

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, Report No. 52, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan on December 10, 2013, as follows:

***By approving the following:***

***That Communication C5 from Mr. Michael S. Goldberg, Goldberg Group, Avenue Road, Toronto, dated November 26, 2013, be received.***

**12**

**VAUGHAN OFFICIAL PLAN (VOP) 2010  
MODIFICATION TO POLICIES 10.1.2.9 – 10.1.2.12  
BONUSING FOR INCREASES IN HEIGHT OR DENSITY  
SECTION 37 OF THE PLANNING ACT AND  
IMPLEMENTATION GUIDELINES (FILE #25.6.1)**

The Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Commissioner of Planning, dated November 26, 2013, be approved;
- 2) That a status report be provided to a Committee of the Whole (Working Session) meeting one year after implementation of the policy;
- 3) That the requests contained in Communication C13, from Ms. June Little, Toronto and Region Conservation Authority, Shoreham Drive, Downsview, dated November 25, 2013, be considered in the implementation of the policy;
- 4) That the deputation of Mr. Chris Atkins, Smart!Centres, Applewood Crescent, Vaughan, be received;
- 5) That the following Communications be received:
  - C9 Ms. Paula Bustard, Smart!Centres, Applewood Crescent, Vaughan, dated November 25, 2013;
  - C11 Mr. Quinto Annibale, Loopstra Nixon LLP, Woodbine Place, Queens Plate Drive, Toronto, dated November 25, 2013;
  - C14 Ms. Danielle Chin, BILD, Upjohn Road, North York, dated November 25, 2013; and
  - C18 Mr. Ryan Mino-Leahan, KLM Planning Partners Inc., Jardin Drive, Concord, dated November 26, 2013.

**Recommendation**

The Commissioner of Planning recommends:

1. That the revised Policies 10.1.2.9 – 10.1.2.12 forming Attachment 1 to this report, be approved as a modification to the Vaughan Official Plan – 2010, regarding “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)”;
2. That the parties to the Ontario Municipal Board appeals of the VOP 2010, including the Region of York, be advised that the City will be seeking approval of the revised Policies 10.1.2.9 – 10.1.2.12 as referenced in 1. above; including the following modification:
  - a) the addition of the following benefit to the list of benefits provided in policy 10.1.2.9 (ii):

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 2

“The provision of affordable housing in the form of land, residential units or cash contributions to be transferred to the Region of York (Housing York, Inc.) or to a non-profit housing provider, free of cost, (including maintenance and condo fees if applicable).”

3. That the Implementation Guidelines once finalized, be submitted to Council for adoption as a Corporate Policy, subsequent to the Ontario Municipal Board’s approval of Policies 10.1.2.9 – 10.1.2.12 of VOP 2010, including the incorporation of any changes made necessary by the Board’s decision; and
4. That it be recognized that at such time that the Implementation Guidelines are submitted to Council for adoption it will be necessary to authorize the Commissioner of Finance/City Treasurer and City Clerk to amend the Consolidated Reserve Policy and By-law to incorporate the “Section 37 Reserve” as outlined in the Implementation Guidelines.

**Contribution to Sustainability**

The use of Section 37 to enhance the environment of Intensification Areas, and other specific sites as considered appropriate, contributes to the goals and objectives within “Green Directions Vaughan”, and the City’s “Sustainability and Environmental Master Plan”, specifically:

Goal 1: To significantly reduce our use of natural resources and the amount of waste we generate.

Objective 1.3 “To support enhanced standards of stormwater management at the City and work with others to care for Vaughan’s watersheds”

Goal 2: To ensure sustainable development and redevelopment.

Objective 2.2 “To develop Vaughan as a City with maximum greenspace and an urban form that supports our expected population growth”

Goal 4: To create a vibrant community for citizens, businesses and visitors.

Objective 4.1 “To foster a city with strong social cohesion, an engaging arts scene, and a clear sense of its culture and heritage”

Objective 4.2 “To ensure that the City of Vaughan attracts businesses and investment that will result in well-paying jobs for Vaughan citizens, a sustainable tax base, and continuing prosperity into the 21<sup>st</sup> century”

Goal 5: To be a leader on sustainability issues.

The use of Section 37 can help to promote goals which directly relate to those of Green Directions Vaughan, including integrating transit infrastructure with the emerging urban fabric and supporting the pedestrian, cyclist, transit and motorist experience for all ages and abilities.

**Economic Impact**

The cost of the study is funded from the Policy Planning Operating Budget.

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013

Item 12, CW Report No. 52 – Page 3

#### Communications Plan

Notice of this meeting has been communicated to stakeholders by the following means:

- Posted on the [www.vaughan.ca](http://www.vaughan.ca) online calendar;
- By Canada Post to the VMC landowners, Vaughan BILD Representatives and to all registered City Ratepayer Associations; and
- By email to all appellants, parties, and participants involved in the appeal relating to the VOP 2010, Volume 1(OMB File no. PL111184).

#### Purpose

The purpose of this report is to present modified Policies 10.1.2.9 – 10.1.2.12 of VOP 2010 in regard to “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)” and corresponding Implementation Guidelines, as refined through input received at the Committee of the Whole (Working Session) of September 10, 2013, for Committee of the Whole’s consideration. The modified policies will form the basis for the City’s position at the Ontario Municipal Board in light of appeals of the affected sections of VOP 2010. The Implementation Guidelines will be finalized and brought forward to Council for subsequent approval, after the Board has approved Policies 10.1.2.9 – 10.1.2.12, and with the benefit of additional input on valuation of the benefit.

#### Background - Analysis and Options

##### Background

##### Provincial Policy

Section 37 of the Planning Act permits the City to authorize increases in height and/or density through a site specific zoning by-law in return for community benefits such as specified facilities, services or other matters from the landowners, provided that there are enabling Official Plan policies in place.

Section 37 of the Planning Act states that:

“A municipality may, through a zoning by-law, approve increases in height and/or density beyond what the zoning by-law would otherwise permit, in return for facilities, services or matters (community benefits) as are set out in the by-law.”

and,

“The Official Plan must first contain provisions authorizing the use of Section 37, and that community benefits may be secured in an agreement that may be registered on title.”

##### The Region of York Official Plan

The Region of York Official Plan requires local municipalities to adopt Section 37 policies for Regional Centres and Corridors (section 5.4.15.). The Regional Official Plan includes the following list of community benefits for Municipalities’ inclusion in their Official Plans for Regional Centres and Corridors:

- a. transit station improvements;
- b. social housing;
- c. direct pedestrian connections to transit stations;
- d. regional community and health facilities;

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013

#### Item 12, CW Report No. 52 – Page 4

- e. regional emergency medical services and police stations;
- f. additional facilities and services identified by local municipalities; and,
- g. appropriate provisions for pedestrian and cycling facilities.

#### The City of Vaughan Official Plan 2010 (VOP 2010)

Currently, Policies 10.1.2.9 – 10.1.2.12 of Chapter 10, “Implementing the Plan”, of the Council adopted and Region of York endorsed VOP 2010, provides policies permitting the use of height and density bonusing through a Section 37 Agreement in the VMC, Primary Centres or as specified in a Secondary Plan. The existing policies speak to the basic requirements of the Planning Act policies respecting the use of Section 37. The VOP 2010 also lists community benefits which shall be considered in a Section 37 Agreement.

#### Stakeholder Consultation Process

Public consultation respecting the use of Section 37 Agreements began June 28, 2012 with a presentation to the Vaughan Metropolitan Centre Sub-Committee of Council on the potential use of Section 37. In March of 2013, the City retained the services of Gladki Planning Associates to report on Section 37 practices in other municipalities and to help develop more comprehensive Section 37 Policies and Implementation Guidelines for the City of Vaughan.

On May 7, 2013, members of the City of Vaughan Senior Management Team (SMT) and representatives of several departments were invited to attend a presentation by the City's Consultant to introduce the use of Section 37 of the Planning Act, including the guiding principles and related practices of other municipalities. The development review process for applications proposing a Section 37 Agreement was also addressed to set the framework for the development of more detailed City Section 37 Policies and Implementation Guidelines. Shortly after the May 7<sup>th</sup> meeting, staff circulated a draft Section 37 Policy and Implementation Guidelines to SMT for review. Comments received from the circulation were incorporated into a draft Policy and Implementation Guidelines.

On June 24, 2013, a consultation meeting was held with VMC Stakeholders, Vaughan BILD Representatives, registered Ratepayer Associations, Vaughan Councillors and City staff. External participants were notified by mail two weeks prior to the meeting date. The purpose of the meeting was to present the (draft) Section 37 Policies and Implementation Guidelines, and to provide an opportunity for input into the policy development process. Issues raised by participants included:

- (i) The proposed percentage range of 25-35 % for the property value uplift to be recovered by the City through a Section 37 Agreement was considered to be excessive by some landowner representatives;
- (ii) the perception that the use of this tool could lead to an expectation of greater heights/densities in an area than is envisioned or permitted by the current Official Plan; and,
- (iii) the request for reproducible methodology for Section 37 development applications.

On September 10, 2013, a Committee of the Whole (Working Session) was held, to present modified Policies 10.1.2.9 - 10.1.2.12 of VOP 2010 (Bonusing for Increases in Height or Density, Section 37 of the Planning Act) and Implementation Guidelines for Committee of the Whole's and stakeholders' consideration and input. Notice of the meeting was sent to Vaughan BILD Representatives, to all registered City Ratepayer Associations; and, to all appellants, parties, and participants involved in the appeal relating to the VOP 2010, Volume 1 (OMB File no. PL111184).

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013

#### Item 12, CW Report No. 52 – Page 5

At the following Council meeting of September 17, 2013, Council received all related deputations and communications, and approved the recommendation of the Commissioner of Planning, including the following direction to staff:

“That the revised policies set out in Attachment 1 applying to Policies 10.1.2.9-10.1.2.12 of the Vaughan Official Plan 2010 regarding “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)” be further refined on the basis of any input received at this Committee meeting.” (see Council Extract, Attachment 3)

Comments received at the Committee of the Whole (Working Session) and responses to each, are provided in the “Refinements to the draft Policy and Implementation Guidelines” section of this report.

#### Ontario Municipal Board Appeals

On July 23, 2013 the Ontario Municipal Board granted partial approval to Volume 1 of VOP 2010. The subject policies (10.1.2.9 – 10.1.2.12) were among those not approved. Fourteen parties have appealed the Section 37 policies. At this time, the appellants have not listed specific issues regarding the wording or content of the affected policies. It is expected that the specific issues will be refined and positions clarified through the mediation process. Ultimately the appeals will be resolved through the Ontario Municipal Board process through further negotiations, Board mediation or a hearing.

The Board approved policies will be incorporated into the Official Plan. Modifications to the original version of Policies 10.1.2.9 – 10.1.2.12, adopted by Council through this process, will form the basis for the City’s position at the Ontario Municipal Board. The Board and the Region of York will be advised of any such decision taken by Council and a recommendation will be provided.

#### Refinements of the Draft Policy and Implementation Guidelines

The draft Section 37 Policy modifications and the corresponding proposed Implementation Guidelines were presented to Committee of the Whole and stakeholders at the September 10, 2013 Committee of the Whole (Working Session). Consideration of the comments received through deputations and from communications for the Working Session, have resulted in Staff’s further refinement of the draft Policy and the commissioning of additional work by the Real Estate Department on the valuation of benefits. Comments received at the Committee of the Whole (Working Session) meeting, and staff’s responses to each are provided below. Where revisions are proposed to either the Policy or the Implementation Guidelines, as explained in the “Response” sections, these changes are also reflected in the proposed drafts of the documents (Attachments 1 and 2).

#### A. Comments respecting the Draft S. 37 Policy and Recommended Responses

##### 1. Comment:

It appears premature to be implementing Section 37 policies at this time given the Minister of Municipal Affairs and Housing’s announcement of the Province’s intention to launch a consultation process that may impact Section 37 policy.

##### **Response:**

**Discussions with Ministry of Municipal Affairs and Housing (MAH) indicate that the review by MAH will take many months and the timing of the outcome is uncertain. Ministry staff are interested in Vaughan’s Section 37 initiatives and are looking at**

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 6

Vaughan as a potential for piloting best practices as they conduct their review. In addition, the City is currently receiving and processing requests for Section 37 development applications under the provisions of older in effect Official Plans; a more transparent, reproducible approach for the use of this tool is therefore needed as soon as possible. Should refinements to the Section 37 Policy and Guidelines be required later as a result of a Provincial study and subsequent legislative/policy change; amendments to the relevant sections of VOP 2010 and the Implementation Guidelines will be made as necessary.

2. Comment:

There seems to be overlap between what is funded through Development Charges, the site plan process, and parkland dedication funds; and what the City is seeking through Section 37 charges. Clarification is required.

**Response:**

Reference is included in the proposed Section 37 Policy and Implementation Guidelines to recognize that Section 37 benefits are in addition to what would be provided to the City through other policies of the Planning Act or through the Development Charges Act.

**The Policy states:**

**10.1.2.9 Increased Height and Density Provision**

“1.1 (ii)A by-law may be enacted by Council to achieve the City’s objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the other provisions of the Planning Act or the Development Charges Act, ...”

**The Guidelines state:**

**Valuation of Community Benefits**

“5. (paragraph 2): The community benefits will be over and above what could otherwise be achieved through other sections of the Planning Act, such as Section 41, 42 and/or 50. Section 37 Agreements do not in any way entitle reductions in Development Charges.”

3. Comment:

It is unclear as to whether the provisions of Section 37 will be applied to increases in density/height above the limits set by the Official Plan or the zoning by-law.

**Response:**

The City’s new Vaughan Official Plan 2010 introduces a number of changes to densities and heights in the Intensification Areas; once this Plan has final approval it will inform subsequent up-dates to the City of Vaughan By-law 1-88. It is understood that the final approved VOP 2010 height and density ranges, will in most cases be used as the base lines from which most Section 37 development applications are reviewed. However, there may be cases where recently approved by-laws established through the development process or through area specific

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 7

studies, will inform the Section 37 application review, and in such cases the by-law may be used as the baseline in combination with the Official Plan. This was previously indicated in the Implementation Guidelines presented at the Committee of the Whole (Working Session), and has now also been clarified in the draft Section 37 Policy (see policy 10.1.2.9 i., Attachment 1). Further research into the setting of the base line values is currently underway, the findings of which will be integrated into the Implementation Guidelines.

4. Comment:

The development standards with respect to architectural design and sustainability for the Vaughan Metropolitan Centre are higher than for other areas; could there be some differentiation in the Section 37 policy for the VMC relative to other areas of the City?

**Response:**

The VOP 2010 calls for good design and implementation of sustainability measures throughout the City, and in particular refers to high standards for design, architecture and the urban realm in all Intensification Areas of Vaughan. Recognizing that the Vaughan Metropolitan Centre has a unique role in the urban structure of Vaughan, the Section 37 Policy for this area has been tailored to specifically address the needs of the City's downtown through the VMC Secondary Plan. These needs are identified as a series of possible community benefits in the VMC Secondary Plan.

