

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 9, Report No. 43, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan on December 13, 2016, as follows:

By approving the following in accordance with Communication C4 from the Deputy City Manager, Planning and Growth Management, dated December 13, 2016:

1. ***That the following red-lined change be added to the proposed changes to the Section 37 Implementation Guidelines, outlined in Attachment 1 to the Committee of the Whole report (Item 9, Report 43) dated December 6, 2016, following the first paragraph of “Section 6.3 – Consultation with Councillors and Communities”:***

“The memorandum noted above, will be sent once the quantum of the Section 37 benefit has been defined using the appraisal methodology and land value formula outlined in the Section 37 Guidelines. It will be copied to the Senior Manager of Real Estate, and will request whether the Ward Councillor would like to hold a meeting with the affected community to discuss how Section 37 benefits could be distributed. In the case that the meeting is requested, it will be arranged and facilitated through the office of the respective Councillor and include the attendance of the appropriate City staff. The objective of the meeting will be to advise the community of the values identified for the alternative benefits and to seek community input on how the benefits can be allocated with regard for “good planning” principles and the Nexus principle. The office of the Ward Councillor will be responsible for organizing details respecting the meeting date, invitees, time and location, and providing this information in the appropriate section of the memorandum. Once completed, the memorandum will be returned to the Development Planning Department.”; and

By receiving Communication C2 from Mr. Richard Lorello, dated December 6, 2016.

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**STATUS UPDATE REPORT
IMPLEMENTATION GUIDELINES FOR PLANNING ACT SECTION 37 POLICIES
OF THE VAUGHAN OFFICIAL PLAN (VOP) 2010 (VOLUME 1) (10.1.2.9-10.1.2.12)
BONUSING FOR INCREASES IN HEIGHT AND/OR DENSITY
SECTION 37 OF THE PLANNING ACT
FILE #25.6.1**

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Deputy City Manager, Planning and Growth Management, the Chief of Corporate Initiatives and Intergovernmental Relations, the Director of Policy Planning and Environmental Sustainability, the Interim Director of Development Planning and the Manager of Urban Design, dated December 6, 2016:

Recommendation

The Deputy City Manager, Planning and Growth Management, the Chief of Corporate Initiatives and Intergovernmental Relations, the Director of Policy Planning and Environmental Sustainability, the Interim Director of Development Planning and the Manager of Urban Design, in consultation with the Deputy City Manager, Legal and Human Resources, the Director of Financial Planning and Development Finance and Deputy City Treasurer, and the Senior Manager of Real Estate, recommend:

1. That the proposed red-lined changes to the Section 37 Implementation Guidelines, as identified in and forming Attachment 1 to this report, be approved thereby replacing the current Corporate Policy “Section 37 Implementation Guidelines”.

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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 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

Since the approval of the Section 37 Guidelines on February 17, 2015, staff have negotiated approximately \$750,000 in Section 37 monetary benefits through the development application review process. Future economic impacts cannot be determined due to uncertainty of timing and details surrounding private development proposals.

Section 37 benefits may be provided in several forms, ranging from facilities to services to cash contributions over and above normal standards. This is to compensate the community for increased height and density being permitted in excess of the base heights and densities established by the Official Plan and/or Zoning By-law for a particular site. This injection of municipal service benefits is important from a financial perspective given the City’s currently constrained reserves and growth related revenue streams.

Communications Plan

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

- Posted on the www.vaughan.ca online calendar; and
- By Canada Post and by email to the VMC landowners, York Region Chapter of BILD (Vaughan Representatives) and to appellants of the VOP 2010 Section 37 policies (OMB File no. PL111184).

Purpose

The purpose of this report is to respond to the Council direction to provide an update to Committee of the Whole on the efficacy of the Section 37 Implementation Guidelines and their

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application through the development approval process, since their adoption as Corporate Policy in February of 2015. In addition, changes to the guidelines are being proposed as a result of continuing staff review.

