institutions and socio-economic forces will distribute different resources in different quantities to different groups of actors. Dahl believes that the slack in resources will allow groups to emerge and oppose any group that attempts to monopolise a specific policy domain. While critics of pluralism, including Stone, have attacked the later half of Dahl’s thesis, the notion that different types of resources are distributed to and made available to different actors remains important in local political economy literature. For instance, Purcell (1997, 2000) contends that upper-middle class neighbourhood associations in Los Angeles have successfully harnessed their ability to mobilise the electorate and pass ballot initiatives to challenge the former pro-growth coalition that used to dominate politics in the city. The emergence of neighbourhood associations as a force in urban politics also contributes to Kantor’s “explosive dilemma”.

The socio-economy and institutions of governance do not affect solely the resources available to political actors external to government; they also play a pivotal role in shaping the resources available to government, including local politicians. Kantor (1987) captures how economic and institutional change affects the resources available to government and local politicians. He argues that changes in American cities from an industrial to a post-industrial economy force municipal governments to focus on economic development and investment, while at the same time, changes to institutions of governance brought about by the reform movement have resulted in greater public input into policy decision-making. Local politicians are losing their leverage over businesses while being forced to become more responsive to the demands of the community. However, as Kantor (1988) notes,

[b]usiness people do not make and administer the law.... [O]ffice-holders of the state do. Separate from the market, the legitimate institutions, laws, and processes of the democratic state provide political authorities with a base for imposing their own preferences upon others and for regulating economic and political conduct. (18)

As I detail in the following section, this distribution of resources among business, neighbourhood and community organizations, and local politicians prevails in many American cities, and arguably is in place in the City of Toronto. This distribution has become particularly prevalent in the politics of urban development, the focus of this paper.

As Todd Swanstrom (1988) suggests “[t]he most important powers of city government are powers over land use, especially powers over zoning and public improvements” and “urban politics is decisively the politics of land use” (100). In two recent articles, Elizabeth Strom (2008) and Juliet Gainsborough (2008) both noted how, as other businesses involvement in local governance has waned overtime, developers have become central figures in urban politics. Authors such as Purcell (1997, 2000) and Logan and Rabrenovic (1990) similarly have noted the increasing prominence of neighbourhood associations as important actors in land-use politics in the US. Although, Swanstrom spoke of American cities, a number of other academics have noted the importance of land use politics

or the politics of urban development to Canadian cities as well. In fact, Andrew Sancton (1983) suggests that the division among pro-growth and anti-growth forces in Canadian cities has been the defining issue of urban politics in Canada, as Canadian cities have lacked the ethnic and racial divisions that are often the main cleavages in American cities. Warren Magnusson (1983) concurs, suggesting issues of land-use planning and the politics of urban development have been central to Toronto politics for most of the city's existence.

Thus, municipal governments' ability to make decisions on issues of land-use and city planning are integral resources to local politicians and shape their relationships with developers and neighbourhood associations. However, as Frug and Barron (2008) note, not all municipal governments control land-use planning. For instance, the two authors discuss how the state of Massachusetts removed most powers over land-use from the City of Boston, investing them instead in two new agencies, the Zoning Commission and Zoning Board of Appeal, neither of which are elected bodies. Frug and Barron (2008) focus on the failure of local political economy literature in the United States to account for the role state law plays in shaping land-use policy. However, they do not address how the removal of such an important resource from local politicians, and one integral to understanding their behaviour in urban politics, affects their behaviour and relationship with other political actors. Although, the City of Toronto maintains far more control over planning than the City of Boston, the OMB effectively wrests final decision-making from local politicians' hands.

### **The Politics of Urban Development in Toronto in Comparison with the United States**

As Sancton (1983) notes, Canadian cities, including Toronto, lack many of the social cleavages that have defined urban politics in American cities. And, as both Garber and Imbroscio (1996) and Keating (1991) suggest, the federal government in Canada has played a far less substantial role at the local level than the American federal government. This distinction is particularly important when studying the politics of urban development in each country, as federal programs and grants played a large role in shaping redevelopment in American cities. For instance, though Toronto for a time adopted similar measures for housing and redevelopment in the downtown core as cities like Atlanta, Dallas, and New Haven, Toronto's projects were on a much smaller scale. These important distinctions between Canadian and American cities are a potential barrier to any comparison of Toronto and cities in the United States. Nonetheless, there exist significant similarities, particularly in the realm of land use politics, between Toronto and similar American cities to validate such a comparison.

For instance, while residents in Los Angeles and San Francisco have access to ballot-measures unavailable in Toronto, many of the institutions in place in Los Angeles and the very history of development politics in both Californian cities bear striking similarities to Toronto. Los Angeles shares with Toronto a lack of local level political parties, an institutionally weak mayor and a ward-based system. Purcell (2000) argues that Los Angeles, especially with regard to the politics of urban development, is "an uneven terrain of political influences, jealously guarded jurisdictions, and personal idiosyncrasies" due to the ward system (96). This notion of idiosyncrasies and guarded terrain was also a recurring theme in my interviews with local politicians, developers, and other prominent participants in the politics of urban development in Toronto. In my interview with Peter Smith, a private sector planner with decades of experience in the city, he described Toronto as "forty-four separate fiefdoms," in reference to the forty-four wards in the city, suggesting there was little consistency between each ward concerning councillors' views on planning and development.

As for the politics of urban development in Los Angeles and San Francisco, middle and upper-middle class neighbourhood organizations emerged in the late sixties and mid-seventies, respectively, to challenge the dominant growth-coalition in each city as development began to encroach on the cities'

wealthier enclaves (for Los Angeles see Purcell 1997; 2000; for San Francisco see DeLeon 1992). Neighbourhood associations in Toronto, also comprised of middle and upper-middle class residents, similarly emerged as a force in city politics in the late sixties, as plans for new highways threatened the city's wealthier neighbourhoods (Lorimer 1972; Filion 1999). Since the emergence of strong anti-growth neighbourhood associations in all three cities, the battle between neighbourhood associations and developers has come to dominate the politics of urban development. In addition, Crocker and Haeckel (1993) discuss San Francisco's adoption of "incentive zoning, which compelled developers of downtown high rises to construct public projects such as plazas and mass-transit access in exchange for building density increases" (138), a measure very similar to Toronto's use of section 37 provisions from Ontario's *Planning Act* (in continued use today).