5. Comment:

Consideration should be given to including affordable housing to the list of benefit criteria for the proposed Section 37 policy 10.1.2.9.

**Response:**

The Region of York Official Plan encourages municipalities to consider density bonusing as a means to achieve affordable housing (Section 3.5.10). With reference to Intensification Areas, the YROP further addresses affordable housing as a required Section 37 benefit in Secondary Plans for Regional Centres and Corridors (Section 5.4.15).

Affordable housing is included in the list of Section 37 benefits in each of the five surveyed municipalities (Toronto, Ottawa, Mississauga, Markham, and Burlington). These policies identify affordable units, land or cash contributions as acceptable benefits under Section 37, which typically represent one component of a broader package of community benefits secured by a given municipality. Upon execution of the Section 37 Agreement, the conveyance of residential units and long term maintenance costs etc., are then subject to an agreement between the developer and the non-profit provider.

It is noted that affordable housing is listed as a benefit in the adopted VOP 2010 policy- 10.1.2.9. Staff had initially proposed deleting it until such time as the Region of York has completed its Affordable Housing Implementation Guidelines; however, given the importance of this initiative, it is recommend it be included in policy 10.1.2.9 (ii) at this time, as follows:

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 8

**“The provision of affordable housing in the form of land, residential units or cash contributions to be transferred to the Region (Housing York, Inc.) or to a non-profit housing provider, free of cost, (including maintenance and condo fees if applicable).”**

**Refinements to the application of the affordable housing benefit may be required once the Region of York has finalized its Affordable Housing Implementation Guidelines and the City in turn, has developed its Affordable Housing Strategy (VOP 2010, section 7.5 -Housing Options).**

6. Comment:

The requirement to execute the Section 37 Agreement prior to the enactment of the Section 37 by-law by City Council may cause delays for the marketing of a project; could we use a holding zone which could then be lifted once the Section 37 Agreement is executed.

**Response:**

**Since the benefit to the community may be a critical factor in the Section 37 application approval decision, it is important to confirm that an appropriate benefit can be agreed on prior to enacting the corresponding Section 37 by-law. This will ensure the development, including any Section 37 benefits, is derived through a transparent process where all the known factors are available for decision makers in the Committee of the Whole (COW) Comprehensive Staff Report. The duration of the negotiation and valuation process is dependent both on City administration and the landowner. Every effort will be made on the part of the City, to expedite the scheduling of negotiation meetings and the completion of the valuation for the subject property, concurrent with the preparation of the Comprehensive Staff Report.**

**To assist in meeting timelines the City Real Estate and Planning Departments are retaining an independent consultant to prepare a supportable and reproducible user friendly valuation formula. The formula will then be used by applicants and staff to determine the value of benefits in the early stages of the development process, concurrent with the preparation of the COW Comprehensive Staff Report.**

B. Comments respecting the Draft S. 37 Implementation Guidelines and Recommended Responses

1. Comment:

Would we consider a narrower range with respect to the required benefit value; 20-35% appears to be a wide range. In addition, the range is still considered high by some members of the development community.

**Response:**

**The range is a guideline and is intended to provide some flexibility regarding the value uplift the City may identify as appropriate in order to reflect contextual issues on a case by case basis. For example, if a specific development application will entail certain infrastructure improvements, or value added contributions to the community by addressing cultural heritage or sustainability priorities, the lower end of the range might apply. Whereas a development**



CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 9

application requesting a relatively greater height and density than permitted in the Secondary Plan, and that does not achieve other City objectives, may be subject to the higher end of the value uplift range.

With respect to the question of the range being considered too high by some members of the development industry, it is noted that Vaughan's proposed range is the average range provided across other Ontario municipalities.

2. Comment:

The City of Vaughan's development threshold for application of Section 37 is lower than the other municipalities mentioned in the report; the same threshold of 5,000 to 10,000 should be used to remain competitive.

**Response:**

There may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above but could still be a suitable candidate to provide a Community Benefit contribution. Such lands could include large vacant or under-developed parcels, greyfield sites or smaller properties assembled for larger infill redevelopment. There should also be a means to permit staff to pursue Section 37 Agreements for smaller developments, as has typically been the case in the Woodbridge Commercial Core, and in other local centres.

Staff propose that Guideline 4. respecting a development GFA threshold for the application of Section 37 Policy be generally set at 4,000 sq.m, but that similar to Mississauga's S. 37 Policy and Guidelines, a second clause be included to permit consideration of smaller development proposals as follows:

**Guideline 4. Size Threshold:**

**"Section 37 density/height bonusing will generally be applied to building projects which are larger than 4,000 sq.m in GFA, and where the proposed density will exceed 1,000 sq.m in GFA over what would otherwise be permitted.**

**While this guideline is not intended to apply to smaller development projects, there may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above, but could still be a suitable candidate to provide a Community Benefit contribution. Such development sites may include larger vacant or under-developed parcels, greyfield sites, smaller properties assembled for larger infill redevelopment, and smaller sites in local centres."**

3. Comment:

The process for the evaluation of the increase in property value as a result of the additional height/density permitted through Section 37 should be clarified; the landowner should be consulted with respect to terms of reference for the increase in value of property estimate.

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 10

**Response:**

The City agrees that the process and the terms of reference for the valuation of the increase in property values must be transparent. The terms of reference will consist of two components:

- Standard guidelines for valuations as set by the Appraisal Institute of Canada and emerging best practices
- The City of Vaughan's policy in reference to a base density to be used in the valuation

The City is currently drafting a policy respecting the base density to be used in the valuation, which once completed, will be integrated into the Guidelines. The Implementation Guidelines will then be brought forward for consideration at a future Committee of the Whole meeting, as part of the process of reporting on Section 37 VOP 2010 OMB appeals.

4. Comment:

Given the City's economic development objectives with respect to Major Office development in the VMC, it may be appropriate to apply a lower requirement for the percentage of value uplift in a Section 37 development application for major office in the VMC.

**Response:**

The economic prosperity of the VMC is a corporate priority and the City is currently reviewing different methods of incenting major office development in the VMC to develop an incentives program. Policy Planning staff will work with the Economic Development Department to ensure that the Section 37 policies specific to the VMC Secondary Plan are aligned with the office incentives program. This issue will be addressed through future reports on Office Incentives, and any direction received will be reflected in the Implementation Guidelines.

5. Comment:

It is important to emphasize that Section 37 should be used primarily in the "Intensification Areas" of Vaughan; could we clarify this by adding text to the proposed Section 37 Policy / Implementation Guidelines.

**Response:**

Staff concur that the use of Section 37 is primarily intended for the Intensification Areas of the City. A section has been added to the Implementation Guidelines (see Attachment 2, number 2.1), to clarify that although Council may request the use of Section 37 in other areas of the City, the use of this planning tool is primarily intended for the Intensification Areas.

6. Comment:

Consider including the Regional Councillor and Mayor in the Section 37 negotiation process.

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013**

Item 12, CW Report No. 52 – Page 11

**Response:**

**Including the Regional Councillors and the Mayor as suggested, may be beneficial in increasing transparency and bringing a wider City perspective to the negotiation process. Staff have made revisions to Guideline 6.3 (see Attachment 2), accordingly.**

7. Comment:

Consideration should be given to the inclusion of purpose built rental housing as a benefit in the proposed Section 37 policy.

**Response:**

**The availability of affordable rental housing is important to the Region's and City's objectives to provide choices for residents that are inclusive of those who cannot afford to purchase, or rent their housing accommodations at current rental rates. It is proposed that the following revision be incorporated into the Guidelines for Implementation of Section 37, number 2., paragraph 2:**

**“Council may exempt certain non-profit or public facilities where such facilities provide a demonstrable public benefit, such as social housing, or affordable rental housing, from contribution of additional community benefits under the Section 37 Policy and Guidelines. Affordable rental housing is defined as housing rented at or below the average CMHC rents in the York Region CMA. The landowner will be required to enter into an agreement with the City to maintain the housing as affordable over a 20 year time horizon.”**

**Specific conditions which will be applicable to affordable rental housing will be defined and included as an appendix to the Guidelines, at the time that the Implementation Guidelines are being considered for approval.**

Continuing Research

City Staff will continue to confer with the relevant agencies and to research best practices with respect to the process and Terms of Reference for the valuation of the increase in property values. A draft policy will be brought forward for Council's consideration in the near future, which will outline the principles applied to the determination of both the Terms of Reference and the proposed base density to be used in the valuation.

Since the Implementation Guidelines will not be brought forward for Council approval until the Section 37 Policy has received final approval by the OMB, there is sufficient time to have further stakeholder consultation on the valuation process, or any other input received at this Committee of the Whole meeting respecting the proposed Guidelines.

**Relationship to Vaughan Vision 2020/Strategic Plan**

This report is consistent with the priorities set forth in the Vaughan Vision 2020 Strategic Plan, through the following initiatives, specifically:

Service Excellence:

- Lead and Promote Environmental Sustainability
- Preserve our Heritage and Support Diversity, Arts and Culture

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 10, 2013

Item 12, CW Report No. 52 – Page 12

Organizational Excellence:

- Manage Corporate Assets
- Ensure Financial Sustainability
- Manage Growth and Economic Well-being

#### **Regional Implications**

The Region of York is a stakeholder in the process in that Section 5.4.15 of the Regional Official Plan requires local municipalities to adopt policies and related zoning by-law provisions to provide community benefits in Regional Centres and Corridors in exchange for additional height and density. This policy of the York Region Official Plan is in effect except for one site specific appeal. The proposed policy is consistent with the requirements of the Region of York Official Plan.

#### **Conclusion**

The proposed modifications to the VOP 2010 Section 37 Policy and the proposed Implementation Guidelines, as further refined through input received at the Committee of the Whole (Working Session) of September 10, 2013, provide greater direction and a transparent, reproducible approach to the use of this planning tool. Only one change has been proposed to the Policy since the recent Committee of the Whole (Working Session) meeting, and that is the addition of "Affordable Housing" to the list of community benefits in policy 10.1.2.9 (ii).

Overall, the proposed Section 37 Policy better articulates the conditions for determining when and where it may be applied and refines the list of community benefits that may be considered. As noted, the original version of the VOP 2010 Policies 10.1.2.9 – 10.1.2.12, regarding "Bonusing for Increases in Height or Density (Section 37 of the Planning Act)", is under appeal. Subject to Council approval of the modified Section 37 Policy, it is recommended that the OMB and York Region be advised that the City will be seeking its approval.

The proposed Implementation Guidelines will serve as a separate Corporate Policy document that provides a step by step procedure for the review of Section 37 zoning by-law amendment applications. Additional work to update the Guidelines with respect to valuation criteria is also underway. The Guidelines will be the subject of a future report to Council seeking their final approval once the Ontario Municipal Board has approved the relevant modified VOP 2010 Policy. This process will be undertaken with the benefit of further stakeholder consultation. The input received on the Implementation Guidelines, as set out in this report will be given further consideration, and adjustments will be made at that time based on the information obtained from on-going City research into the best practices for the implementation of Section 37 policies.

#### **Attachments**

1. Proposed Section 37 Policy
2. Proposed section 37 Implementation Guidelines and Development Application Process Flow Chart
3. Council Extract from September 17, 2013 – Item 2, Report No 38

#### **Report prepared by:**

Anna Sicilia, Senior Policy Planner, ext. 8063  
Roy McQuillin, Manager of Policy Planning, ext. 8211

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

GOLDBERG GROUP LAND USE PLANNING AND DEVELOPMENT  
2096 AVENUE ROAD, TORONTO, ONTARIO M5M 4A8  
TEL: 416-322-6364 FAX: 416-932-9327



November 26, 2013

Chair and Members of Committee of the Whole  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, ON  
L6A 1T1

C	<u>5</u>
Item #	<u>12</u>
Report No.	<u>52 (cw)</u>
<u>Council - December 10/13</u>	

Dear Chair and Members of the Committee of the Whole:

**RE: Comments Filed on Behalf of Baif Development Limited  
Vaughan Official Plan (VOP) 2010  
Modifications to Policies 10.1.2.9 - 10.1.2.12  
Section 37 of the Planning Act and  
Implementation Guidelines (File #25.6.1)**

We are the land use planners for Baif Developments Limited, current appellants of the VOP 2010 concerning the development of its property located at the northwest corner of Bathurst Street and Beverley Glen in the Thornhill Community.

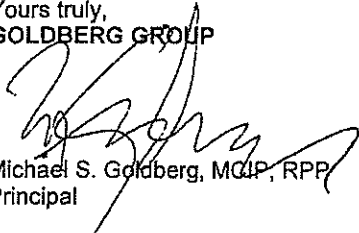
We have had the opportunity to review the November 26, 2013 Staff Report concerning the captioned topic area of the VOP 2010. While our client's review is ongoing, we understand that City staff are recommending approval of revised COP 2010 Policies 10.1.2.9 - 10.1.2.12, as a modification to the VOP 2010 regarding Bonusing for Increases in Height or Density. We further understand that if approved by City Council, the report recommends Council's direction to seek approval of the revised Policies before the Ontario Municipal Board.

While Section 37 has been a part of the Planning Act for many years, it is a relatively new approach to planning in the City of Vaughan. Our clients concern is that the implementation of Section 37 be undertaken in a fair, equitable and transparent manner. This relates to when and how Section 37 would potentially be applied on a site specific basis. In this regard, it appears from the staff report that there will be considerable reliance on Implementation Guidelines which are currently in draft, and are intended to only be finalized once the OMB approves the revised VOP 2010 policies. At this time, the draft Implementation Guidelines are broad in application and potentially require an excessive amount of Section 37 contributions. Section 5 of the draft Implementation Guidelines specify that on average, the City will seek to achieve a value for community benefits that represent a range between 20-35% of the increase in land value resulting from the increase in height and/or density. In our view and that of your staff, more work needs to be done concerning this.

Since the VOP 2010 policies are intended to work hand in hand with the approved Implementation Guidelines, it is our suggestion that both documents should be finalized at the same time. It is through such a process that the most appropriate combination of policies and guidelines can be determined. As such and in our view, approving the revised VOP 2010 policies now is premature until both the policies and the Implementation Guidelines are finalized.

In view of the above, we request that you only approve the recommended policies when the Implementation Guidelines have been finalized through a full consultation process.

Yours truly,  
GOLDBERG GROUP

  
Michael S. Goldberg, MCIP, RPP  
Principal

Cc: John Mackenzie, Anna Sicilia and Roy McQuillin, City Planning  
Paul Minz and Lynn Barkey, BAIF Developments Limited  
Roslyn Houser, Goodmans LLP



**SmartCentres**

700 Applewood Crescent, Vaughan, ON, L4K 5X3

Telephone (905) 760-6200 Fax (905) 760-6201

November 25, 2013

Members of the Committee of the Whole  
City of Vaughan  
City Hall, Level 200  
2141 Major Mackenzie Drive  
Vaughan, ON  
L6A 1T1

c 9
Communication
cw: Nov 26/13
Item: 12

Dear Members;

**RE: MODIFICATION TO OFFICIAL PLAN POLICIES 10.1.2.9-10.1.2.12  
BONUSING FOR INCREASES IN HEIGHT OR DENSITY  
SECTION 37 OF THE PLANNING ACT AND IMPLEMENTATION  
GUIDELINES  
CITY FILE #25.6.1**

---

SmartCentres owns considerable lands within the Vaughan Metropolitan Centre (“VMC”). We have reviewed the November 2013 staff report regarding the proposed policy revisions and Section 37 Implementation Guidelines relative to our lands and intentions for those lands. We would like to express the following comments and concerns.