Background - Analysis and Options

Executive Summary

This report is divided into sections which provide the following information:

- (1) Policy framework information relating to the approval of the Section 37 Implementation Guidelines as Corporate Policy;
- (2) General comments;
- (3) Allocation of Section 37 benefits through the development planning application process using the Section 37 Implementation Guidelines;
- (4) Modification to wording of Section 3.2 of the Implementation Guidelines;
- (5) Proposed changes to timing of Section 37 benefit collections;
- (6) Proposed minor modification to Appendix 1 of the Section 37 Implementation Guidelines, pertaining to the updating of the Land Valuation Matrix;
- (7) Further changes under review: evaluation of funding priorities and the creation of priority benefit categories for the VMC local area;
- (8) Public consultation; and
- (9) Conclusion.

(1) Policy Framework and Development of the Implementation Guidelines

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 landowners, provided approved implementing Official Plan policies are in place. The Region of York Official Plan requires local municipalities to adopt Section 37 policies for Regional Centres and Corridors (Section 5.4.15).

On December 10, 2013, Vaughan Council adopted amendments to the VOP 2010 (Volume 1) Section 37 policies (10.1.2.9-10.1.2.12), and received the corresponding draft Implementation Guidelines. The Section 37 policies were subsequently approved by the Ontario Municipal Board (OMB) on September 30, 2014.

The VMC Secondary Plan Section 37 policies were approved by the OMB on November 18, 2015. The Secondary Plan policies reference the VOP 2010 Section 37 policies, with the exception that the benefit list is expanded to include the more specific needs of the local VMC area.

On February 17, 2015, Council approved the following recommendation of the Deputy City Manager, Planning & Growth Management and the Director of Policy Planning & Environmental Sustainability (in part):

“That the Section 37 Implementation Guidelines, including the Valuation Methodology Brief be approved as new Corporate Policy to guide city staff in the application of Section 37 policies of the VOP 2010.

That consistent with the Council directive of December 10, 2013, Council 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.

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That consistent with the Council directive of December 10, 2013, a status report be provided to a Committee of the Whole (Working Session) one year after implementation of the new Corporate Policy."

This report constitutes staff's follow-up on Council's directive to report back on the implementation of the new Corporate Policy.

(2) General Comments on the Efficacy of the Section 37 Implementation Guidelines

The Section 37 Implementation Guidelines have been in effect for a year and a half. During this time, they have been used in the negotiation of multiple development applications involving requests for increased heights and densities. Staff acknowledge that the guidelines have provided a clear protocol for the evaluation of Section 37 development applications. Discussions with the departmental staff utilizing the guidelines indicate that they are working well and that no significant revisions are required at this time.

Stakeholders, such as the York Chapter of BILD and private owners, have generally indicated support for the guidelines and methodology employed. The Vaughan Section 37 protocol has been referenced by other municipalities as an emerging best practice and the Deputy City Manager, Planning and Growth Management and staff have presented on the policy at general forums, including working sessions of Hamilton Council and at Ryerson Cities Institute.

(3) Allocation of Section 37 benefits through the development planning application process using the Section 37 Implementation Guidelines

To date, one development planning application requesting the use of density bonusing has been processed using the Section 37 Implementation Guidelines. Information respecting the site's location and Section 37 agreement details are provided below.

- (i) Baif Developments Limited, Files OP.12.019 and Z.12.047, 2 Beverley Glen Boulevard, northwest corner of Bathurst Street and Beverley Glen Boulevard.
 - (a) The Section 37 agreement includes \$350,000 for the provision of public art within the catchment area of the proposed development, and \$350,000 for community benefits including but not limited to, improvements to the Thornhill Green Park, Benjamin Vaughan District Park, and for Rosemount Community Centre and City Playhouse Theatre.
 - (b) A VIVA Transit Pass to be provided free of charge to purchasers of units in the development upon occupancy of the units, for a total cost not to exceed \$50,000.

It is noted that the Implementation Guidelines have also been used in settlement discussions and mediations related to OMB appeals.