While important differences exist between Toronto and cities such as Los Angeles and San Francisco, their similar systems of government and history of land-use and development politics suggest the latter two are useful models for understanding how local politicians in Toronto would act in absence of the OMB. Kantor's "explosive dilemma" is at play in both California cities. Local politicians in both cities must contend with a development industry important both for its contribution to electoral campaigns and for its addition to the economic well-being of the city, and an increasingly mobilised and well-organised neighbourhood movement led by middle and upper-middle class homeowners, whom form the core of local politicians' electoral support (Purcell 2000; DeLeon 1992). Each group wields resources necessary for the success of local politicians, and arguably for the cities, but the continued clash of interests has often made the cities ungovernable.

While Kantor (1987) suggests "public officials are constrained to reconcile their responsiveness to the citizenry ... with the promotion of their economies" (495), Purcell (2000) and DeLeon's (1992) respective accounts of Los Angeles and San Francisco suggest local politicians in each city have chosen sides in the debate. The combination and fluctuation of such disparate elements in local government has led to unstable governing coalitions in each city. In addition to this, DeLeon (1992) suggests that the fragmentation of the anti-growth coalition in San Francisco has led to a government whose main purpose is "to obstruct and complicate the exercise of power rather than facilitate it" (555). Both cases suggest a level of parochialism has established itself in each city, as local politicians vie to win the support of their particular constituencies. Given the existence of the "forty-four fiefdoms" in Toronto, I believe that absent the Ontario Municipal Board, the politics of urban development in the City of Toronto would be much as it is in Los Angeles and San Francisco.

## **The Ontario Municipal Board and Land Use policy in Ontario**

In *City Bound*, Frug and Barron (2008) criticise local political economy literature for its failure to address the effect of lower level institutions in shaping and constraining the actions of municipal government. The authors look specifically at institutions state governments create to shape policy-making at the municipal level. I contend that to understand the politics of urban development in Toronto over the last decade (if not longer), one must also address such low-level institutions in Ontario. The OMB undoubtedly is an institution that can affect changes in municipal policy-making. However, I also believe that the Board shapes the politics of policy-making as well, largely due to another institutional element present in Ontario land-use planning: the lack of limitation on municipalities' ability to amend their own Official Plans and zoning by-laws.

The province of Ontario created the Ontario Railway and Municipal Board (ORMB) in 1906, largely to regulate and monitor the expanding municipal railway networks in Ontario municipalities. As municipal railway began to wane, the Boards focus shifted to the control and maintenance of municipal finance. By the 1930s, the Board lost railway from its name and became the Ontario Municipal Board.

Since then, the province has devolved significant powers to the Board. The ability to govern land-use planning, both proactively and in the form of an appeals body eventually became the Boards primary responsibility (Chipman 2002). Today, while the OMB maintains diverse powers and responsibilities, detailed in numerous provincial statutes, its primary function is as an appeal body on land-use issues. In its capacity as a land use tribunal, it wields significant powers. The Board can not only uphold or overturn the decisions of elected municipal councils, it can also alter or amend municipal councils' decisions or replace them with its own, regardless of existing municipal by-laws or plans (*Planning Act, 1990*). Thus, its power extends beyond that of an appeals court. While an appellant must have some rationale for appealing the decision of council, anyone can appeal, including developers, neighbourhood associations, individual citizens, or other businesses, if they disagree with a council's decision. Thus, the access to the appeal mechanism is readily available to any party concerned with a municipal council's decision. Lastly, the *Planning Act, 1990* allows developers to appeal to the Board even before a municipal council reaches a decision on a development proposal, if the council fails to reach a decision within the prescribed number of days (Chipman 2002; Krushelnicki 2007).

Although, other appeal bodies like the OMB exist in both the United States and Canada (for instance, Manitoba employs the aptly named Manitoba Municipal Board), few have the same power or are as easily accessible. In Saskatchewan, the Planning Appeals Commission (PAC) hears appeals in a court-like adversarial manner similar to the OMB. However, the Commission lacks the same breadth of power available to the OMB. It cannot hear appeals of Official Plan amendments, nor can it nullify a municipality's decision to amend its zoning by-laws. In addition, appellants must first appeal councils' decisions to local development appeals boards before approaching the PAC (Saskatchewan Municipal Board 2003; *Planning and Development Act, 2007*).

In the United States, Oregon's Land Use Board of Appeals (LUBA) wields most of the powers available to the OMB, and according to Christopher Leo (1998), the LUBA, along with the Land Conservation and Development Commission (LCDC), and the Department of Land Conservation and Development (DLCD) have emerged as important political players in the politics of land use and development in Oregon. However, while the LUBA bears striking similarities to the OMB in scope and breadth of powers, access to the LUBA is far more limited. The DLCD, a state agency and arm of the LCDC, is responsible for reviewing proposed amendments to municipalities' Comprehensive Plans<sup>1</sup> (the equivalent of Official Plans in Ontario). If the DLCD does not agree with a municipality's planning rationale, the Department can appeal to the LUBA. Thus, a state agency, not developers or citizens, is often the main protagonist in appeals to the LUBA (though individuals can appeal to the Board) (Cullingworth 1993). Several thousand amendments to municipal Comprehensive Plans make their way to the DLCD every year (Cullingworth 1993). However, few (roughly one percent) make their way to the LUBA (Liberty 1998). The LUBA has the potential to affect the politics of urban development in Oregon much as the OMB does in Ontario. However, the far fewer number of appeals is likely to offset this effect.