We feel that our comments and concerns with the policy revisions and implementation guidelines have not been satisfactorily addressed and respectfully request that the policies and implementation guidelines be deferred for further detailed discussion with key stakeholders in the VMC. To this extent, we reiterate our concerns outlined in September as follows:

**Application of Section 37 of the Planning Act**

1. The proposed guidelines will seek to achieve a value for community benefits that represents a range between 20-35% of the increase in land value associated with the proposed density increase. The original value of 25-35% was identified during the consultation process as high. The 20-35% valuation remains high in the draft guidelines, and could lead to specific areas (such as the VMC) becoming uncompetitive with surrounding urban centres, such as Downtown Brampton, Richmond Hill Centre, Markham Centre, and North York Centre. While staff have identified that this is the “average range” we feel that, given other costs associated with development in the VMC, a lower range should be used. We also feel that this item should be included in a policy as opposed to a guideline.
2. The process the City has identified for the valuation is still not fully explained. The guidelines mention that the creation of terms of reference for the appraisal of increased

value will be prepared by the City. These terms are a critical component of the application of Section 37 and should be established in the guidelines rather than separately. Consultation with the development community on these terms of reference is key in making the application of Section 37 more transparent. An agreed-to process of valuation needs to be worked out with stakeholders and clearly articulated in the guidelines in order to avoid a subjective determination of the value of the increased land use permissions. Before policies and guidelines are adopted, we believe the valuation terms of reference must be dealt with.

3. The market conditions for major office development in the VMC, which is a strategic priority for the City in its downtown vision, remain problematic. The City's current financial policies, including the extraction of Section 37 benefits, do not align with the City's economic development objectives to promote the VMC as a major mixed use centre. Specifically, the development standards established in the Secondary Plan are anticipated to increase development costs, which in turn will be passed on to the end user (office tenants) in the form of higher lease rates. Further, office users (businesses and their employees) may derive fewer benefits from the specified capital/community facilities in Section 10.1.2.9(ii) of the proposed policies. Therefore the value threshold for the application of Section 37 bonuses as it relates to office development should not be the same as for residential development. While staff have identified this matter as an issue and state that it will be addressed through a future report on "Office Incentives", we cannot support a policy at this time without both incentives and disincentives (such as Section 37 bonuses) being addressed concurrently.
  4. Staff have not included a transition policy dealing with the discrepancy between the heights and densities set out in the Official Plan for the VMC and the current Zoning By-law permissions. The Planning Act specifically states that Section 37 may be invoked when the proposed development results in increases in the height and density otherwise permitted by the Zoning By-law. We note that the City of Vaughan Zoning By-law 1-88 is now out of date due to the implementation of the new Official Plan. Therefore development that is contemplated in the Official Plan, such as the high density development considered in the VMC, would be considered an increase in the height and density otherwise permitted in the Zoning By-law, despite implementing the intent of the new Official Plan. A transition policy is required to recognize the disparity between heights and densities permitted in the new Official Plan versus the Zoning By-law, until such time as the Zoning By-law is brought into conformity with the Official Plan, Volumes 1 and 2. Such a provision should use the Official Plan as the baseline for measuring increases in height and density as if they were those set out in the Zoning By-law.
  5. We still feel that the threshold for application of Section 37 is too low for the VMC. Given the City's desire to create a dynamic and vibrant downtown of high density uses, a more competitive threshold of 7,000-10,000 square metres is more appropriate.
-

6. With all due respect, staff has misunderstood our comment with respect to the issue of the increased development criteria / standards of the VMC. Our point was that these increased standards, along with Section 37 benefits will create an uncompetitive environment for the VMC as compared to other downtowns in the GTA. Specific to the VMC, there are a number of development criteria that are above the standards expected across the remainder of the City and/or in competing urban centres. Such improvements include high architectural standards, sustainable design, and affordable housing. We still feel it would be appropriate to consider such upgrades as partial compensation in the implementation guidelines in order to align development with the vision and objectives of the VMC Secondary Plan.
7. Staff's explanation in the staff report and their proposed policy revisions relative to the overlap between what is funded through Development Charges and what the City is seeking through Section 37 charges has not been clarified in our opinion. The City should not be requesting items which are subject to Development Charge funding or other mechanisms available to it by the Planning Act or other legislation.

#### **Appropriateness of the Timing of Section 37 Implementation Guidelines**

8. We still feel that it is inappropriate for the City to proceed in adopting policy and implementation guidelines which are subject to an ongoing review process by the Province. In light of this Provincial review and consultation process, it would seem premature to be implementing the Section 37 policies as outlined in the staff report, until such time as this comprehensive Provincial undertaking is completed.

#### **Conclusions**

The proposed Section 37 implementation policies and guidelines are an important step in increasing transparency and consistency in the City of Vaughan's development process. However, additional consideration of the details of implementation is required.

We note that the cost of development in the VMC, including land costs, approvals, construction, and leasing will be much higher than surrounding areas. We caution the City in the overzealous application of Section 37 to developments in the VMC for this reason. As the costs of municipal levies in the form of Development Charges, application fees, parkland dedication, and Section 37 payments increases, the cost to supply new development to the end user increases, eroding affordability. This is particularly critical for strategic sectors in the VMC, such as office and residential uses. As the cost of providing new residential and office space increases, the likelihood increases that end users will be attracted elsewhere, possibly to other urban centres, to find more competitively-priced space. We recommend that the City consider aligning its financial levies with its strategic planning objectives, particularly within in the VMC Secondary Plan area. In our opinion this has not been realized through the current iteration of the policies nor the implementation guidelines.

---



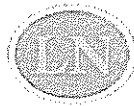
We therefore respectfully request that the policies and implementation guidelines be deferred for further detailed discussion with key stakeholders in the VMC.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "Paula Bustard". The signature is fluid and cursive, with the first name "Paula" and last name "Bustard" clearly distinguishable.

Paula Bustard  
Senior Director Land Development



# LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

**Quinto M. Annibale\***

**\*Quinto Annibale Professional Corporation**

Direct Line: 416-748-4757

E-mail: [qannibale@loonix.com](mailto:qannibale@loonix.com)

November 25, 2013

**By E-Mail**

Mayor Maurizio Bevilacqua and Members of Council  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, Ontario  
L6A 1T1

c 11
Communication
cw: <u>NOV 26/13</u>
Item: <u>12</u>

Dear Mayor and Members of Council:

**Re: VAUGHAN OFFICIAL PLAN (VOP) 2010  
MODIFICATION TO POLICIES 10.1.2.9 – 10.1.2.12  
BONUSING FOR INCREASES IN HEIGHT OR DENSITY  
SECTION 37 OF THE PLANNING ACT AND  
IMPLEMENTATION GUIDELINES (FILE #25.6.1)**

I am the Corporate Secretary for the Vaughan Arts Centre of Excellence ("VACE"), a Vaughan Not-for-Profit Arts organization dedicating to promoting the arts in the City of Vaughan.

I understand that tomorrow, Committee of the Whole will be considering a modification to the Vaughan Official Plan which is currently before the Ontario Municipal Board, to deal with the issue of bonusing.

I do note that the proposed policy does include in the list of matters that may be bonused, public art and arts and cultural facilities. I am writing to you on behalf of VACE to urge you to specifically include reference to the City of Vaughan Arts, Design and Cultural Campus" in the list of matters that may be bonused. VACE supports this initiative and hopes that Council will endorse it today in a separate resolution. We appreciate council's support for the Arts and look forward to working with Council in the furtherance of our mutual objectives.



Thank you for your consideration in this matter.

Yours truly,

LOOPSTRA NIXON LLP

Per:

A handwritten signature in black ink, appearing to read "Q. Annibale".

Quinto M. Annibale

QMA/rs

cc VACE Chair and Board of Directors



Toronto and Region  
**Conservation**  
for The Living City

CFN 38958

November 25, 2013

**By mail and email** (jeffrey.abrams@vaughan.ca)

Mr. Jeffrey Abrams  
City Clerk  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, Ontario  
L6A 1T1

c. 13
Communication
CW: Nov 26/13
Item: 12

Dear Mr. Abrams,

**Re: City of Vaughan - Committee of the Whole Public Hearing November 26 2013 -  
Bonusing for Increases in Height/Density - Section 37 of the Planning Act**

Thank you for providing the Notice of Public Hearing respecting this matter. Further to the notice, and review of the staff report on the website, we offer the following comments for the City's consideration and further discussion.

We understand the proposed amendment to the Official Plan is to provide the opportunity for the City to obtain added measures beyond normal development considerations, in exchange for added density.

While TRCA has a limited interest in the provision of extra density, the Authority does have an interest when the added permission's are to be given in exchange for enhancements associated with valleylands and natural features.

A part of the proposed Section 37 Official Plan Amendment (OPA) identifies providing the opportunity for potentially receiving extra development permissions for alterations within areas that are of interest to the TRCA and are likely to be subject to Regulation 166/06 under the Conservation Authorities Act. It would be a most undesirable circumstance for the Authority and the City, if such permission was negotiated and then found at the time of construction, that the nature of the alteration could not be accommodated based on the Authority's mandate. To avoid such circumstances, we suggest, if City Staff consider it appropriate to do so, an amendment to Section 10.1.2.9 of the OPA, and Section 6 of the "Guideline for Implementing Section 37 Policies", to acknowledge the need to consult with the Authority. Below are the relevant sections of the OPA and Guideline. Added italics, are suggested modifications that, if considered appropriate by the City, would address this concern.

***Suggested Policy Additions Relevant to the TRCA:***

***Section 37 Official Plan Amendment***

***10.1.2.9 Increased Height and Density Provision***

Tel. 416.661.6600, 1.888.872.2344 | Fax. 416.661.6898 | info@trca.on.ca | 5 Shoreham Drive, Downsview, ON. M3N 1S4



ii. Pursuant to Section 37 of the Planning Act, a by-law may be enacted by Council to achieve the City's objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the other provisions of the Planning Act or the Development Charges Act, and which may be of particular benefit to a specific area or the City at large. Notwithstanding the generality of the foregoing it is the intent of Council in passing such by-laws to attain community benefits consisting of capital facilities, services or cash contributions toward specific capital facilities or services including but not limited to:

- enhanced public access to natural heritage features, ravines and valleylands *supported by the Toronto and Region Conservation Authority*, involving off-site improvements/upgrades ;

### **Section 37 Implementation Guideline**

#### **6. Protocol for Determining Community Benefits**

##### **6.1 Planning Staff will manage the negotiations Process**

Planning staff responsible for making recommendations on development applications to Vaughan Council in accordance with the Planning Act and other Provincial policy will lead negotiations with owners/developers regarding the nature of Section 37 community benefits. Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits. *Planning Staff will also consult with the Toronto and Region Conservation Authority to determine regulatory feasibility where enhanced public access to natural heritage features, ravines and valleylands is being considered.*

The modifications identify the need to consult and the preference that such consultations take place as early in the process as possible. TRCA supports policies that provide creative opportunity to help build the Living City. We would be happy to discuss further as required. Thank you for the opportunity to comment,

Yours truly,



for June Little, MCIP, RPP  
Manager, Planning Development & Regulation, York West  
Ext. 5756

Copy: John Mackenzie, Commissioner of Planning, john.mackenzie@vaughan.ca  
Anna Sicilia, Senior Planner, anna.sicilia@vaughan.ca  
Carolyn Woodland, Director of Planning and Development



**BILD**

BUILDING A GREATER GTA  
Building Industry and Land  
Development Association

c 14
Communication
CW: <u>Nov 26/13</u>
Item: <u>12</u>

November 25, 2013

Mayor Maurizio Bevilacqua and Members of the Committee of the Whole  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, Ontario  
L6A 1T1

Dear Mayor Maurizio Bevilacqua and Members of the Committee of the Whole,

**RE: Committee of the Whole – November 26, 2013  
Vaughan Official Plan (VOP) 2010 Modification to Policies 10.1.2.9 – 10.1.2.12  
Bonusing for Increases in Height or Density, Section 37 of the Planning Act and  
Implementation Guidelines (File #25.6.1)**

---

On behalf of the York Chapter members of the Building Industry and Land Development Association, we submit the following comments to the City of Vaughan with respect to the Vaughan Official Plan (VOP) 2010 Modification to Policies 10.1.2.9 – 10.1.2.12 Bonusing for Increases in Height or Density, Section 37 of the Planning Act and Implementation Guidelines to be discussed at the November 26<sup>th</sup> Committee of the Whole meeting.

We acknowledge that the purpose of the report is to present modified Policies (10.1.2.9 – 10.1.2.12 of the VOP) in regard to “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)” and corresponding Implementation Guidelines, as refined through input received at the Committee of the Whole (working session) of September 10, 2013 and that the modified policies will form the basis for the City’s position at the Ontario Municipal Board in light of appeals of the affected sections of VOP 2010. Furthermore, we also understand that the Implementation Guidelines” will be finalized and brought forward to Council for subsequent approval after the Board has approved the policies.

**With respect to the Modifications to the VOP Policies for Bonusing for Increases in Height or Density, Section 37 of the Planning Act:**

In principle, the topic of Section 37 is of the utmost importance to our membership. Through our lessons learned in other municipalities, we know that it is a complex tool and its application to development projects must be consistent for its effectiveness. In order to meet the goals and objectives of the Provincial Growth Plan and the VOP, the creation of Section 37 policies must consider its effects on the affordability of housing, on (non-residential) businesses, and the overall economic impact. When implemented, the application of Section 37 must be fair, transparent, predictable and relevant.

In light of the Ministry of Municipal Affairs and Housing’s current consultations underway regarding Land Use Planning and Appeal and Development Charges Systems Review, and specifically the direction to consult on the application of Section 37, we recommend that the City ‘**pause**’ this review until the Province has completed its consultation exercise. We acknowledge, as found in the City’s report that waiting on the completion of the provincial process would delay the adoption of the VOP policies, but we ask for this ‘**pause**’ to avoid duplicating efforts by dealing with these changes now and having to revisit them later. Any provincial changes to the application of Section 37 will require a review of these proposed policies and adopting new policies now will only create confusion in the interim.