(4) Proposed Modifications to Language of Section 3.2 of the Guidelines

Drawing upon, in part, decisions issued by the Ontario Municipal Board, the Section 37 Guidelines require that there be a reasonable planning relationship between the community benefit and the proposed development site. This relationship is in reference to compensating the affected community for the additional needs which will be imposed by the increased density and/or height sought through the development proposal requiring Section 37. Geographic proximity of the community benefit to the development site is also an important

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consideration in forming this relationship which is known in Section 37 terminology as the “nexus”. An appropriate geographic relationship can be said to exist if certain criteria, including those listed below, are applicable:

- “(i) The contributing development is located within the community that benefits from the provision of the community benefits.
- (ii) The occupants of the contributing development will have the opportunity to use the facilities being contributed or improved.
- (iii) The contributing development will benefit from the provision of the community benefits possibly through increased value, or enhanced marketing or business opportunities.” (City of Toronto Section 37 Review, January 2014, Gladki Planning Associates)

Section 3.2 of the Implementation Guidelines currently speaks to the requirement of a suitable nexus as follows:

“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.”

Staff are proposing that the language of Section 3.2 of the Implementation Guidelines be modified to provide for a better balance between the emphasis placed on negotiating for the “priority needs” of a local area, and that of negotiating for the “immediate proximity” of any benefit listed in the relevant Official Plan policies, to the development site.

Recommendation:

Therefore staff recommends that Section 3.2 of the Implementation Guidelines be modified to read:

“The determination of appropriate community benefits for a specific development application will conform to the relevant Official Plan policies for the development site, and the community benefits must bear a reasonable planning relationship to the increase in the height and/or density of a proposed development, including at a minimum, having an appropriate geographic relationship to the development and addressing planning issues associated with the development.

Where Council approved studies or assessments have outlined community needs, including an assessment of benefit priorities, these particular benefits should form the basis of Section 37 negotiations.

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.”

This revised language emphasizes the importance of both the priority needs of the local community and the proximity of the benefit to the development site.

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(5) Timing of Section 37 Collections

Currently Section 37 funds are collected prior to the issuance of the first above grade building permit for the development. Staff believe that it would be beneficial to adjust the City's policy to allow for the collection of these funds earlier in the process, at the first below grade building permit (foundation permit). This would align the collection of Section 37 benefits with the collection of other funds such as development charges; and, would give City staff more time to emplace the community benefit. This will help to advance the provision of infrastructure and amenities to new intensification areas. In the case of the VMC area, which will be undergoing rapid intensification, this is extremely important.

Recommendation:

Therefore, staff recommends the following modification to the wording of Section 7, last sentence of paragraph 1, of the Implementation Guidelines:

“Cash contributions will be paid prior to the issuance of the foundation permit for the respective development, or earlier if agreed to by the City and the applicant.”

(6) Proposed Minor Modification to Appendix 1, Updating of the Land Valuation Matrix

The Implementation Guidelines contain an appendix (See Attachment 1, Appendix 1), which provides an overview of the land valuation process and payment protocols for Section 37 contributions. As an initial step in determining the appropriate land value to apply in the “increase in land value” formula, the City relies on land value unit rates (ie. price per square foot of buildable gross floor area), which are included in a “Land Valuation Matrix”.

Currently, Appendix 1 requires that the Land Valuation Matrix be updated annually (as of January 1st) by a qualified real estate appraiser. Based on the limited number of Section 37 development applications received to date, staff assert that an annual Land Value Matrix update is not cost efficient. Unless the request for Section 37 development applications increases, staff are of the opinion that the Land Value Matrix should be updated at the City's discretion, but that the time period between updates should not exceed 3 years. Should the City consider the Matrix outdated at the time of receiving a Section 37 development application, a site specific property appraisal can be commissioned at the City's expense. This is a much more cost effective method of proceeding, until such time as the demand for use of this planning tool increases. The remainder of the appraisal procedure described in “Appendix 1- Overview of the Administration of the Land Valuation Process and Payment Protocols for Section 37 Contributions” of the Implementation Guidelines will still apply.

Recommendation:

Staff recommend that the Land Value Matrix for the City be updated at the City's discretion, but that the time lapse between updates should not exceed 3 years. Should the City receive a development application proposing Section 37 and more than a year has lapsed since the last Matrix update, the City may commission a site specific property assessment. The site specific property value assessment would be at the City's cost and only commissioned if the current Matrix were considered outdated. The remainder of the appraisal procedure described in Appendix 1 will still apply.

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(7) Further Changes Under Review: Evaluation of Funding Priorities and the Creation of Priority Benefit Categories for the VMC Local Area

Areas of intensification require a heightened level of service when compared to a traditional greenfield development. The Development Charges Act has certain restrictions that render certain projects as ineligible for Development Charge funding.