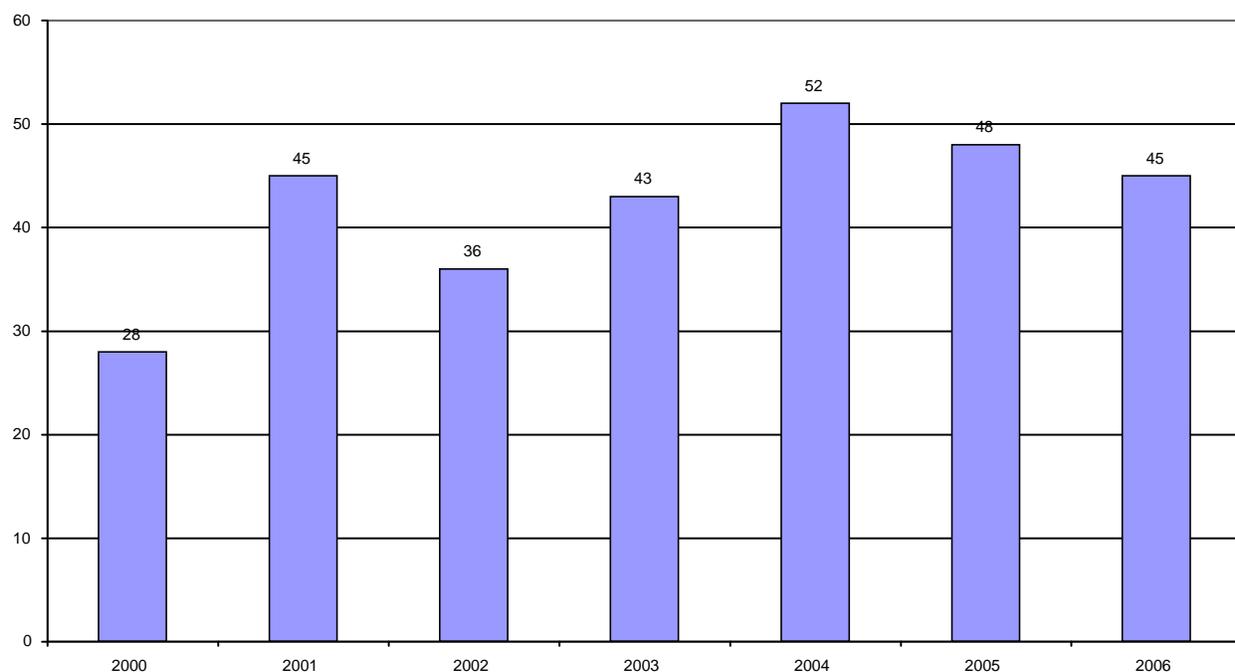
For the City of Toronto alone, the OMB rendered decisions on an average of forty-two appeals each year from 2000 through 2006, as indicated in Chart 1.<sup>2</sup> The high volume of appeals likely stems from the equally high volume of Official Plan and zoning by-law amendment application developers submit every year in the city. From 2003 through 2006 (statistics for 2000 through 2002 were unavailable), the City received over 392 applications for OPAs and major re-zoning changes (*Policy and Research 2006; City Planning 2005; 2004*). While exact data of the number of amendments the city grants each year was not readily available, my survey of OMB appeals suggests the City of Toronto,

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1 This was once a responsibility of the OMB as well, but the Board now acts solely as an appeals body.

2 The total includes settlements of appeals between the appellant and other actors before the Board rendered its decision, and withdrawn appeals. In cases resulting in settlements, the Board usually holds a final hearing to accept the settlement.

Chart 1: Number of OMB Decisions/Settlements



during the span of my investigation, granted OPAs and major ZBLA amendments on a regular basis, without resorting to the Board.

John Barber (2008) suggests the City of Toronto adopts stringent density and height restrictions through its Official Plan and zoning by-laws for the purpose of breaking them, so the City can accrue substantial benefits from developers when it agrees to amend its own Plan and by-laws. While the question of intent is debatable, the benefits available to the City as a result of section 37 of the *Planning Act, 1990* are substantial. The act states that:

[t]he council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are let out in the by-law. (s. 37(1))

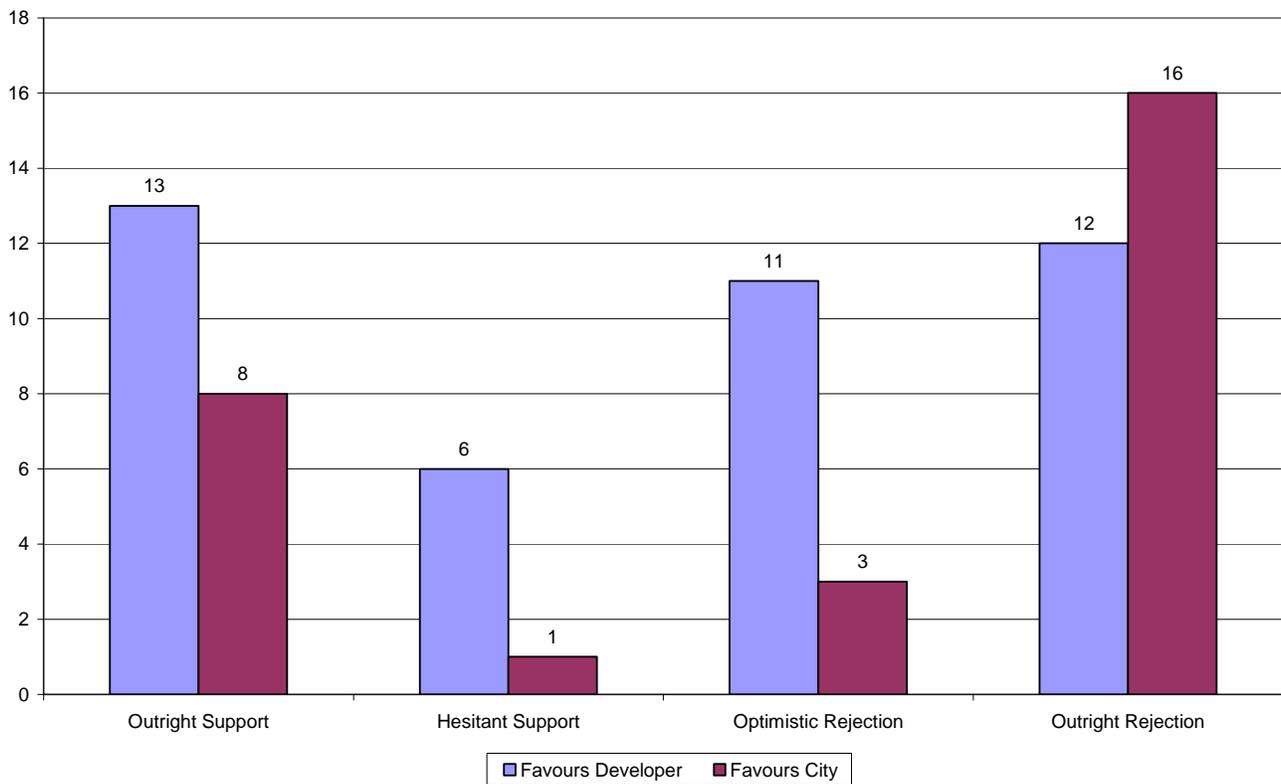
The “facilities” and “services” can be substantial in size. For instance, the City received \$2 million from the developers of Trump Tower in Toronto toward the construction of an aquatic centre in Regent Park. In the case of Minto Midtown, a large and controversial development in midtown Toronto, Minto Developments gave the city a \$1 million contribution for affordable rental housing for seniors, as well as \$200,000 for the construction of a pedestrian walkway from the new development to the Eglinton subway station (City Clerk 2002).