20 Upjohn Rd, Suite 100  
North York, ON M3B 2V9

Tel: 416.391.3445  
Fax: 416.391.2118

www.gthba.ca

**With respect to the Implementation Guidelines for Section 37 we submit the following recommendations:**

- Pre-zone lands to achieve the intensification objectives of the VOP and Growth Plan/Provincial Policy Statement. This will ensure that Section 37 is being appropriately applied.
- Early consultation is an essential component of the process. A reasonable Section 37 negotiation package should be made available at a consultation meeting, well in advance of a final staff report being finalized. This will ensure that no *surprise* additional costs are incurred very late in the development approval process without a clear rationale. Most notably, last minute negotiations should not be permitted.
- For complete transparency, Municipalities should be required to create community needs assessments for projects that would benefit from Section 37 funding. Section 37 funding should not be collected in perpetuity for unassigned projects.
- Geographical proximity of the proposed community improvements must be taken into account to ensure that those that are paying for the new improvements have the appropriate access.
- An independent appraiser should be used to calculate the value of the increased height and/or density. Section 37 benefits that involve conveyances of property or buildings should also have their value determined by an independent appraiser.
- Initial contributions should be based on a clearly articulated methodology and should be subject to refund if it is not expended.
- Additionally, in situations where the height or density of the building has been reduced from a predetermined Section 37 negotiation, a correlating reduction in amount of Section 37 monies should apply.

Again, we thank you for the opportunity to submit comments and we trust that you will take these comments into consideration. As partners in building complete communities, we look forward to our continued consultation. If you have any questions or concerns, please don't hesitate to contact the undersigned.

Sincerely,



Danielle Chin MCIP RPP  
Senior Planner, Policy & Government Relations

CC: *Michael Pozzebon, BILD York Chapter Chair*  
*Paula Tenuta, Vice President, Policy & Government Relations, BILD*  
*BILD Chapter members*



64 Jardin Drive, Unit 1B  
Concord, Ontario  
L4K 3P3  
T. 905.669.4055  
F. 905.669.0097  
klmplanning.com

P-2199

November 26, 2013

(via E-mail)

City of Vaughan  
Clerks Department  
2141 Major Mackenzie Drive  
Vaughan, Ontario  
L6A 1T1

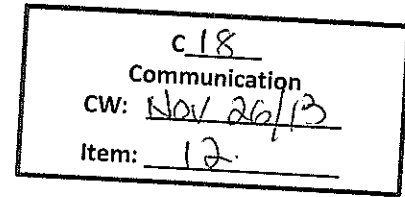
Attention: Mr. Jeffrey A. Abrams

Re: **Committee of the Whole – November 26, 2013 – Item #12**  
**Vaughan Official Plan 2010**  
**Modifications to Policies 10.1.2.9 – 10.1.2.12**  
**Bonusing for Increases in Height of Density**  
**Section 37 of the Planning Act**  
**File #25.6.1**  
**Auto Complex Limited – 7200 Yonge Street**  
**2 Steeles Ave W. Ltd. – 2 Steeles Avenue West**  
**Salz & Son Limited – 100 Steeles Avenue West**  
**7040 Yonge Holdings Limited – 7040 Yonge Street**  
**& 72 Steeles Holdings Limited – 72 Steeles Holdings Limited**  
**City of Vaughan**

Dear Mr. Abrams,

We act on behalf of Auto Complex Limited, 2 Steeles Ave W. Ltd., Salz & Son Limited, 7040 Yonge Holdings Limited, & 72 Steeles Holdings Limited; the owners of the above-referenced parcels of land located in the vicinity of Yonge Street and Steeles Avenue West in the City of Vaughan. These landowners have appealed the City of Vaughan Official Plan and the Yonge Steeles Corridor Secondary Plan for the Region's failure to render a decision within 180 days of the adoption of the new Official Plan by Vaughan Council.

This letter is in response to the City of Vaughan Planning Department Staff Report being considered at Committee of the Whole on November 26, 2013 dealing with modifications to Density Bonusing policies 10.1.2.9 – 10.1.2.12 in Volume 1 of the Official Plan. We are not supportive of the proposed modifications to these policies respecting Section 37 Density Bonusing and would like to opportunity to meet with staff to resolve our concerns and settle our appeal of policies 10.1.2.9 – 10.1.2.12 as it relates to the Yonge-Steeles Corridor Secondary Plan only.

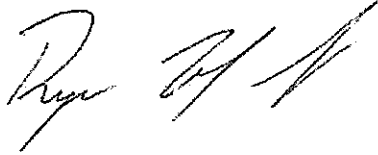




I trust the foregoing is in order and I thank you for your consideration of these matters. Please provide me with a copy of the decision from the Committee of the Whole.

Yours very truly,

**KLM PLANNING PARTNERS INC.**

A handwritten signature in black ink, appearing to read "Ryan Mino-Leahan". The signature is fluid and cursive, with the first name "Ryan" being the most prominent.

Ryan Mino-Leahan, MCIP, RPP  
Associate/Senior Planner

Copy:           John Mackenzie, Commissioner of Planning  
                  Roy McQuillin, Manager of Policy Planning  
                  Clients  
                  Ira Kagan, Kagan Shastri LLP  
                  Patricia Foran, Aird & Berlis LLP

## **COMMITTEE OF THE WHOLE NOVEMBER 26, 2013**

### **VAUGHAN OFFICIAL PLAN (VOP) 2010 MODIFICATION TO POLICIES 10.1.2.9 – 10.1.2.12 BONUSING FOR INCREASES IN HEIGHT OR DENSITY SECTION 37 OF THE PLANNING ACT AND IMPLEMENTATION GUIDELINES (FILE #25.6.1)**

#### **Recommendation**

The Commissioner of Planning recommends:

1. That the revised Policies 10.1.2.9 – 10.1.2.12 forming Attachment 1 to this report, be approved as a modification to the Vaughan Official Plan – 2010, regarding “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)”;
2. That the parties to the Ontario Municipal Board appeals of the VOP 2010, including the Region of York, be advised that the City will be seeking approval of the revised Policies 10.1.2.9 – 10.1.2.12 as referenced in 1. above; including the following modification:
  - a) the addition of the following benefit to the list of benefits provided in policy 10.1.2.9 (ii):

“The provision of affordable housing in the form of land, residential units or cash contributions to be transferred to the Region of York (Housing York, Inc.) or to a non-profit housing provider, free of cost, (including maintenance and condo fees if applicable).”
3. That the Implementation Guidelines once finalized, be submitted to Council for adoption as a Corporate Policy, subsequent to the Ontario Municipal Board’s approval of Policies 10.1.2.9 – 10.1.2.12 of VOP 2010, including the incorporation of any changes made necessary by the Board’s decision; and
4. That it be recognized that at such time that the Implementation Guidelines are submitted to Council for adoption it will be necessary to authorize the Commissioner of Finance/City Treasurer and City Clerk to amend the Consolidated Reserve Policy and By-law to incorporate the “Section 37 Reserve” as outlined in the Implementation Guidelines.

#### **Contribution to Sustainability**

The use of Section 37 to enhance the environment of Intensification Areas, and other specific sites as considered appropriate, contributes to the goals and objectives within “Green Directions Vaughan”, and the City’s “Sustainability and Environmental Master Plan”, specifically:

Goal 1: To significantly reduce our use of natural resources and the amount of waste we generate.

Objective 1.3 “To support enhanced standards of stormwater management at the City and work with others to care for Vaughan’s watersheds”

Goal 2: To ensure sustainable development and redevelopment.

Objective 2.2 “To develop Vaughan as a City with maximum greenspace and an urban form that supports our expected population growth”

Goal 4: To create a vibrant community for citizens, businesses and visitors.

Objective 4.1 “To foster a city with strong social cohesion, an engaging arts scene, and a clear sense of its culture and heritage”

Objective 4.2 “To ensure that the City of Vaughan attracts businesses and investment that will result in well-paying jobs for Vaughan citizens, a sustainable tax base, and continuing prosperity into the 21<sup>st</sup> century”

Goal 5: To be a leader on sustainability issues.

The use of Section 37 can help to promote goals which directly relate to those of Green Directions Vaughan, including integrating transit infrastructure with the emerging urban fabric and supporting the pedestrian, cyclist, transit and motorist experience for all ages and abilities.

### **Economic Impact**

The cost of the study is funded from the Policy Planning Operating Budget.

### **Communications Plan**

Notice of this meeting has been communicated to stakeholders by the following means:

- Posted on the [www.vaughan.ca](http://www.vaughan.ca) online calendar;
- By Canada Post to the VMC landowners, Vaughan BILD Representatives and to all registered City Ratepayer Associations; and
- By email to all appellants, parties, and participants involved in the appeal relating to the VOP 2010, Volume 1(OMB File no. PL111184).

### **Purpose**

The purpose of this report is to present modified Policies 10.1.2.9 – 10.1.2.12 of VOP 2010 in regard to “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)” and corresponding Implementation Guidelines, as refined through input received at the Committee of the Whole (Working Session) of September 10, 2013, for Committee of the Whole’s consideration. The modified policies will form the basis for the City’s position at the Ontario Municipal Board in light of appeals of the affected sections of VOP 2010. The Implementation Guidelines will be finalized and brought forward to Council for subsequent approval, after the Board has approved Policies 10.1.2.9 – 10.1.2.12, and with the benefit of additional input on valuation of the benefit.

### **Background - Analysis and Options**

#### **Background**

##### **Provincial Policy**

Section 37 of the Planning Act permits the City to authorize increases in height and/or density through a site specific zoning by-law in return for community benefits such as specified facilities, services or other matters from the landowners, provided that there are enabling Official Plan policies in place.

Section 37 of the Planning Act states that:

“A municipality may, through a zoning by-law, approve increases in height and/or density beyond what the zoning by-law would otherwise permit, in return for facilities, services or matters (community benefits) as are set out in the by-law.”

and,

“The Official Plan must first contain provisions authorizing the use of Section 37, and that community benefits may be secured in an agreement that may be registered on title.”

#### The Region of York Official Plan

The Region of York Official Plan requires local municipalities to adopt Section 37 policies for Regional Centres and Corridors (section 5.4.15.). The Regional Official Plan includes the following list of community benefits for Municipalities' inclusion in their Official Plans for Regional Centres and Corridors:

- a. transit station improvements;
- b. social housing;
- c. direct pedestrian connections to transit stations;
- d. regional community and health facilities;
- e. regional emergency medical services and police stations;
- f. additional facilities and services identified by local municipalities; and,
- g. appropriate provisions for pedestrian and cycling facilities.

#### The City of Vaughan Official Plan 2010 (VOP 2010)

Currently, Policies 10.1.2.9 – 10.1.2.12 of Chapter 10, “Implementing the Plan”, of the Council adopted and Region of York endorsed VOP 2010, provides policies permitting the use of height and density bonusing through a Section 37 Agreement in the VMC, Primary Centres or as specified in a Secondary Plan. The existing policies speak to the basic requirements of the Planning Act policies respecting the use of Section 37. The VOP 2010 also lists community benefits which shall be considered in a Section 37 Agreement.

#### Stakeholder Consultation Process

Public consultation respecting the use of Section 37 Agreements began June 28, 2012 with a presentation to the Vaughan Metropolitan Centre Sub-Committee of Council on the potential use of Section 37. In March of 2013, the City retained the services of Gladki Planning Associates to report on Section 37 practices in other municipalities and to help develop more comprehensive Section 37 Policies and Implementation Guidelines for the City of Vaughan.

On May 7, 2013, members of the City of Vaughan Senior Management Team (SMT) and representatives of several departments were invited to attend a presentation by the City's Consultant to introduce the use of Section 37 of the Planning Act, including the guiding principles and related practices of other municipalities. The development review process for applications proposing a Section 37 Agreement was also addressed to set the framework for the development of more detailed City Section 37 Policies and Implementation Guidelines. Shortly after the May 7<sup>th</sup> meeting, staff circulated a draft Section 37 Policy and Implementation Guidelines to SMT for review. Comments received from the circulation were incorporated into a draft Policy and Implementation Guidelines.

On June 24, 2013, a consultation meeting was held with VMC Stakeholders, Vaughan BILD Representatives, registered Ratepayer Associations, Vaughan Councillors and City staff.

External participants were notified by mail two weeks prior to the meeting date. The purpose of the meeting was to present the (draft) Section 37 Policies and Implementation Guidelines, and to provide an opportunity for input into the policy development process. Issues raised by participants included:

- (i) The proposed percentage range of 25-35 % for the property value uplift to be recovered by the City through a Section 37 Agreement was considered to be excessive by some landowner representatives;
- (ii) the perception that the use of this tool could lead to an expectation of greater heights/densities in an area than is envisioned or permitted by the current Official Plan; and,
- (iii) the request for reproducible methodology for Section 37 development applications.

On September 10, 2013, a Committee of the Whole (Working Session) was held, to present modified Policies 10.1.2.9 - 10.1.2.12 of VOP 2010 (Bonusing for Increases in Height or Density, Section 37 of the Planning Act) and Implementation Guidelines for Committee of the Whole's and stakeholders' consideration and input. Notice of the meeting was sent to Vaughan BILD Representatives, to all registered City Ratepayer Associations; and, to all appellants, parties, and participants involved in the appeal relating to the VOP 2010, Volume 1 (OMB File no. PL111184).

At the following Council meeting of September 17, 2013, Council received all related deputations and communications, and approved the recommendation of the Commissioner of Planning, including the following direction to staff:

"That the revised policies set out in Attachment 1 applying to Policies 10.1.2.9-10.1.2.12 of the Vaughan Official Plan 2010 regarding "Bonusing for Increases in Height or Density (Section 37 of the Planning Act)" be further refined on the basis of any input received at this Committee meeting." (see Council Extract, Attachment 3)

Comments received at the Committee of the Whole (Working Session) and responses to each, are provided in the "Refinements to the draft Policy and Implementation Guidelines" section of this report.

#### Ontario Municipal Board Appeals

On July 23, 2013 the Ontario Municipal Board granted partial approval to Volume 1 of VOP 2010. The subject policies (10.1.2.9 – 10.1.2.12) were among those not approved. Fourteen parties have appealed the Section 37 policies. At this time, the appellants have not listed specific issues regarding the wording or content of the affected policies. It is expected that the specific issues will be refined and positions clarified through the mediation process. Ultimately the appeals will be resolved through the Ontario Municipal Board process through further negotiations, Board mediation or a hearing.

The Board approved policies will be incorporated into the Official Plan. Modifications to the original version of Policies 10.1.2.9 – 10.1.2.12, adopted by Council through this process, will form the basis for the City's position at the Ontario Municipal Board. The Board and the Region of York will be advised of any such decision taken by Council and a recommendation will be provided.

#### Refinements of the Draft Policy and Implementation Guidelines

The draft Section 37 Policy modifications and the corresponding proposed Implementation Guidelines were presented to Committee of the Whole and stakeholders at the September 10,

2013 Committee of the Whole (Working Session). Consideration of the comments received through deputations and from communications for the Working Session, have resulted in Staff's further refinement of the draft Policy and the commissioning of additional work by the Real Estate Department on the valuation of benefits. Comments received at the Committee of the Whole (Working Session) meeting, and staff's responses to each are provided below. Where revisions are proposed to either the Policy or the Implementation Guidelines, as explained in the "Response" sections, these changes are also reflected in the proposed drafts of the documents (Attachments 1 and 2).

