

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, Steelecase 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(WS) 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 21st 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 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 7th 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(WS) 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(W/S) 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.

Municipality	Development Threshold	Percentage of Value Increase	Protocol	Geography
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

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

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.)