There exists in Ontario, therefore, an incentive for municipalities to amend their own Plans and by-laws. The Province of Ontario, like Oregon, places no limits on the number of times a municipality may amend its Official Plan and zoning by-laws. Thus, that Toronto regularly amends both is not surprising. Even as the OMB removes certain powers and resources from local politicians and municipal governments, the province allows municipalities’ far greater flexibility in daily land-use policy-making than that available in many other jurisdictions, such as Georgia, where state law prohibits municipalities from making major amendments to their Comprehensive Plans more than five

times a year (Gale 1992). As Cullingworth (1993) notes, in the United States “zoning was originally conceived as being virtually ‘self-executing’” (14). This is clearly not the case in Ontario or Toronto, nor does the OMB view Official Plans as sacrosanct in this matter.

While the ease with which municipalities in Ontario, including Toronto, can amend their own Plans and zoning by-laws provides them with an important means to wrest concessions and contributions from developers, at the same time, it limits their ability to use an applications’ failure to meet planning requirements or zoning by-laws to justify their rejection of a developers application. This fact, in itself, further erodes local politicians’ functional control over land-use decision-making, by effectively ceding their power to the OMB. As an additional consequence, local politicians must rely on city planning experts to argue the municipality’s case before the Board, as city planning experts have the requisite skills to identify good and bad planning. The chart that follows demonstrates this fact in Toronto.

**Chart 2: City Planning's Opinion and OMB's Verdict**



The chart highlights city planner’s opinion or advice to City Council on OPA and ZBLA applications that resulted in a direct confrontation between developer and City at the Board. City Planning’s opinions range from outright support to outright rejection. In addition, the chart indicates whom the OMB favoured in its decision (developer or city). When the City opposed the developer at the Board, it fares much better with city planners’ support (outright rejection of the application) than without. When City Council ignored the advice of City Planning to outright support the development, continuing to oppose the developer at the Board (the first two columns), it won 8 decisions in 21 appeals, or 38 percent. With the support of City Planning for outright rejection of the development (the final two columns), the City won 16 decisions in 28 appeals, or 57 percent. Thus, the City wins almost twenty percent more appeals with the support of city planning experts than without. Even when one includes the murky categories of hesitant support and optimistic rejection in the equation, the City wins

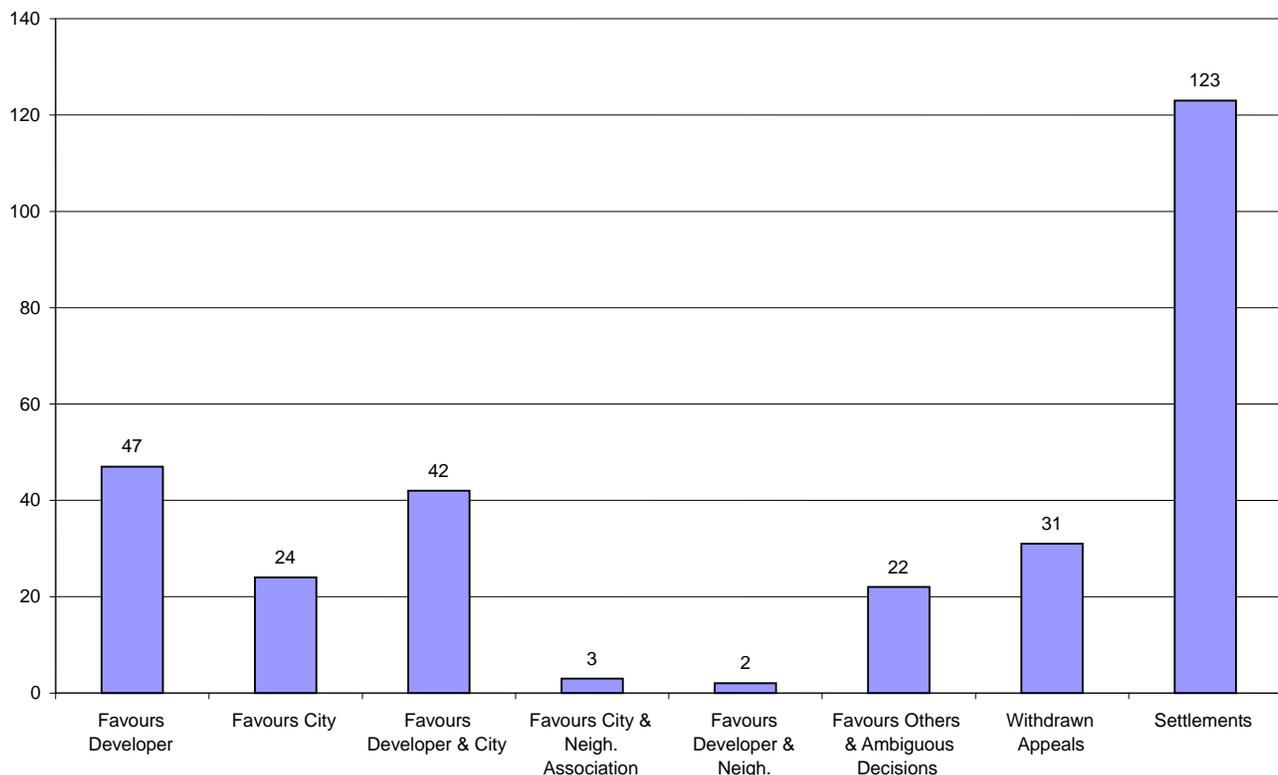
32 percent of the time without City Planning’s support versus 45 percent with City Planning’s support.