A. Comments respecting the Draft S. 37 Policy and Recommended Responses

1. Comment:

It appears premature to be implementing Section 37 policies at this time given the Minister of Municipal Affairs and Housing's announcement of the Province's intention to launch a consultation process that may impact Section 37 policy.

**Response:**

**Discussions with Ministry of Municipal Affairs and Housing (MAH) indicate that the review by MAH will take many months and the timing of the outcome is uncertain. Ministry staff are interested in Vaughan's Section 37 initiatives and are looking at Vaughan as a potential for piloting best practices as they conduct their review. In addition, the City is currently receiving and processing requests for Section 37 development applications under the provisions of older in effect Official Plans; a more transparent, reproducible approach for the use of this tool is therefore needed as soon as possible. Should refinements to the Section 37 Policy and Guidelines be required later as a result of a Provincial study and subsequent legislative/policy change; amendments to the relevant sections of VOP 2010 and the Implementation Guidelines will be made as necessary.**

2. Comment:

There seems to be overlap between what is funded through Development Charges, the site plan process, and parkland dedication funds; and what the City is seeking through Section 37 charges. Clarification is required.

**Response:**

**Reference is included in the proposed Section 37 Policy and Implementation Guidelines to recognize that Section 37 benefits are in addition to what would be provided to the City through other policies of the Planning Act or through the Development Charges Act.**

**The Policy states:**

**10.1.2.9 Increased Height and Density Provision**

**"1.1 (ii) A by-law may be enacted by Council to achieve the City's objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the other provisions of the Planning Act or the Development Charges Act, ..."**

**The Guidelines state:**

**Valuation of Community Benefits**

**“5. (paragraph 2): The community benefits will be over and above what could otherwise be achieved through other sections of the Planning Act, such as Section 41, 42 and/or 50. Section 37 Agreements do not in any way entitle reductions in Development Charges.”**

3. **Comment:**

It is unclear as to whether the provisions of Section 37 will be applied to increases in density/height above the limits set by the Official Plan or the zoning by-law.

**Response:**

The City's new Vaughan Official Plan 2010 introduces a number of changes to densities and heights in the Intensification Areas; once this Plan has final approval it will inform subsequent up-dates to the City of Vaughan By-law 1-88. It is understood that the final approved VOP 2010 height and density ranges, will in most cases be used as the base lines from which most Section 37 development applications are reviewed. However, there may be cases where recently approved by-laws established through the development process or through area specific studies, will inform the Section 37 application review, and in such cases the by-law may be used as the baseline in combination with the Official Plan. This was previously indicated in the Implementation Guidelines presented at the Committee of the Whole (Working Session), and has now also been clarified in the draft Section 37 Policy (see policy 10.1.2.9 i., Attachment 1). Further research into the setting of the base line values is currently underway, the findings of which will be integrated into the Implementation Guidelines.

4. **Comment:**

The development standards with respect to architectural design and sustainability for the Vaughan Metropolitan Centre are higher than for other areas; could there be some differentiation in the Section 37 policy for the VMC relative to other areas of the City?

**Response:**

The VOP 2010 calls for good design and implementation of sustainability measures throughout the City, and in particular refers to high standards for design, architecture and the urban realm in all Intensification Areas of Vaughan. Recognizing that the Vaughan Metropolitan Centre has a unique role in the urban structure of Vaughan, the Section 37 Policy for this area has been tailored to specifically address the needs of the City's downtown through the VMC Secondary Plan. These needs are identified as a series of possible community benefits in the VMC Secondary Plan.

5. **Comment:**

Consideration should be given to including affordable housing to the list of benefit criteria for the proposed Section 37 policy 10.1.2.9.

**Response:**

The Region of York Official Plan encourages municipalities to consider density bonusing as a means to achieve affordable housing (Section 3.5.10). With reference to Intensification Areas, the YROP further addresses affordable housing as a required Section 37 benefit in Secondary Plans for Regional Centres and Corridors (Section 5.4.15).

Affordable housing is included in the list of Section 37 benefits in each of the five surveyed municipalities (Toronto, Ottawa, Mississauga, Markham, and Burlington). These policies identify affordable units, land or cash contributions as acceptable benefits under Section 37, which typically represent one component of a broader package of community benefits secured by a given municipality. Upon execution of the Section 37 Agreement, the conveyance of residential units and long term maintenance costs etc., are then subject to an agreement between the developer and the non-profit provider.

It is noted that affordable housing is listed as a benefit in the adopted VOP 2010 policy- 10.1.2.9. Staff had initially proposed deleting it until such time as the Region of York has completed its Affordable Housing Implementation Guidelines; however, given the importance of this initiative, it is recommend it be included in policy 10.1.2.9 (ii) at this time, as follows:

“The provision of affordable housing in the form of land, residential units or cash contributions to be transferred to the Region (Housing York, Inc.) or to a non-profit housing provider, free of cost, (including maintenance and condo fees if applicable).”

Refinements to the application of the affordable housing benefit may be required once the Region of York has finalized its Affordable Housing Implementation Guidelines and the City in turn, has developed its Affordable Housing Strategy (VOP 2010, section 7.5 -Housing Options).

6. Comment:

The requirement to execute the Section 37 Agreement prior to the enactment of the Section 37 by-law by City Council may cause delays for the marketing of a project; could we use a holding zone which could then be lifted once the Section 37 Agreement is executed.

**Response:**

Since the benefit to the community may be a critical factor in the Section 37 application approval decision, it is important to confirm that an appropriate benefit can be agreed on prior to enacting the corresponding Section 37 by-law. This will ensure the development, including any Section 37 benefits, is derived through a transparent process where all the known factors are available for decision makers in the Committee of the Whole (COW) Comprehensive Staff Report. The duration of the negotiation and valuation process is dependent both on City administration and the landowner. Every effort will be made on the part of the City, to expedite the scheduling of negotiation meetings and the completion of the valuation for the subject property, concurrent with the preparation of the Comprehensive Staff Report.



To assist in meeting timelines the City Real Estate and Planning Departments are retaining an independent consultant to prepare a supportable and reproducible user friendly valuation formula. The formula will then be used by applicants and staff to determine the value of benefits in the early stages of the development process, concurrent with the preparation of the COW Comprehensive Staff Report.

B. Comments respecting the Draft S. 37 Implementation Guidelines and Recommended Responses

1. Comment:

Would we consider a narrower range with respect to the required benefit value; 20-35% appears to be a wide range. In addition, the range is still considered high by some members of the development community.

**Response:**

The range is a guideline and is intended to provide some flexibility regarding the value uplift the City may identify as appropriate in order to reflect contextual issues on a case by case basis. For example, if a specific development application will entail certain infrastructure improvements, or value added contributions to the community by addressing cultural heritage or sustainability priorities, the lower end of the range might apply. Whereas a development application requesting a relatively greater height and density than permitted in the Secondary Plan, and that does not achieve other City objectives, may be subject to the higher end of the value uplift range.

With respect to the question of the range being considered too high by some members of the development industry, it is noted that Vaughan's proposed range is the average range provided across other Ontario municipalities.

2. Comment:

The City of Vaughan's development threshold for application of Section 37 is lower than the other municipalities mentioned in the report; the same threshold of 5,000 to 10,000 should be used to remain competitive.

**Response:**

There may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above but could still be a suitable candidate to provide a Community Benefit contribution. Such lands could include large vacant or under-developed parcels, greyfield sites or smaller properties assembled for larger infill redevelopment. There should also be a means to permit staff to pursue Section 37 Agreements for smaller developments, as has typically been the case in the Woodbridge Commercial Core, and in other local centres.

Staff propose that Guideline 4. respecting a development GFA threshold for the application of Section 37 Policy be generally set at 4,000 sq.m, but that similar to Mississauga's S. 37 Policy and Guidelines, a second clause be included to permit consideration of smaller development proposals as follows:

**Guideline 4. Size Threshold:**

**“Section 37 density/height bonusing will generally be applied to building projects which are larger than 4,000 sq.m in GFA, and where the proposed density will exceed 1,000 sq.m in GFA over what would otherwise be permitted.**

**While this guideline is not intended to apply to smaller development projects, there may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above, but could still be a suitable candidate to provide a Community Benefit contribution. Such development sites may include larger vacant or under-developed parcels, greyfield sites, smaller properties assembled for larger infill redevelopment, and smaller sites in local centres.”**

3. **Comment:**

The process for the evaluation of the increase in property value as a result of the additional height/density permitted through Section 37 should be clarified; the landowner should be consulted with respect to terms of reference for the increase in value of property estimate.

**Response:**

**The City agrees that the process and the terms of reference for the valuation of the increase in property values must be transparent. The terms of reference will consist of two components:**

- **Standard guidelines for valuations as set by the Appraisal Institute of Canada and emerging best practices**
- **The City of Vaughan’s policy in reference to a base density to be used in the valuation**

**The City is currently drafting a policy respecting the base density to be used in the valuation, which once completed, will be integrated into the Guidelines. The Implementation Guidelines will then be brought forward for consideration at a future Committee of the Whole meeting, as part of the process of reporting on Section 37 VOP 2010 OMB appeals.**

4. **Comment:**

Given the City’s economic development objectives with respect to Major Office development in the VMC, it may be appropriate to apply a lower requirement for the percentage of value uplift in a Section 37 development application for major office in the VMC.

**Response:**

**The economic prosperity of the VMC is a corporate priority and the City is currently reviewing different methods of incenting major office development in the VMC to develop an incentives program. Policy Planning staff will work with the Economic Development Department to ensure that the Section 37 policies specific to the VMC Secondary Plan are aligned with the office incentives program. This**

**issue will be addressed through future reports on Office Incentives, and any direction received will be reflected in the Implementation Guidelines.**

5. Comment:

It is important to emphasize that Section 37 should be used primarily in the “Intensification Areas” of Vaughan; could we clarify this by adding text to the proposed Section 37 Policy / Implementation Guidelines.

**Response:**

**Staff concur that the use of Section 37 is primarily intended for the Intensification Areas of the City. A section has been added to the Implementation Guidelines (see Attachment 2, number 2.1), to clarify that although Council may request the use of Section 37 in other areas of the City, the use of this planning tool is primarily intended for the Intensification Areas.**

6. Comment:

Consider including the Regional Councillor and Mayor in the Section 37 negotiation process.

**Response:**

**Including the Regional Councillors and the Mayor as suggested, may be beneficial in increasing transparency and bringing a wider City perspective to the negotiation process. Staff have made revisions to Guideline 6.3 (see Attachment 2), accordingly.**

7. Comment:

Consideration should be given to the inclusion of purpose built rental housing as a benefit in the proposed Section 37 policy.

**Response:**

**The availability of affordable rental housing is important to the Region’s and City’s objectives to provide choices for residents that are inclusive of those who cannot afford to purchase, or rent their housing accommodations at current rental rates. It is proposed that the following revision be incorporated into the Guidelines for Implementation of Section 37, number 2., paragraph 2:**

**“Council may exempt certain non-profit or public facilities where such facilities provide a demonstrable public benefit, such as social housing, or affordable rental housing, from contribution of additional community benefits under the Section 37 Policy and Guidelines. Affordable rental housing is defined as housing rented at or below the average CMHC rents in the York Region CMA. The landowner will be required to enter into an agreement with the City to maintain the housing as affordable over a 20 year time horizon.”**

**Specific conditions which will be applicable to affordable rental housing will be defined and included as an appendix to the Guidelines, at the time that the Implementation Guidelines are being considered for approval.**

### Continuing Research

City Staff will continue to confer with the relevant agencies and to research best practices with respect to the process and Terms of Reference for the valuation of the increase in property values. A draft policy will be brought forward for Council's consideration in the near future, which will outline the principles applied to the determination of both the Terms of Reference and the proposed base density to be used in the valuation.

Since the Implementation Guidelines will not be brought forward for Council approval until the Section 37 Policy has received final approval by the OMB, there is sufficient time to have further stakeholder consultation on the valuation process, or any other input received at this Committee of the Whole meeting respecting the proposed Guidelines.

### Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities set forth in the Vaughan Vision 2020 Strategic Plan, through the following initiatives, specifically:

#### Service Excellence:

- Lead and Promote Environmental Sustainability
- Preserve our Heritage and Support Diversity, Arts and Culture

#### Organizational Excellence:

- Manage Corporate Assets
- Ensure Financial Sustainability
- Manage Growth and Economic Well-being

### Regional Implications

The Region of York is a stakeholder in the process in that Section 5.4.15 of the Regional Official Plan requires local municipalities to adopt policies and related zoning by-law provisions to provide community benefits in Regional Centres and Corridors in exchange for additional height and density. This policy of the York Region Official Plan is in effect except for one site specific appeal. The proposed policy is consistent with the requirements of the Region of York Official Plan.

### Conclusion

The proposed modifications to the VOP 2010 Section 37 Policy and the proposed Implementation Guidelines, as further refined through input received at the Committee of the Whole (Working Session) of September 10, 2013, provide greater direction and a transparent, reproducible approach to the use of this planning tool. Only one change has been proposed to the Policy since the recent Committee of the Whole (Working Session) meeting, and that is the addition of "Affordable Housing" to the list of community benefits in policy 10.1.2.9 (ii).

Overall, the proposed Section 37 Policy better articulates the conditions for determining when and where it may be applied and refines the list of community benefits that may be considered. As noted, the original version of the VOP 2010 Policies 10.1.2.9 – 10.1.2.12, regarding "Bonusing for Increases in Height or Density (Section 37 of the Planning Act)", is under appeal. Subject to Council approval of the modified Section 37 Policy, it is recommended that the OMB and York Region be advised that the City will be seeking its approval.

The proposed Implementation Guidelines will serve as a separate Corporate Policy document that provides a step by step procedure for the review of Section 37 zoning by-law amendment applications. Additional work to update the Guidelines with respect to valuation criteria is also

underway. The Guidelines will be the subject of a future report to Council seeking their final approval once the Ontario Municipal Board has approved the relevant modified VOP 2010 Policy. This process will be undertaken with the benefit of further stakeholder consultation. The input received on the Implementation Guidelines, as set out in this report will be given further consideration, and adjustments will be made at that time based on the information obtained from on-going City research into the best practices for the implementation of Section 37 policies.

