

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.

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**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.**

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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 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

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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

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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:

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- “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.

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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

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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

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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
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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.

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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.)



SmartCentres

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September 9, 2013

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

<p>C1 COMMUNICATION</p> <p>CW (WORKING SESSION) September 10/13</p> <p>ITEM - 2</p>

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 over 100 acres of land within the Vaughan Metropolitan Centre ("VMC"). We have reviewed the staff report regarding the proposed Section 37 Implementation Guidelines relative to our lands and intentions for those lands. We would like to express the following comments and concerns.

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.
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.
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 rate which will make this market unobtainable for many office uses due to extraordinary competition in other markets. 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.

4. 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. In the staff report's comparison of Section 37 policies across Ontario, it is noted that most development thresholds for the implementation of Section 37 become applicable when development is between 5,000 and 10,000 square metres. The stated purpose of this threshold is "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." However, the staff recommended threshold is 2,000 square metres, without any supporting justification. This threshold is too low both in comparison with other competing market areas and within the context of development within the VMC specifically. 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. 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. As such, 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. In the review of the draft policies contained within the staff report there seems to be some overlap between what is funded through Development Charges and what the City is seeking through Section 37 charges. This overlap needs to be clarified, and a clearer distinction between what is covered under Development Charges and what is covered under Section 37 is required. For example, the proposed policies allow for the acquisition of land through Section 37, when land may be acquired through other
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processes such as the subdivision/Site Plan process, parkland dedication, or by funds collected from Development Charges. Similarly, enhanced public access to natural heritage features could be achieved through similar means. An additional avenue for these provisions is not necessary.

Appropriateness of the Timing of Section 37 Implementation Guidelines

8. On August 22, 2013, the Minister of Municipal Affairs and Housing announced the Province's intention to launch a consultation process that, according to the Minister, will have "significant effects on the new housing and land development industry." One of the two consultation processes will be related to development charges and other municipal development related fees and charges, including Section 37. 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.