This reliance of City Council on city planning experts for success at the Board further erodes local politicians control over land-use policy, while increasing the importance of planning experts’ role in the politics of urban development. Thus, a combination of the OMB, the City’s constant amending of its own Official Plan and zoning by-laws, and its heavy reliance on its own planning experts, significantly erodes local politicians control over what is otherwise a vital resource to local politicians in their relationship with developers and neighbourhood associations. However, rather than being the Achilles’ heel of municipal politicians in Toronto, the erosion of their role in the politics of urban development in Toronto may allow them to “abrogate” responsibility for land-use issues, as Cullingworth (1987) suggests, and circumvent Kantor’s “explosive dilemma,” which has undermined the effectiveness (in land use planning and development) of local government in cities such as Los Angeles and San Francisco. The following data analysis and case studies examine whether local politicians in Toronto are in fact using their position of weakness to avoid or navigate the conflict between pro-growth and anti-growth forces in the city.

### The City of Toronto’s Success (and Failure) at the OMB

The following chart highlights two important findings regarding the City’s dealings with the Ontario Municipal Board. First, the City fares relatively poorly when opposing developers. The first column from the left comprises all of developers’ victories against the City, excluding two where developers and neighbourhood associations supported one another in opposition to the City’s decision (the fifth column from the left). In total developers won 49 appeals when in opposition to the City. In contrast, the City won 27 appeals when opposing developers (the combined total of the second and

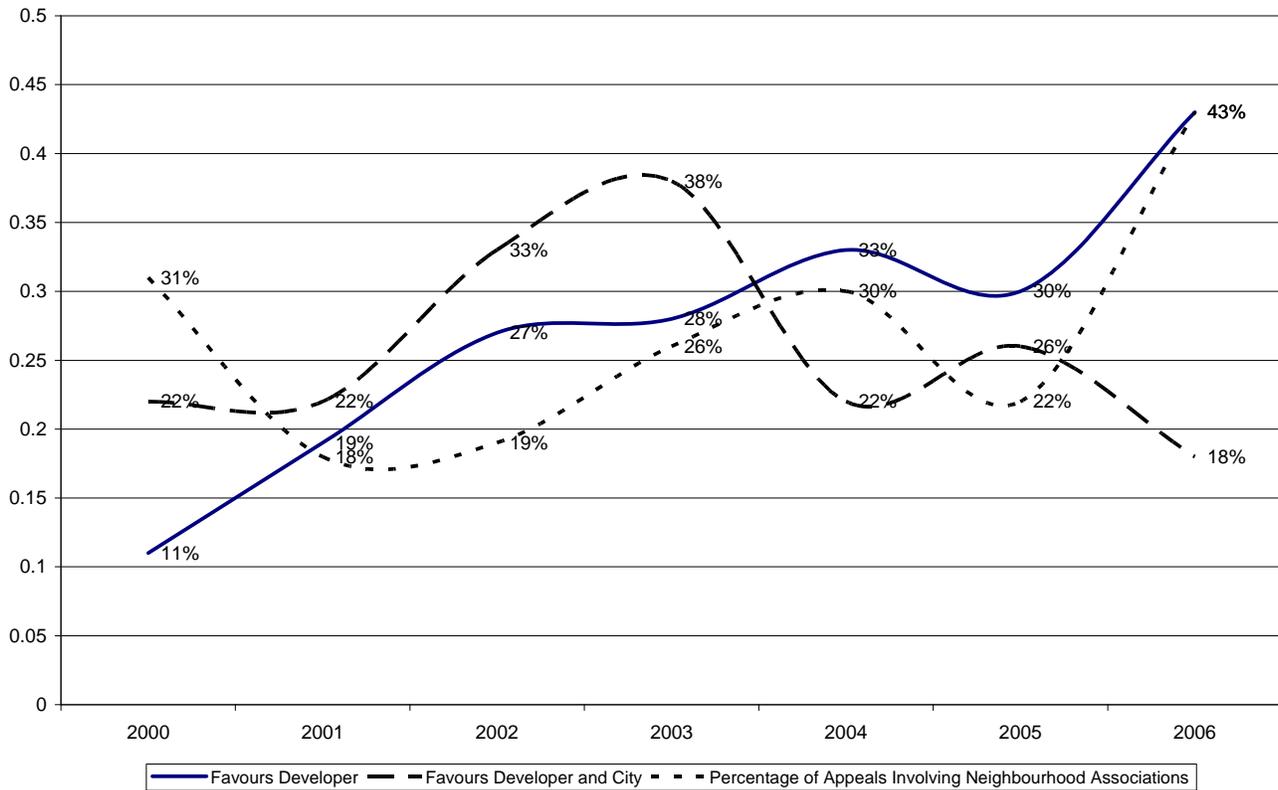
Chart 3: Results of OMB Appeals in Toronto, 2000-2006



fourth columns). Thus, when developers and the City directly confronted one another at the OMB, developers won 64 percent of the time.

Given the City’s relatively poor showing at the OMB when directly opposing developers, the number of settlements may not represent the existence of strong ties or cooperation between the development industry and the City, but rather the City’s attempt to maintain some control over the planning process, by pre-empting the Board. If this were true, local politicians are not “abrogating” their responsibility. In fact, they would be orchestrating their role in land use planning to the best of their ability. However, the following chart suggests another possibility.