**Attachments**

1. Proposed Section 37 Policy
2. Proposed section 37 Implementation Guidelines and Development Application Process Flow Chart
3. Council Extract from September 17, 2013 – Item 2, Report No 38

**Report prepared by:**

Anna Sicilia, Senior Policy Planner, ext. 8063  
Roy McQuillin, Manager of Policy Planning, ext. 8211

Respectfully submitted,

JOHN MACKENZIE  
Commissioner of Planning

/lm

## 1.0 THE PROPOSED SECTION 37 POLICY

1. Policies 10.1.2.9 – 10.1.2.12 Bonusing for Increases in Height and Density (Section 37 of the *Planning Act*) of VOP 2010, as endorsed by York Region on June 28, 2013, be replaced by the following:

### **10.1.2.9 Increased Height and Density Provision**

- i. In accordance with Section 37 of the *Planning Act*, Council may authorize an increase in the building height and/or density of development otherwise permitted in areas of the City, as contained in Volume 1 or Volume 2 of this Plan, or as contained in a site specific zoning by-law, in return for the provision of community benefits in the form of facilities, services or matters provided:
  - a. the community benefits bear a reasonable planning relationship to the increase in building height and/or density of the proposed development;
  - b. the development represents good planning, is consistent with the other objectives of this Plan and consistent with applicable built form and neighbourhood compatibility objectives; and
  - c. there is adequate infrastructure to support the increase in building height and/or density.
- ii. Pursuant to Section 37 of the *Planning Act*, a by-law may be enacted by Council to achieve the City's objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the other provisions of the *Planning Act* or the *Development Charges Act*, and which may be of particular benefit to a specific area or the City at large. Notwithstanding the generality of the foregoing it is the intent of Council in passing such by-laws to attain community benefits consisting of capital facilities, services or cash contributions toward specific capital facilities or services including but not limited to:
  - public parking;
  - public art contributions;
  - non-profit and/or public arts, and cultural, community or institutional facilities;
  - parkland and/or parkland improvements, or cash-in-lieu of parkland or parkland improvements that are over and above the City's standard levels of service, and above the contributions secured through DCs under Section 42 of the *Planning Act*;
  - enhanced public access to natural heritage features, ravines and valleylands involving off-site improvements/upgrades;
  - enhanced below-grade and/or at-grade connections to public transit facilities;
  - district energy;
  - land for municipal purposes;
  - upgrades to community facilities that are above the City's standard level of service;
  - upgrades to cultural heritage facilities/elements which are above that which is required by Provincial and municipal Policy;

- fully furnished and equipped non-profit day care facilities, including start up funding;
- The provision of affordable housing in the form of land, residential units or cash contributions to be transferred to the Region (Housing York, Inc.) or to a non-profit housing provider, free of cost, (including maintenance and condo fees if applicable);
- other community benefits that may be identified in Secondary Plans, Area Specific Policies or Site Specific Policies as contained in Volume 2 of this Plan; and other community improvements that may be identified through the development approval process.

#### **10.1.2.10**

Community benefits which are the subject of Section 37 provisions will be determined based on local community needs, intensification issues in the area, and the objectives of this Plan with priority given to provision of benefits in proximity to the proposed development.

Council reserves the right to select community benefits based on local community needs, the nature of the development application, any Implementation Guidelines or Plans adopted by Council and the policies of this Plan.

#### **10.1.2.11**

Increased building height and density provisions under Section 37 of the *Planning Act* will be implemented by site specific zoning by-laws. Such by-laws will specify the facilities, services and matters that are required to be provided under this provision.

#### **10.1.2.12**

That community benefits provided through policy 10.1.2.9 shall be secured in one or more agreements to be registered on title. The agreement(s) will specify when the community benefits will be provided. The agreement(s) will be executed, registered and secured in a manner satisfactory to the City, prior to the enactment of an Official Plan and/or zoning by-law amendment.

## **Guidelines for the Implementation of Section 37 of the Planning Act**

### **1. Introduction**

Section 37 of the Planning Act (also referred to as “density bonusing”) allows municipalities to secure “facilities, matters or services” (i.e. community benefits) as a condition of the approval of rezonings for increases in building height and/or density above existing planning permissions. The Section also provides for Section 37 benefits to be secured through Agreements that are registered on title. The policy framework regarding the application of Section 37 in the City of Vaughan are contained in Section 10.1.2.9 of the Official Plan.

The purpose of this Guideline is to provide more detailed direction on how the Section 37 policies will be applied in the City of Vaughan to:

- meet the overall objectives of the Official Plan;
- identify which developments will be eligible for consideration of Section 37 applications; and
- describe the process for negotiating Section 37 Agreements.

These guidelines are intended to assist in the implementation of policies contained in Section 10.1.2.9 of the City of Vaughan Official Plan. These guidelines must be read in conjunction with the policies of the Official Plan. If conflicts arise between the Official Plan provisions and these guidelines, the Official Plan policies shall prevail.

### **2. Application Process**

Requests for increases in the height and/or density of development may be considered by Council in the context of Official Plan Amendments and/or rezoning applications, and will be subject to compliance with the planning principles listed below. The Official Plan and/or zoning by-law building height and density limits will represent the base building height and/or density above which Section 37 policies may apply. Once Council deems the proposed increase in building height and/or density to be acceptable it may require, as a condition of approval, the provision of certain community benefits.

Council may exempt certain non-profit or public facilities where such facilities provide a demonstrable public benefit, such as social housing, or affordable rental housing, from contribution of additional community benefits under the Section 37 Policy and Guidelines. Affordable rental housing is defined as housing rented at or below the average CMHC rents in the York Region CMA. The landowner will be required to enter into an agreement with the City to maintain the housing as affordable over a 20 year time horizon.

Council may request a Section 37 contribution for developments proposing an increase in building height and/or density that are appealed to the Ontario Municipal Board.

The administration of the Section 37 policy shall be the responsibility of the Commissioner of Planning in consultation with the Legal Services, Finance, Community Services, Engineering, Real Estate and Public Works Departments.

#### **2.1 Section 37 to focus on the Intensification Areas of Vaughan**

The application of Section 37 is primarily intended for the Intensification Areas of the City as identified on “Schedule 1-Urban Structure” of the Vaughan Official Plan 2010;



however, a site specific by-law including Section 37 benefits, if deemed appropriate, may be enacted by Vaughan Council elsewhere in the City.

### **3. Planning Principles**

#### **3.1 The development must represent good planning**

Prior to determining whether a development should be subject to a Section 37 Agreement, planning staff will need to assess if the development, and in particular the increase in height and/or density, represents “good planning”. Good planning includes addressing all other policies contained in the Official Plan, including urban design policies and objectives; the relationship of a development to its context, the adjacent street, the creation of a good public realm, improvements to the public realm adjacent to the site (including off site improvements included under Section 41), adequate infrastructure, and the compliance to the policies of the Plan regarding the natural environment. Good Planning includes sustainable design and good architecture and should not be subject to negotiations regarding building height and/or density increases, but should constitute the foundation for all development in the City. Design quality must not be compromised.

#### **3.2 There should be a reasonable planning relationship between the community benefit and the proposed increase in development.**

A reasonable planning relationship between the community benefit and the proposed development refers, in the first instance, to geographic proximity. The highest priority would be for community benefits in the immediate vicinity of the site, and then in the local area. Where provided for in City Policy, funding may be considered as part of a Section 37 agreement to address particular City-wide needs, which cannot be adequately addressed in the vicinity of the development, such as funds for improvement of a district park, or for broadly accessed amenities.

### **4. Size Threshold**

Section 37 density/height bonus will generally be applied to building projects which are larger than 4,000 sq.m in GFA, and where the proposed density will exceed 1,000 sq.m in GFA over what would otherwise be permitted.

While this guideline is not intended to apply to smaller development projects, there may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above, but could still be a suitable candidate to provide a Community Benefit contribution. Such development sites could include larger vacant or under developed parcels, greyfield sites, smaller properties assembled for larger infill redevelopment, and smaller sites in local centres.

### **5. Valuation of Community Benefits**

The City will secure community benefits for which the cost to the owner/developer represents a reasonable proportion of the increase in residual land value resulting from an increase in height and/or density over the limits identified in the Official Plan/zoning by-law. A standard City wide formula for determining the value of benefits will not be applied and thus the value of the Section 37 benefits will vary from project to project or from one area of the City to another. The approach to determining the base density to be used in the valuation, and the standard guidelines for the determination of property uplift, are contained in Appendix 1. On average, the City will seek to

achieve a value for community benefits that represent a range between 20-35% of the increase in land value resulting from the increase in height and/or density.

The community benefits will be over and above what could otherwise be achieved through other Sections of the Planning Act, such as Sections 41, 42 and/or 50. Section 37 Agreements do not in any way entitle reductions in Development Charges.

The City's Real Estate Division will retain the services of an appraiser to be paid for by the owner/developer to determine the increase in the value of land resulting from the increase in height and/or density, based on a terms of reference to be prepared by City staff. Should there be a disagreement between the City and the owner/developer on the value of the increase, the owner may wish to initiate a second appraisal, at their own expense, from a City approved list of appraisers and based on the same terms of reference as the first appraisal.

## **6. Protocol for Determining Community Benefits**

### **6.1 Planning Staff will manage the negotiations Process**

Planning staff responsible for making recommendations on development applications to Vaughan Council in accordance with the Planning Act and other Provincial policy will lead negotiations with owners/developers regarding the nature of Section 37 community benefits. Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits.

### **6.2 Local Area Studies**

Where Council has approved studies or plans for a particular geographic area of the City, including Secondary Plans, which outline the range of community facilities, services or matters that should be provided or supported on a priority basis, these findings will inform negotiations regarding the provision of Section 37 benefits for these areas. Funds established to sustain the long term maintenance of capital facilities may also be considered.

### **6.3 Consultation with Councillors and Communities**

The Mayor, Regional Councillors, and Ward Councillor will be consulted by the Planning Department between the time of the Public Hearing and the preparation of the Comprehensive Staff Report to Committee of the Whole; to review the list of recommended potential community benefits, prior to the initiation of negotiations with the owner/developer regarding the nature of community benefits. A memorandum with a recommended response date similar to the approach applied to development application circulations will be used.

As part of the consultation, the Planning Department will provide the Mayor and Councillors with information regarding community benefits that were identified, any interest expressed by the owner/developer regarding community benefits, and the nature of the increase in land value for the proposed development. Community benefits may also be discussed and identified during the community meetings/Public Hearing held for the development application in question.

### **6.4 Transparency**

To ensure greater transparency, Planning staff will include the rationale for the allowance of the increased building height and density in the Comprehensive Technical Report to Committee of the Whole. Staff will also include an explanation of the nature of the community benefits to be secured and the value of each component (whether cash

contribution or in-kind), as part of their technical report to Committee of the Whole recommending development approval of a Section 37 application. The recommended site specific zoning by-law will include sections addressing the requirement for the developer to enter into a Section 37 Agreement and listing the community benefits to be secured.

**7. Securing the Community Benefit(s)**

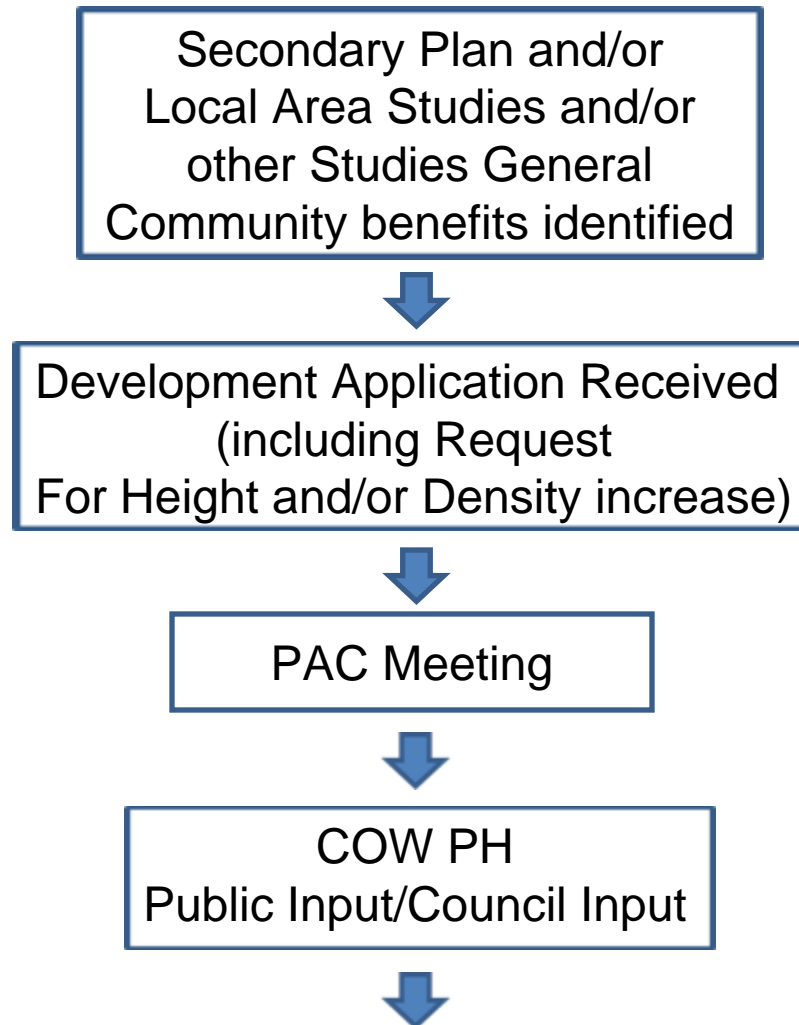
Prior to the enactment of the zoning by-law amendment, the owner/developer will execute the Section 37 Agreement securing the community benefits. The agreement will be registered on title and will identify the community benefits, and how any cash benefit will be used. Cash contributions will be paid prior to the issuance of the first above-grade building permit for the respective development.

The contributions/benefits paid to the City will be indexed to current land value using the date of execution of the agreement as the base value, and indexing the value difference between the date of the execution of the agreement and the issuance date of the building permit, as set out in the Section 37 agreement.

Proceeds will be placed in a dedicated "Section 37 Reserve Fund" managed by the Finance Commission. For tracking purposes, proceeds for specific negotiated benefits will be applied to a new or specified capital project. A record of proceeds and disbursements will be maintained in conjunction with the Section 37 Reserve Fund and capital projects' balances.

Should excess funds remain after the reasonable completion and closing of a community benefit project, the City shall maintain the excess funds in the Section 37 Reserve to be used at the City's discretion towards City-wide community benefits, as per Section 3.2 of these Guidelines.