In the case of the VMC, there is a great need for community infrastructure and services to transition this area from an industrial and largely undeveloped area to a thriving high density city centre. Of the overall list of community benefits contained in Section 10.1.2.9 of the Vaughan Official Plan 2010 (Volume 1) and Section 8.1.16 of the VMC Secondary Plan, staff in consultation with VMC stakeholders has identified several items that are of high priority, but currently underfunded, for the early build out of the downtown. Additional funding for infrastructure like enhanced streetscaping, provision of public parking, urban parks, public art and other emerging priorities may be required across this local area.

The funding for these items will be further reviewed in light of the possibility of creating local priority project funding, through pooling of all Section 37 monetary benefits collected from development applications in the VMC area. The priority benefit categories would be established for a set period of time, after which they would be reviewed and possibly replaced with more current project needs. Should recommendations arise from this further review, they will be considered through the City's Financial Sustainability Program under the Service Excellence initiatives currently underway.

(8) Public Consultation

Staff held a public consultation session with VMC Stakeholders on October 17, 2016, to introduce the proposed revisions to the Section 37 Implementation Guidelines and to receive stakeholders' input. The proposed changes were well received at this meeting, and no further comments have been provided to staff within the additional commenting period ending October 24, 2016. The Vaughan BILD representatives were also apprised of the proposed revisions on October 31, 2016.

In addition, all proponents that had been involved in the initial Section 37 policy discussions have been sent notice of this Committee of the Whole meeting, including the VMC landowners and Vaughan BILD representatives. All previous appellants to the VOP 2010, Section 37 policies have also been sent the notice of this meeting.

During one development application review for Woodbridge, the community raised concerns about the timing of when Section 37 details were presented. One individual recommended it be discussed in a public hearing report. In response staff note that it has not been possible at the early stages of the process to identify details as the initial proposal at a public hearing, may differ from the final product that is presented in the technical report at the future Committee of the Whole meeting. Staff will continue to provide as much detail as possible on the nature of any proposed Section 37 arrangement in the technical staff report for the development application.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report is consistent with the Term of Council Service Excellence priorities to:

- Facilitate the development of the VMC
- Support and promote arts, culture, heritage and sports in the community

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- Invest, renew and manage infrastructure and assets
- To continue to advance a culture of excellence in governance

In addition, the report objectives are aligned with the Service Excellence strategic initiative to:

- Implement continuous improvement initiatives to improve our service and business processes.

Regional Implications

The Region of York is a stakeholder in the City's Section 37 policies and procedures, 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.

Conclusion

City staff have been applying the Implementation Guidelines for the review of development applications proposing Section 37 benefits since February, 2015. The experience of utilizing this planning tool has proven to be a very positive one. The guidelines have provided staff with a clear protocol for negotiating development applications proposing Section 37 and brought a great deal of transparency to the negotiation process. In fact, Vaughan's Implementation Guidelines have been commended for their transparency:

"Amid ongoing debate over the application of density bonuses through Section 37 of the Planning Act, the approach taken by the City of Vaughan is praised as a model of transparency." (Novea Res Urbis, March 9, 2016)

Patrick Devine, a prominent planning and development lawyer, is quoted in this same article as recommending that "municipalities look carefully at the procedures on density bonuses adopted by Vaughan".

However, the guidelines are a new Corporate Policy and the directive from Council has provided an opportunity for staff to review the effectiveness of this planning tool through its practical use since the approval of the guidelines. The modifications to the guidelines identified by staff in this report are proposed to permit increased flexibility with respect to emplacing Section 37 benefits within the community, and to deliver the benefits earlier in the development process.

In addition, staff are considering future changes to the guidelines to better target priority needs in the VMC local area. It is also intended that over the next few months, internal processes will be developed in order to better establish the roles and responsibilities of staff across all departments as they pertain to the acquisition of Section 37 funds. These further considerations will be presented and discussed in a future report to a Committee of the Whole (Working Session).

Attachments

1. Proposed (Redlined) Section 37 Implementation Guidelines

Report prepared by:

Anna Sicilia, Project Manager, New Community Areas, ext. 8063

(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.)