**Chart 4: Developer Success at the OMB and Neighbourhood Association Involvement**



The solid line represents developers’ success against the City at the OMB from 2000 through 2006. The chart suggests developers’ success at the OMB has grown appreciably and steadily over time, from 11 percent of all appeals in 2000 to 43 percent in 2006. The segmented line represents the number of cases where the City and developers supported one another in opposition to another party at the OMB. This line fluctuates far more over time. However, 65 percent of all appeals in 2000 resulted in settlement (not shown), suggesting that the City still was cooperating heavily with developers that year (2002 had the second highest proportion of settlements at 51 percent, suggesting 2000 was unusually cooperative in that regard). Since 2002, cooperation between developers and City at the Board has been in decline. Lastly, the dotted line represents the percentage of OMB appeals neighbourhood associations were involved in each year. Aside from 2000, neighbourhood association involvement has increased steadily over time, in line with developers’ increasing success at the Board.

Over the seven-year period, neighbourhood associations participated in seventy-seven appeals, but won only five favourable decisions (three with the City’s support, and two with the support of developers). Of the remaining 72 appeals, developers won 19 against the City, accounting for 40 percent of all decisions won by developers (excluding those won with neighbourhood associations). In

contrast, neighbourhood associations were involved in only 3 of the City's 27 victories against developers (or 11 percent). If one removes all appeals involving neighbourhood associations from the equation, the City fares far better against developers, though still losing a majority of appeals (24 victories versus 28 defeats). While the chart above suggests that the City is becoming more accommodating to neighbourhood associations, and less so to developers, the City fares far worse at the OMB when fighting alongside neighbourhood associations against developers, than when going it alone.

If the City has strong planning rationale for rejecting a proposal, the involvement and support of neighbourhood associations is unlikely to hamper the City's defence of its decision. Therefore, that the City fares poorer at the OMB when working with neighbourhood associations against developers most likely results from local politicians reacting to neighbourhood associations' opposition to development, when minimal planning rationale against the proposal is evident. Toronto's City Council, as a whole, seems willing to cooperate with developers in most instances, but is also apt to reject proposals when significant citizen opposition arises. These findings suggest that local politicians, at least in aggregate, choose to support or reject development proposals on a case-by-case basis, rather than adopting a specific anti-growth or pro-growth perspective. This behaviour contrasts sharply with the behaviour of local politicians in Los Angeles and San Francisco, who have to consistently side with the constituency that got them elected (either through campaign contributions or through votes). The climate of conflict between developers and upper-class neighbourhood associations exists in Toronto, as it does in the two California cities. Thus, some element absent in the two latter cases must allow local politicians to avoid Kantor's "explosive dilemma". Given that much of the politics of urban development in Toronto unfolds during or leading up to OMB hearings, the Board is the most likely culprit. The two case studies below suggest exactly how the Board allows local politicians in Toronto the flexibility to avoid making-decisions.

### **One Sherway**

One Sherway was one of the more controversial developments proposed during the period of my study. On 4 July 2003, Lifetime Homes Inc., applied to the City of Toronto for amendments to the Official Plan and pertinent zoning by-laws (Council Minutes 2005a). The original application proposed the construction of two thirty-five storey and two thirty storey condominium towers on vacant land adjacent to the Sherway Gardens Shopping Centre, a large mall in the city's south-west corner (Diamond 2003). The City and developer held a meeting for the public to attend a month following the submission of the application. City Planning noted that Lifetime's proposal substantially exceeded the density permitted under the Sherway Centre Secondary Plan (Community Planning 2004). The piece of land subsequently changed hands from Lifetime Homes to Sherway Gate Development Corporation (SGDC), a partnership of two other developers. On 4 March 2004, the new owners submitted a revised proposal for the site. The new proposal maintained four towers, but significantly reduced their heights and overall density. In addition, the proposal reduced the number of units below the maximum number permitted (1 350) for the site (Community Planning 2004).

The proposed development was located in Ward 5, Councillor Peter Milczyn's ward. Councillor Milczyn attended both public meetings. Because of the close proximity of the site to Ward 6, Councillor Mark Grimes also involved himself in the process. Most of the residents who attended the meetings were from Councillor Grimes' ward, from a community called Alderwood. The Alderwood residents were vehemently opposed to the development. They expressed concerns over the density and height of the development, increased traffic, loss of privacy due to the buildings' heights, and the effect of the development on the neighbourhood's schools. In addition, residents felt that the development

would result in greater pollution and noise, and that the site lacked the proper infrastructure for such a large development (Community Planning 2004).

Despite local residents concerns, the City's planning experts recommended that the City approve necessary amendments to the Official Plan and zoning by-laws so the developer could proceed with the development. In its report, City Planning noted that any limited shadow cast by the buildings would fall solely on the Toys R Us and Sherway Gardens. The report also noted that the Queen Elizabeth Way (QEW), a major expressway that separates the site from the Alderwood community to the south, produced far more noise than any possibly generated by the new development. Finally, City Planning had accepted a traffic study from the developer, which concluded that the existing road network in the area could accommodate any increase in traffic resulting from the development. City staff noted that SGDC had already committed itself to a minimum of \$500 000 for provision of open space and public art under section 37 of the *Planning Act* (Community Planning 2004).

In a meeting of the Etobicoke York Community Council (EYCC), a sub-committee of council responsible for the city's west end, held on 16 November 2004, Councillor Grimes, at the behest of residents from his ward, requested that the City hire an outside consultant to conduct a peer review of the traffic study the developer had submitted to City Planning. His motion passed (City Clerk's Office 2004). However, according to the staff report, the firm responsible for the peer-review agreed with the original report on most points, and considered the site a suitable location due to easy access to transit (City Clerk 2005).