# Development Application Process/ Section 37 Process



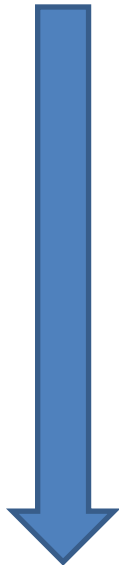
## Development Approval Process

## Section 37 Process/Protocol

Development must achieve "Good Planning"



Development/Policy Staff do not support increased height/density, application reviewed in accordance with permitted height and density maximums



Development/Policy Staff support increased height/density and S.37 Agreement



Landowner agrees to fund appraisal of increase to property value



City Real Estate Department retains Appraiser and Uplift Value is determined

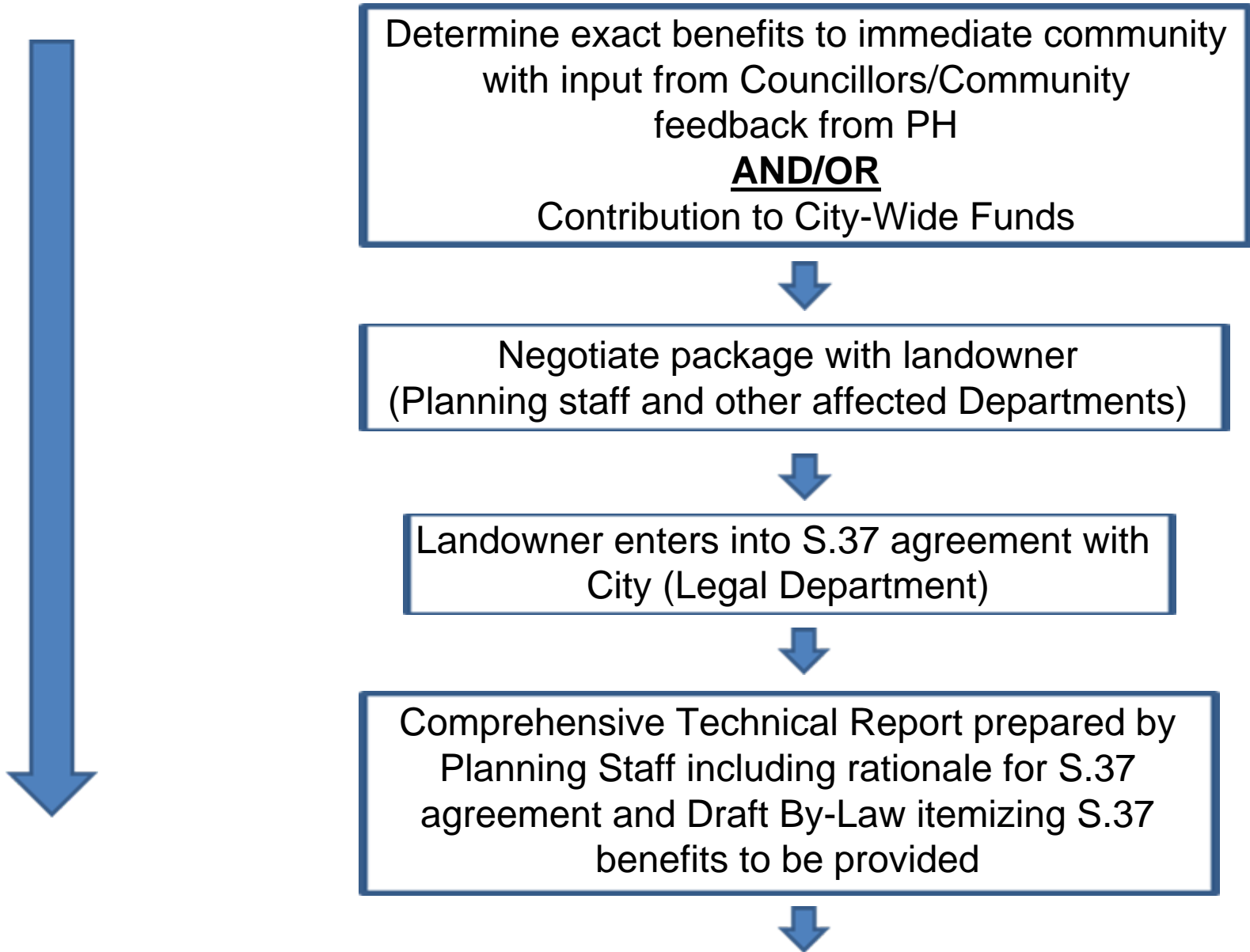


Determine proportion of Uplift land value to be provided towards Community Benefit (range 20-35%)



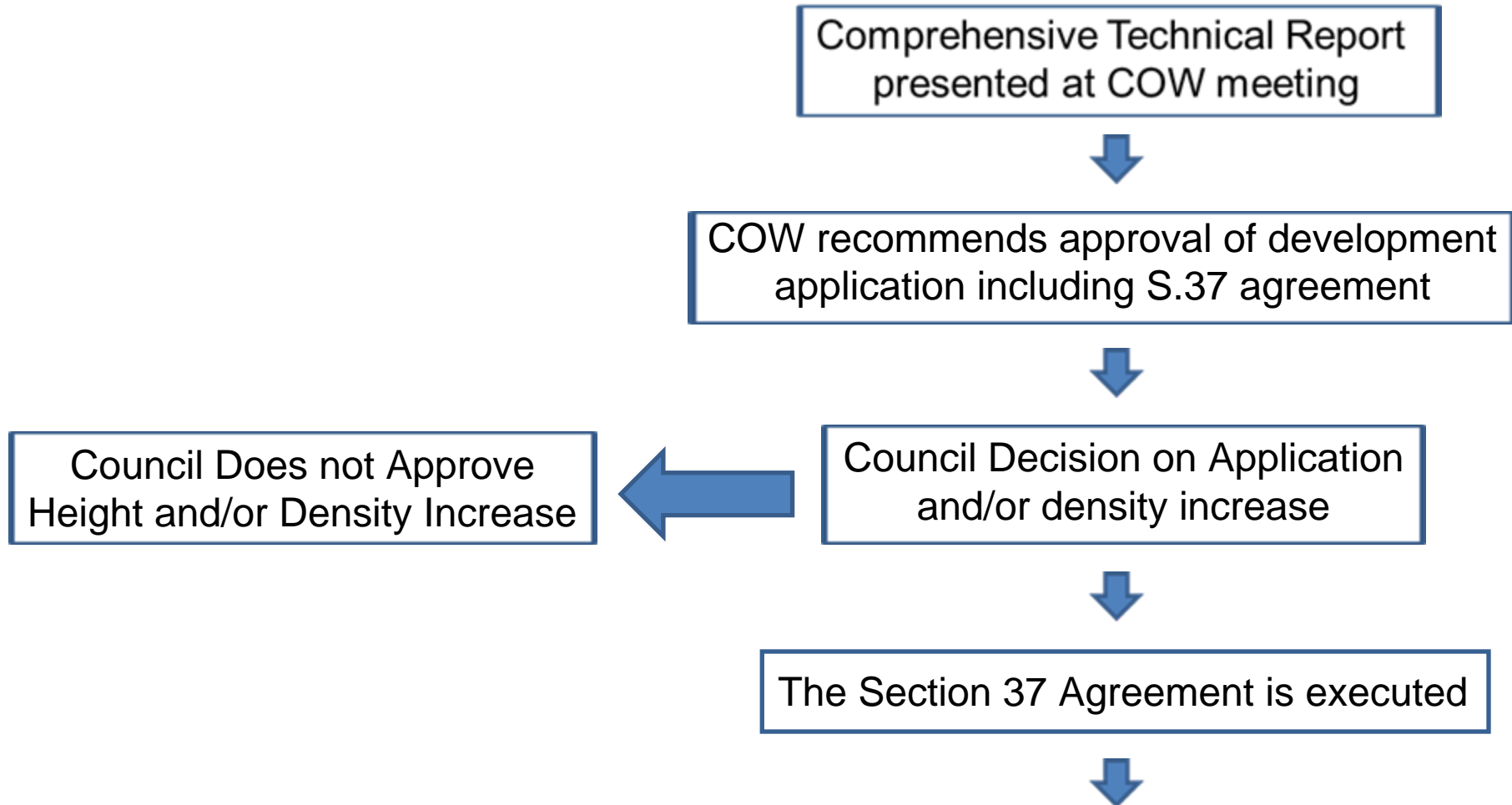
## Development Approval Process

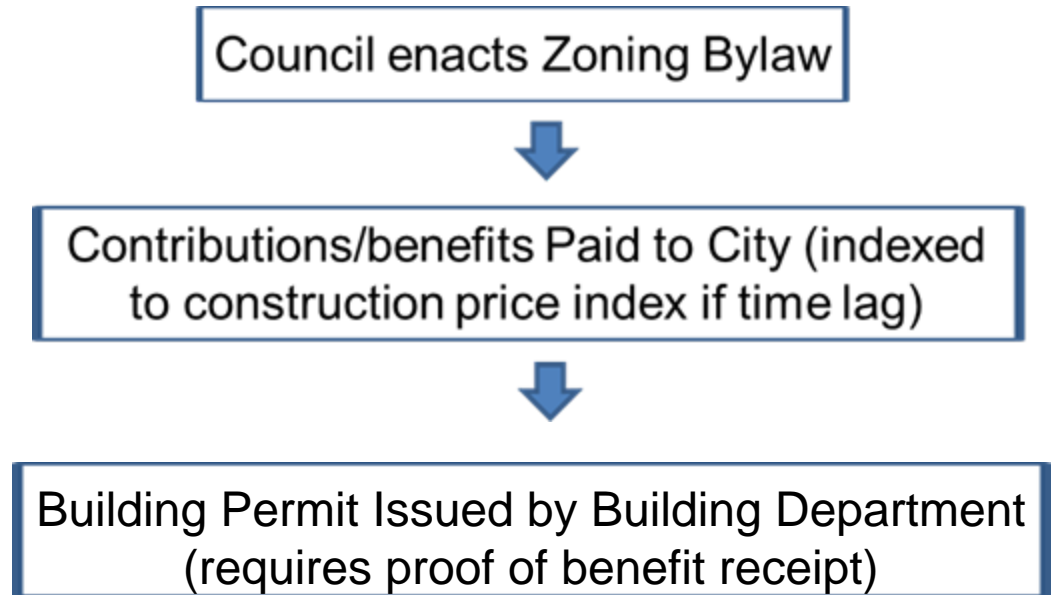
## Section 37 Process/Protocol



## Development Approval Process

## Section 37 Process/Protocol





Note: Ideally Secondary Plan and/or Local Area Study and/or other Study work is completed prior to submission of development application.



## CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013**

Item 2, Report No. 38, of the Committee of the Whole (Working Session), which was adopted without amendment by the Council of the City of Vaughan on September 17, 2013.

**2**

**VAUGHAN OFFICIAL PLAN 2010  
MODIFICATION TO POLICIES 10.1.2.9 – 10.1.2.12  
BONUSING FOR INCREASES IN HEIGHT OR DENSITY  
SECTION 37 OF THE PLANNING ACT AND  
IMPLEMENTATION GUIDELINES (FILE #25.6.1)  
STATUS UPDATE AND PRESENTATION BY JOHN GLADKI**

The Committee of the Whole (Working Session) recommends:

- 1) That the recommendation contained in the following report of the Commissioner of Planning, dated September 10, 2013, be approved;
- 2) That the following deputations and Communication be received:
  1. Ms. Paula Bustard, SmartCentres, Applewood Crescent, Vaughan and Communication C1, dated September 9, 2013;
  2. Ms. Amy Shepherd, IBI Group, Richmond Street West, Toronto, on behalf of Bentall Kennedy (Canada) and Toromont Industries Ltd.; and
  3. Mr. Frank Greco, Frank Greco Property Management, Islington Avenue, Kleinburg; and
- 3) That the following Communications be received:
  - C3. Presentation material, entitled "*Section 37 Policy Discussion*";
  - C4. Ms. Lezlie Phillips, Liberty Development, Steeplecase Road West, Markham, dated September 9, 2013; and
  - C5. Mr. Jay Claggett, IBI Group, Richmond Street West, Toronto, dated September 9, 2013.

**Recommendation**

The Commissioner of Planning recommends:

1. That the presentation by John Gladki be received;
2. That the revised policies set out in Attachment 1 applying to Policies 10.1.2.9 – 10.1.2.12 of the Vaughan Official Plan – 2010, regarding "Bonusing for Increases in Height or Density (Section 37 of the Planning Act)", be further refined on the basis of any input received at this Committee meeting;
3. That the parties to the Ontario Municipal Board appeals of the VOP 2010, including the Region of York, be advised that the City will be seeking approval of the revised Policies 10.1.2.9 – 10.1.2.12 as referenced in 2 above;
4. That the Implementation Guidelines be submitted to Council for adoption as a Corporate Policy, subsequent to the Ontario Municipal Board's approval of Policies 10.1.2.9 – 10.1.2.12 of VOP 2010, including the incorporation of any changes made necessary by the Board's decision; and
5. That it be recognized that at such time that the Implementation Guidelines are submitted to Council for adoption; it will be necessary to authorize the Commissioner of Finance/City Treasurer and City Clerk to amend the Consolidated Reserve Policy and By-law to incorporate the "Section 37 Reserve" as outlined in the Implementation Guidelines.

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013

Item 2, CW(W/S) Report No. 38 – Page 2

#### Contribution to Sustainability

The use of Section 37 to enhance the environment of intensification areas, and other specific sites as considered appropriate, contributes to the goals and objectives within “Green Directions Vaughan”, and the City’s “Sustainability and Environmental Master Plan”, specifically:

Goal 1: To significantly reduce our use of natural resources and the amount of waste we generate.

Objective 1.3 “To support enhanced standards of stormwater management at the City and work with others to care for Vaughan’s watersheds”

Goal 2: To ensure sustainable development and redevelopment.

Objective 2.2 “To develop Vaughan as a City with maximum greenspace and an urban form that supports our expected population growth”

Goal 4: To create a vibrant community for citizens, businesses and visitors.

Objective 4.1 “To foster a city with strong social cohesion, an engaging arts scene, and a clear sense of its culture and heritage”

Objective 4.2 “To ensure that the City of Vaughan attracts businesses and investment that will result in well-paying jobs for Vaughan citizens, a sustainable tax base, and continuing prosperity into the 21<sup>st</sup> century”

Goal 5: To be a leader on sustainability issues.

The use of Section 37 can help to promote goals which directly relate to those of Green Directions Vaughan, including integrating transit infrastructure with the emerging urban fabric and supporting the pedestrian, cyclist, transit and motorist experience for all ages and abilities.

#### Economic Impact

The cost of the study is funded from the Policy Planning Operating Budget.

#### Communications Plan

Notice of this meeting has been communicated to stakeholders by the following means:

- Posted on the [www.vaughan.ca](http://www.vaughan.ca) online calendar;
- By Canada Post to the VMC landowners, Vaughan BILD Representatives and to all registered City Ratepayer Associations;
- By email to all appellants, parties, and participants involved in the appeal relating to the VOP 2010, Volume 1(OMB File no. PL111184).

#### Purpose

The purpose of this report is to present modified Policies 10.1.2.9 – 10.1.2.12 of VOP 2010 in regard to “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)” and Implementation Guidelines for Committee of the Whole’s consideration and input. The modified policies will form the basis for the City’s position at the Ontario Municipal Board in light of appeals of the affected sections of VOP 2010. The Implementation Guidelines will be finalized and

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013

#### Item 2, CW(WS) Report No. 38 – Page 3

brought forward to Council for subsequent approval, after the Board has approved Policies 10.1.2.9 – 10.1.2.12.

#### **Background - Analysis and Options**

##### Background

##### Provincial Policy

Section 37 of the Planning Act permits the City to authorize increases in height and/or density through a site specific zoning by-law in return for community benefits such as specified facilities, services or other matters from the landowners, provided that there are enabling Official Plan policies in place.

Section 37 of the Planning Act states that:

“A municipality may, through a zoning by-law, approve increases in height and/or density beyond what the zoning by-law would otherwise permit, in return for facilities, services or matters (community benefits) as are set out in the by-law.”

and,

“The Official Plan must first contain provisions authorizing the use of Section 37, and that community benefits may be secured in an agreement that may be registered on title.”