Despite City Planning's support for the project, and the support of Councillor Milczyn, the EYCC voted eight to two against the proposal (City Clerk 2005; Barber 2005). In an interview with the *Globe and Mail*, Councillor Milczyn vented his frustration with the decision, noting that the proposal was "precisely the type of development we want in precisely the place we want it" (Barber 2005). At the City Council meeting of 1 February 2005, Councillor Grimes submitted a petition with 814 signatures in opposition to the development, while Councillor Milczyn proposed to amend the EYCC clause, and adopt city staff's recommendations instead. Milczyn's motion lost by one vote, and council subsequently rejected the proposal twenty-two to seventeen (Council Minutes. 2005b).

The developers subsequently appealed to the OMB. Despite Council's rejection and Alderwood's opposition, the OMB allowed the appeal. The Board relied heavily on the testimony of city planners in favour of the development. The City's external planning expert suggested the city needed to revisit the secondary plan for Sherway Gardens to determine what was appropriate for the area. However, his testimony did not suggest the proposal was poor planning. The Board did not give significant weight to Alderwood residents' fears, noting, as did City Planning, that the QEW was responsible for most of the noise and traffic in the area (*Toronto (City) Official Plan Redesignate Land Amendment (Re)*).

The close vote in favour of refusing the development application suggests a City Council heavily divided, as in Los Angeles and San Francisco. However, this clash between developer and neighbourhood residents was unusual. Typically, neighbourhood opposition to a development emerges in the same ward as the proposed development. In this instance, there was limited opposition to the development in Councillor Milczyn's ward, so he was free to support the development without repercussion to his standing with residents in Ward 5. The opposition arose from the community to the south of the proposed development in Councillor Grimes's ward (Ward 6). Councillor Grimes clearly felt pressured to oppose the development. Had no opposition arose in Ward 6, or had the proposal arose in that ward, Council likely would not have split in the fashion it did.

## Lowe's

The Lowe's case is more typical of the majority of appeals to the OMB, lacking neighbourhood opposition and media coverage. On 21 May 2003, Toronto City Council approved the demolition of a building used for paint manufacturing (City Clerk 2003). Over two years later, on 26 September 2005,<sup>3</sup> the owner of the site, North American Development Group, applied for a site plan control to permit the construction of a large retail hardware and home improvement store, and seven smaller satellite buildings with additional retail (Macaulay 2006).

The developer's proposal did not require either an amendment to the Official Plan or existing by-laws. According to North American's solicitor, the developer had been in talks with City Planning for almost two years prior to submitting its application (Makuch 2005). Lowe's Companies Canada, UCL (Lowe's), a new subsidiary of the giant American home hardware retailer, also joined in discussions with City Planning, after signing a lease for the site with North American (Harbell 2005). Despite the consultation, City Planning staff approached City Council in late October of 2005 recommending that the City pass an Interim Control By-Law preventing most types of development in the Castlefield Caledonia Design and Décor District (CCDDD), which included the North American development site (Tyndorf 2005).

In its report to City Council, City Planning suggested that the new ICBLs should exclude the sites of two other proposed developments in the area as City Planning had been reviewing these development applications for sometime. However, City Planning did not suggest North American and Lowe's site should be exempt, though it acknowledged in its report that it recently had received an application for the site in question. City Planning suggested North American and Lowe's proposal could affect the review and alter the character of the area. Councillor Howard Moscoe, whose ward encompassed the district, moved that council adopt City Planning's recommendation (Tyndorf 2005). City Council subsequently passed two interim control by-laws, effectively ending City Planning's consideration of the development proposal for at least one year (the duration of the initial ICBLs).

On 21 December 2005, North American appealed to the OMB, noting that it had engaged with City Planning in discussions for almost two years, and at no time did City Planning mention the possibility of a development freeze on the site. The developer also argued that the new Official Plan already addressed the issues of large-scale retail development. As it was then under appeal to the OMB, the ICBL was premature, since the Board had yet to rule on the new Official Plan in regards to such retail development (Makuch 2005). Lowe's appealed both ICBLs the following day. In its notice to the City Clerk, Lowe's noted that it had approached City Planning months prior to submission of the application concerning the development, and reiterated North American's claim that it had no prior warning of the ICBLs. Lowe's argued that its proposal for the site was completely in keeping with the existing Official Plan, and the City was wrong to pass the ICBLs based on the new Official Plan, as it had yet to come into force. Lowe's claimed that the ICBL was "unnecessary, unreasonable, was passed for an improper purpose and does not represent good planning" (Harbell 2005).<sup>4</sup>

There is little evidence of continued dialogue between Councillor Moscoe, councillor for the ward, and the developers. In their appeals to the OMB, both Lowe's and North American spoke of their dialogue with City Planning, and their feeling that the City's planning experts had not dealt with them in good faith, but made little mention of local politicians. While Councillor Moscoe may have been apprised of the development and the effect of the ICBL on it, City Planning's failure to mention the

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<sup>3</sup> In the developer's Notice of Appeal to the OMB, the solicitor suggests the developers submitted the application on 23 September 2005. However, all other sources state the 26<sup>th</sup> (the actual application was not in the OMB's archival material).

<sup>4</sup> Both North American and Lowe's also appealed council's neglect to render a decision on the site plan application within thirty days following its submission (Harbell 2005; Makuch 2005), which is a more typical reason for appeal.

development in its report may have left much of City Council unaware of these facts.

Following notification of the appeal, City Planning sought City Council's direction on the specific development. In a report to council asking direction regarding the impending OMB hearing, city planning experts recommended council oppose the site plan application of the developers, as the site plan did not conform to the newly passed ICBL. Council adopted City Planning's recommendations. In its justification for opposing the site plan application, City Planning noted that while the developer had submitted the initial application on 26 September 2005, the application was not completed until the middle of October, and did not begin circulating among staff until 26 October (the day council passed the two ICBLs) (City Clerk 2006).

On 21 June 2006, Lowe's and North American submitted a proposal for settlement to the City for the ICBL appeal. The proposed settlement involved Lowe's and North American withdrawing their appeals of the ICBLs, effectively postponing construction until October 2006 (roughly the time when the initial ICBLs would run-out). The City would agree to exempt the developer's application from the ICBL, allowing City Planning to process the site plan application. The City would also commit to processing the application before the end of October (Rovazzi and Shelton 2006). The city solicitor approached council directly with the proposal, and recommended its adoption in a confidential report. In addition, City Council considered a confidential fiscal impact statement from the City's CFO and Deputy City Manager. Lowe's and North American gave the City until 30 June to accept the proposal. The OMB hearing was scheduled for 12 July. Councillor Moscoe moved that council adopt city staff's recommendations. City Council approved the settlement on 27 June 2006 (Council Minutes 2006).