##### The Region of York Official Plan

The Region of York Official Plan requires local municipalities to adopt Section 37 policies for Regional Centres and Corridors (section 5.4.15.). The Regional Official Plan includes the following list of community benefits to be considered by municipalities for inclusion in their Official Plans for Regional Centres and Corridors:

- a. transit station improvements;
- b. social housing;
- c. direct pedestrian connections to transit stations;
- d. regional community and health facilities;
- e. regional emergency medical services and police stations;
- f. additional facilities and services identified by local municipalities; and,
- g. appropriate provisions for pedestrian and cycling facilities.

##### The City of Vaughan Official Plan 2010 (VOP 2010)

Currently, Policies 10.1.2.9 – 10.1.2.12 of Chapter 10, “Implementing the Plan”, of the Council adopted and Region of York endorsed VOP 2010, provides policies permitting the use of height and density bonus through a Section 37 Agreement in the VMC, Primary Centres or as specified in a Secondary Plan. The existing policies speak to the basic requirements of the Planning Act policies respecting the use of Section 37. The VOP 2010 also lists community benefits which shall be considered in a Section 37 Agreement.

##### Stakeholder Consultation Process

Public consultation respecting the use of Section 37 Agreements began June 28, 2012 with a presentation to the Vaughan Metropolitan Centre Sub-Committee of Council on the potential use of Section 37. In March of 2013, the City retained the services of Gladki Planning Associates to

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013

#### Item 2, CW(WS) Report No. 38 – Page 4

report on Section 37 practices in other municipalities and to help develop more comprehensive Section 37 Policies and Implementation Guidelines for the City of Vaughan.

On May 7, 2013, members of the City of Vaughan Senior Management Team (SMT) and representatives of several departments were invited to attend a presentation by the City's Consultant to introduce the use of Section 37 of the Planning Act, including the guiding principles and related practices of other municipalities. The development review process for applications proposing a Section 37 Agreement was also addressed to set the framework for the development of more detailed City Section 37 Policies and Implementation Guidelines. Shortly after the May 7<sup>th</sup> meeting, staff circulated a draft Section 37 Policy and Implementation Guidelines to SMT for review. Comments received from the circulation were incorporated into a draft Policy and Implementation Guidelines.

On June 24, 2013, a consultation meeting was held with VMC Stakeholders, Vaughan BILD Representatives, registered Ratepayer Associations, Vaughan Councillors and City staff. External participants were notified by mail two weeks prior to the meeting date. The purpose of the meeting was to present the (draft) Section 37 Policies and Implementation Guidelines, and to provide an opportunity for input into the policy development process. Issues raised by participants included:

- (i) The proposed percentage range of 25-35 % for the property value uplift to be recovered by the City through a Section 37 agreement was considered to be excessive by some landowner representatives;
- (ii) the perception that the use of this tool could lead to an expectation of greater heights/densities in an area than is envisioned or permitted by the current Official Plan; and,
- (iii) the request for reproducible methodology for Section 37 development applications.

#### Ontario Municipal Board Appeals

On July 23, 2013 the Ontario Municipal Board granted partial approval to Volume 1 of VOP 2010. The subject policies (10.1.2.9 – 10.1.2.12) were among those not approved. Fourteen parties have appealed the Section 37 policies. At this time, the appellants have not listed specific issues regarding the wording or content of the affected policies. It is expected that the specific issues will be refined and positions clarified through the mediation process. Ultimately the appeals will be resolved through the Ontario Municipal Board process through further negotiations, Board mediation or a hearing.

The Board approved policies will be incorporated into the Official Plan. Modifications to the original version of Policies 10.1.2.9 – 10.1.2.12, adopted by Council through this process, will form the basis for the City's position at the Ontario Municipal Board. The Board and the Region of York will be advised of any such decision taken by Council and a recommendation will be provided.

#### The Proposed Section 37 Policy

The proposed Section 37 Official Plan Policy (see Attachment 1), if approved by Council, will form a modification to the VOP 2010, replacing the existing policies 10.1.2.9 -10.1.2.12. In comparison to the existing policy, the proposed policy is more detailed, clarifies that benefits are over and above existing and/or standard levels of service, and clearly articulates the required conditions under which this planning tool may be used city-wide. These conditions are as follows:

CITY OF VAUGHAN

**EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013**

Item 2, CW(W/S) Report No. 38 – Page 5

- “a. The community benefits bear a reasonable planning relationship to the increase in building height and/or density of the proposed development;
- b. The development represents good planning, is consistent with the other objectives of this Plan and consistent with applicable built form and neighbourhood compatibility objectives; and,
- c. There is adequate infrastructure to support the increase in building height and/or density.”

The proposed Policy states that a by-law may be enacted by Council to achieve the City's objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the Planning Act or the Development Charges Act and which may be of particular benefit to a specific area or the City at large. The provision of community benefits may take different forms, including capital facilities, services and cash contributions.

The list of community benefits provided in the VOP 2010 Section 37 Policy has also been reviewed and subsequently some benefits have been removed, while others have been added. The following revised list of benefits is proposed:

- (i) public parking;
- (ii) public art contributions;
- (iii) non-profit and/or public arts, and cultural, community or institutional facilities;
- (iv) parkland and/or parkland improvements, or cash-in-lieu of parkland or parkland improvements that are over and above the City's standard levels of service, and above the contributions secured through DCs and under Section 42 of the *Planning Act*;
- (v) enhanced public access to natural heritage features, ravines and valleylands involving off-site improvements/upgrades;
- (vi) enhanced below-grade and/or at-grade connections to public transit facilities;
- (vii) district energy;
- (viii) land for municipal purposes;
- (ix) upgrades to community facilities that are above the city's standard level of service;
- (x) upgrades to cultural heritage facilities/elements which are above that which is required by Provincial and municipal Policy;
- (xi) fully furnished and equipped non-profit day care facilities, including start up funding; and,
- (xii) other community benefits that may be identified in Secondary Plans, Area Specific Policies or Site Specific Policies as contained in Volume 2 of this Plan; and other community improvements that may be identified through the development approval process.

The community benefits are to be determined on the basis of local community needs, intensification issues and the objectives of the plan with priority given to the provision of benefits in proximity to the proposed development. Council also reserves the right to select community benefits based on local needs, the nature of the development application and any Guidelines or Plans adopted by Council. The implementing by-law will specify the facilities, services and matters that are required to be provided.

The Policy also provides that the benefits set out in Policy 10.1.2. 9 are to be secured through one or more agreements to be registered on title. The agreement(s) will specify when the community benefits will be provided; and they must be executed, registered and secured in a manner satisfactory to the City prior to the enactment of the zoning by-law.

## CITY OF VAUGHAN

### EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013

Item 2, CW(WS) Report No. 38 – Page 6

#### Proposed Section 37 Implementation Guidelines

The Section 37 Implementation Guidelines (see Attachment 2), will serve as a separate policy document to guide City staff in the application of the Section 37 policies of VOP 2010 by providing a step by step procedure, which defines the roles of Councillors and specific City departments. The Guidelines also further define the conditions for the use of Section 37, and the negotiations protocol. Highlights of the proposed Implementation Guidelines include:

- (i) Planning staff will be responsible for the administration of the Section 37 Agreement, with the support of other departments including Legal Services, Finance, Community Services, Engineering, Real Estate and Public Works Departments.
- (ii) A planning relationship must be established between the proposed development and the community benefit. Geographic proximity between the two is considered a primary means of establishing this relationship. However, funding for particular city-wide needs which cannot be adequately addressed in the vicinity of the development, such as for the improvement of a district park, or for broadly accessed amenities, may also be considered. Where Council has approved studies or Secondary Plans for a local area which outline the range of community facilities/services that should be supported on a priority basis, these findings may inform the planning relationship.
- (iii) The City will secure community benefits for which the cost to the owner represents a reasonable proportion of the increase in residual land value resulting from an increase in and/or density over the limits identified in the Official Plan /zoning by-law. On average, the City will seek to achieve a value for community benefits that represents a range between 20-35% of the increase in land value associated with the proposed density.
- (iv) Planning staff will manage the negotiations with landowners regarding the nature of the community benefit based on input from the Ward Councillor and other City departments.
- (v) To ensure transparency, Planning staff will include the rationale for the consideration of an allowance of the increased building height and/or density in the comprehensive technical report to Committee of the Whole. Staff will also include an explanation of the nature of the community benefits to be secured and the value of each component. The recommended site specific OPA/zoning by-law will include sections addressing the requirement for the owner to enter into a Section 37 Agreement and listing the community benefits to be secured.
- (vi) The Section 37 Agreement will be executed prior to the enactment of the zoning by-law amendment. The Agreement will be registered on title and cash contributions will be paid prior to the issuance of the first above-grade building permit for the respective development.

#### Comparison of Key Section 37 Policies across Ontario Municipalities

Research conducted by the consultant included the review of Section 37 policies adopted by other Ontario municipalities. The City of Toronto has the broadest range of experience with the use of Section 37 provisions. More recently other municipalities including the City of Ottawa, the City of Burlington, the City of Markham, and the City of Mississauga have also approved policies

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013**

Item 2, CW(WS) Report No. 38 – Page 7

for the use of Section 37. A review of these five Ontario municipalities reveals some variation in policy approaches. The following chart compares policies respecting development thresholds, percentage of value increase capture, the negotiation protocol and geographic requirements across these municipalities, with those proposed for the City of Vaughan.

<b>Municipality</b>	<b>Development Threshold</b>	<b>Percentage of Value Increase</b>	<b>Protocol</b>	<b>Geography</b>
City of Toronto	Greater than 10,000 sq m; Density increase exceeds 1500 sq m	Not specified	City Planning staff to coordinate; Ward Councillor to be consulted prior to any discussions or negotiations	Priority given to on-site benefits or in the local area of the development
City of Ottawa	Greater than 7000 sq m; Density increase is 25% more than otherwise permitted	To be based on “uplift value”--Inner Urban Area \$250/sq m Outer Urban Area \$130/sq m (to be drawn down based on relevance of zoning/OP; retention of heritage; implementation of public benefits within development)	Planning and Growth Management staff to coordinate; Ward Councillor to be consulted prior to any discussions or negotiations	Appropriate geographic relationship of benefits to address amenities and services in the local community of the development
City of Mississauga	Greater than 5000 sq m; Density increase exceeds 1500 sq m	20-40% of the increase in land value	Planning and Building staff to lead discussions; Ward Councillor must be consulted prior to any negotiation	Highest priority—on site or immediate vicinity; next priority community benefits to address city – wide needs
City of Markham	Greater than 5000 sq m; Density increase exceeds 1500 sq m	Not specified	Planning staff are to be lead negotiators; Councillor(s) to be involved	Highest priority—on-site provision of community benefits; next level of priority – immediate vicinity of the development site; City wide benefits to be considered where fund exists
City of Burlington	No threshold specified	Not specified	A staff committee chaired by Director of Development Services	High priority for on-site or near site community benefits; high priority for city-wide community benefits

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013**

Item 2, CW(WS) Report No. 38 – Page 8

<b>Proposed City of Vaughan Policies/Guidelines</b>	<b>Generally Greater than 2000 sq m; Density increase exceeds 1000 sq m</b>	<b>20-35%</b>	<b>Planning staff to manage negotiations; Ward Councillor to be consulted prior to negotiations</b>	<b>Highest priority—community benefits in immediate vicinity of the development; next level—local area; City-wide needs to be considered where appropriate</b>
---	---	---------------	---	--

The majority of municipalities surveyed have set development thresholds below which Section 37 provisions will not be applied. The reason for setting such thresholds is based on the practical supposition that the increased value of the development in question, must be substantial enough to result in community benefits which are still of value, once staff's time to review the application has been considered.

The increase in height and density will entail an increase in land value accruing to the property owner/developer. In applying Section 37, the City will require the conveyance in cash or an in-kind equivalent equal to a percentage of the increase in land value to provide for the public benefit. With respect to the percentage of the value increase, municipalities have chosen to either generally require "a reasonable" proportion of the value increase or a more specific "percentage range" of the value increase. Given a recent Ontario Municipal Board decision pointing to the requirement for specificity, fairness and predictability in the use of Section 37 provisions (1477677 Ontario Ltd. (Baywood Homes) v. City of Toronto); it is proposed that Vaughan require a set percentage range of 20-35% of the value increase. It is noted that the percentage range has been decreased from the originally suggested range of 25-35% introduced at the stakeholder meeting of June 24, 2013, in response to stakeholder input.

With respect to the negotiations protocol, and required geographic relationship of the proposed Section 37 benefit to the development, the draft City of Vaughan policies are in keeping with the majority of the municipalities surveyed.

**Relationship to Vaughan Vision 2020/Strategic Plan**

This report is consistent with the priorities set forth in the Vaughan Vision 2020 Strategic Plan, through the following initiatives, specifically:

**Service Excellence:**

- Lead and Promote Environmental Sustainability
- Preserve our Heritage and Support Diversity, Arts and Culture

**Organizational Excellence:**

- Manage Corporate Assets
- Ensure Financial Sustainability
- Manage Growth and Economic Well-being

**Regional Implications**

The Region of York is a stakeholder in the process in that Section 5.4.15 of the Regional Official Plan requires local municipalities to adopt policies and related zoning by-law provisions to provide community benefits in Regional Centres and Corridors in exchange for additional height and density. This policy of the York Region Official Plan is in effect except for one site specific appeal. The proposed policy is consistent with the requirements of the Region of York Official Plan.



**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 17, 2013**

Item 2, CW(WS) Report No. 38 – Page 9

**Conclusion**

The proposed modifications to the VOP 2010 Section 37 policy and the proposed Implementation Guidelines provide greater direction and a transparent, reproducible approach for the use of this planning tool. The proposed policy better articulates the conditions for when and where it may be applied and refines the list of community benefits that may be considered. The proposed Implementation Guidelines will serve as a separate Council adopted corporate policy document that provides a step by step procedure for the review of Section 37 zoning by-law amendment applications. The proposed policies respond to issues associated with the application of bonus zoning by establishing an administrative framework which is transparent and fair and meets the fundamental requirements for municipal use of the bonusing provisions of Section 37.

As noted, the original version of the VOP 2010 Policies 10.1.2.9 – 10.1.2.12, regarding “Bonusing for Increases in Height or Density (Section 37 of the Planning Act)”, are under appeal. Subject to Council approval of the modified policies it is recommended that the OMB and York Region be advised that the City will be seeking approval of these modified policies through the OMB process. The Implementation Guidelines will be the subject of a future report to Council seeking their final approval once the Ontario Municipal Board has approved the modified policies.

**Attachments**

1. Proposed Section 37 Policy
2. Proposed section 37 Implementation Guidelines and Development Application Process Flow Chart

**Report prepared by:**

Anna Sicilia, Senior Policy Planner, ext. 8063  
Roy McQuillin, Manager of Policy Planning, ext. 8211

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)