The City advised the Board of the settlement on 30 June 2006 (Haley 2006). The final settlement did not deviate significantly from the developers' proposal. City Planning and the developers subsequently began discussions on the site plan application (*Toronto (City) Interim Control By-law 862-2005 (Re)*). In late August 2008, City Planning recommended to City Council that it extend the ICBLs for another year. However, the new ICBLs would exempt North American and Lowe's site. (Tyndorf 2006). While the city solicitor's report and the fiscal impact statement are inaccessible, one can infer that the City faced potential legal action had it continued to disregard North American and Lowe's application. Alternatively, the City's solicitor may have advised council that the City likely would lose the appeal of the ICBL, which would render the by-laws void (allowing for additional applications for development in the area).

City Council in this instance relied heavily on the advice of the City's planning experts and later the city solicitor and top bureaucrats. In contrast with the One Sherway case, council did not split when voting in support of the ICBL, nor in support of the settlement. Planning and development in this case did not have the same salience for local politicians in Toronto as they did in the previous case. City Council's heavy reliance of the advice and expertise of members of the planning community and the City's top bureaucrats suggests it relinquished the decision-making to its bureaucracy, not the OMB. After all, council opted to settle with the developers to avoid a hearing (on the advice from the city solicitor, CFO, and Deputy City Manager). However, effectively delegating the decision-making in this matter suggests City Council, if not avoiding responsibility for the decision, did not perceive the issue as salient enough to become actively involved in the process.

### **Local Politicians' Behaviour and the Role of the OMB**

Local politicians in Toronto are not abandoning entirely their role in decision-making on development issues in the city. Councillor Grimes's response to neighbourhood opposition in the One Sherway case, and the findings of my analysis of OMB decisions, indicate that Toronto's local politicians are responsive to citizens in certain circumstances. A councillor's perception of the strength

of neighbourhood opposition to development, or the ability of an organised neighbourhood association to affect the outcome of future electoral campaigns, could well be the decisive factor in swaying a councillor's decision (though some councillors in Toronto are clearly anti-growth). Where neighbourhood opposition is absent, or a councillor does not perceive their opposition as a threat, as in the Lowe's case and the numerous cases resulting in settlements, local politicians in Toronto (again, with some exceptions) seem to prefer settling disputes with developers before the dispute reaches the OMB. However, although they are not abrogating responsibility to the Board, local politicians in the city, as the Lowe's case demonstrates, delegate real decision-making to the City's bureaucracy, notably the City's planning experts. Thus, local politicians in Toronto do make land use and development policy decisions, but do so largely on the advice of others, including neighbourhood associations, city planning experts and bureaucrats, and even developers on occasion (after all, the City accepted Lowe's and North American's settlement with few alterations).

Although, the relationship between local politicians and developers is not always cordial, the City Council, if not all local politicians, maintains a functioning working relationship with the development industry in Toronto. However, individual councillors will respond to neighbourhood opposition to development. Conflict among councillors over development is not the norm in the City. The Lowe's case is indicative of most appeals to the OMB, and council's unanimity characterises its usual response to development proposals. The One Sherway case suggests that conflict in council over development only arises when a development affects multiple wards. That Toronto's City Council can in one instance unanimously oppose a development (its first decision in the Lowe's case), unanimously support a settlement (its second decision in the Lowe's case), and split on another development proposal (One Sherway), suggest local politicians in Toronto enjoy significant flexibility in decision-making.

While two cases are insufficient to account for the politics of urban development in Toronto as a whole, my data analysis above suggests the same. In years where neighbourhood association opposition to development was muted, the City regularly worked toward compromises with developers. As neighbourhood association involvement and opposition grew, the same local politicians<sup>5</sup> increasingly opposed developers. Toronto's local politicians' ability to switch back and forth between pro-growth and anti-growth sentiment contrasts sharply with local politicians in cities like Los Angeles and San Francisco. In these cities, anti-growth and pro-growth attitudes often define local politicians.

The very presence of the Ontario Municipal Board allows local politicians to deflect criticism from themselves when dealing with controversial planning and development issues. They do not achieve this simply by abrogating responsibility to the OMB, however. Rather, while they do not and cannot de-politicise issues of development and land-use planning, they effectively remove these issues from the sphere of municipal elections. By catering to developers most of the time, as indicated by the prevalence of settlements in the city, local politicians in Toronto avoid the potential loss of campaign contributions and economic stimulus from development. They can also use the potential of an unfavourable Board decision to justify their position to neighbourhood residents. Alternatively, the Board allows local politicians the luxury of opposing developers when significant opposition arises from neighbourhood associations. In selectively choosing their battles with the development industry, local politicians in Toronto can maintain support with the electorate, with the knowledge that the Board will likely rule against them.

The Board removes an otherwise vital resource for local politicians, the power over land-use planning. However, as Stone (1980) suggests, a resource is not only a source of inducement, but something that can lure other actors into cooperation with the actor that wields that power. Local politicians in Toronto matter enough for developers and neighbourhood associations to approach them

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<sup>5</sup> Toronto has very low turnover rate among its councillors in elections.

for support. However, that the Board is the ultimate decision-maker removes some of the pressure for local politicians to choose a side, which is, essentially, what Kantor's "explosive dilemma" is all about. The OMB allows local politicians in Toronto to offload the cost of decision-making to the Board, which effectively removes the politics of urban development from the electoral sphere. The Board allows Toronto's politicians to circumnavigate the "explosive dilemma," by removing the burden of decision-making from their shoulders. This finding has important implications beyond Toronto. While resources are important assets to actors in urban politics, wielding certain resources can also place costs on the actors that wield them. For local politicians in other jurisdictions in North America, the cost of wielding power over planning derives from the pressure to choose sides in the politics of urban development.

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