Thank you,

Yours truly



Paula Bustard
Senior Director of Development
SmartCentres

C3 - CW (WS)
September 10/2013
Item 2

City of Vaughan

Section 37 Policy Discussion

John Gladki
September 10, 2013

gladki planning associates

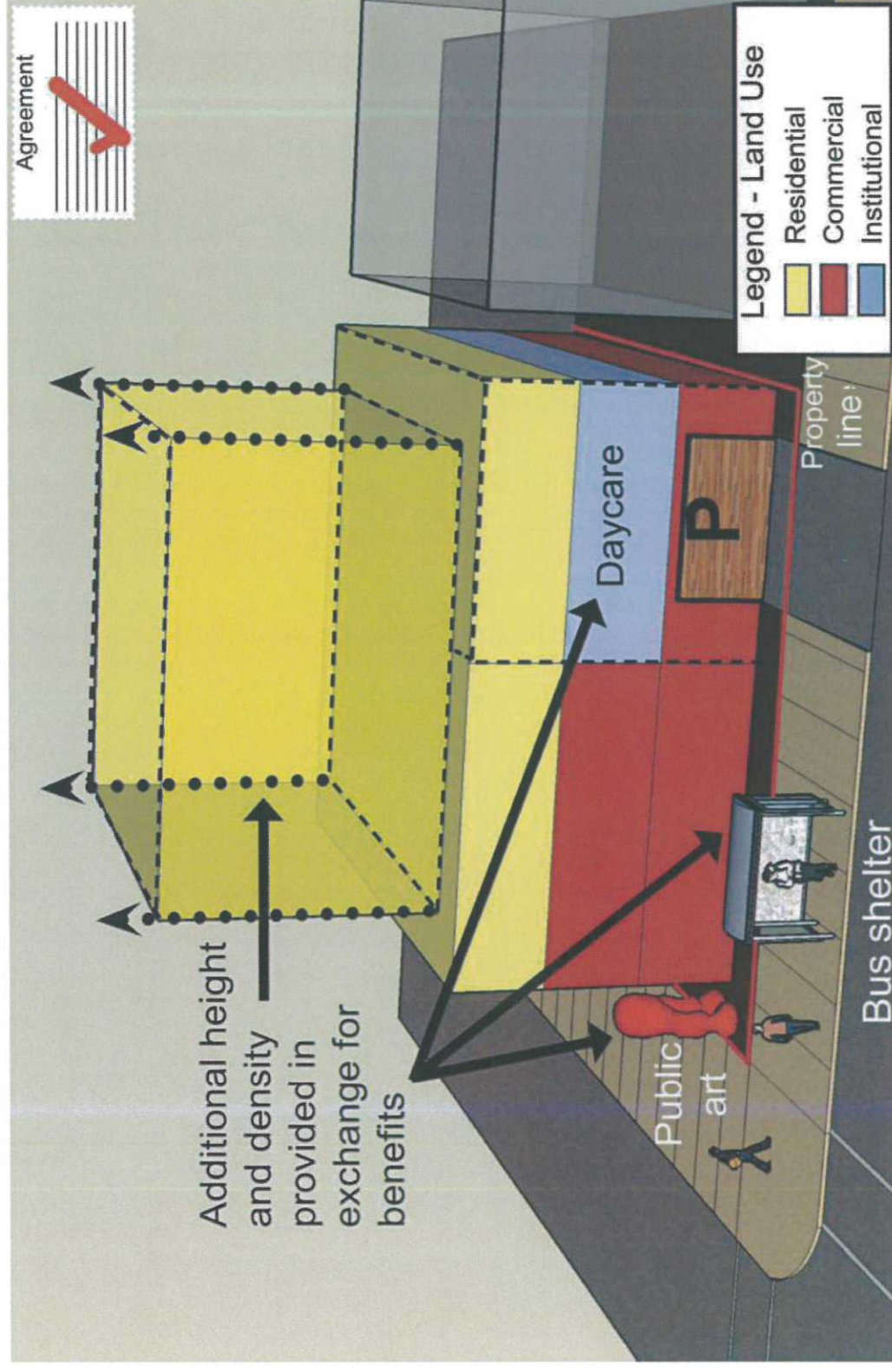
Presentation Outline

- Section 37 background
- Proposed Policy
- Proposed Guideline

Section 37 Background

- Section 37 of the Planning Act authorizes local municipalities to increase zoned height and/or density of development in return for “facilities, services or matters”
- It also authorizes the municipality to enter into an agreement with the land owner to secure the “facilities, services or matters”
- The agreement may be registered on title

Section 37 Background



VMC Sub Committee Report on Section 37

Section 37 Background-Other Municipal Experience

- Toronto has most extensive experience: since 1998, have raised \$350+ million city-wide (in 2012 dollars) plus in-kind benefits
- Benefits include public art, daycare, affordable housing, community service facilities, parks and streetscape improvements
- Burlington, Ottawa, Mississauga, London, Cambridge also have experience with Section 37

Section 37 Background-Other Municipal Experience

- York Region OP encourages use of Section 37 by local municipalities in support of compact and transit-oriented development
- York Region endorsed Section 37 policies in the Vaughan Official Plan 2010
- Other municipalities have policies, but limited experience

Section 37 Existing Official Plan Policy

Existing Section 10.1.2.9 of the Vaughan Official Plan includes a comprehensive list of benefits that can be secured as part of a Section 37 arrangement

Affordable housing

Day care

Cultural/community facilities

Environmental upgrades

Transit connections

Heritage conservation

Public art

Parkland improvements

Streetscape Improvements

Land

Section 37 Existing Official Plan Policy

Existing Section 8.1.15 of the Vaughan Metropolitan Centre Plan lists a number of additional community benefits that may qualify for bonusing.

Subway entrances	Cultural facilities
Special parks facilities	Public amenities
Structured parking	Streetscape Improvements
Community facility upgrades	

Section 37 Proposed Revisions to Official Plan Policy

1. Increased height and density may be authorized in return for provision of community benefits provided:
 - There is a reasonable planning relationship between the increase in height and density and the community benefits
 - The development represents good planning
 - Infrastructure can support the increase

Section 37 Proposed Revisions to Official Plan Policy

2. Benefits would be over and above what can be otherwise secured through the Planning Act (park contributions) and DCs and may include:

- Public art
- Non profit/public cultural facilities
- Park improvements above City standard
- Upgrades to community facilities above City standards
- Enhanced off-site access to natural/environmental features
- Access to public transit
- Non profit day care
- Upgrades to cultural heritage facilities
- Public Parking
- District energy
- Land for municipal purposes
- Other improvements identified in local plans

3. Benefits to be determined based on:

- Objectives of the Official Plan
- Local community needs
- Unique needs based on intensification issues
- Priority given to benefits in geographic proximity to the development representing a “reasonable planning relationship”

Section 37 Proposed Revisions to Official Plan Policy

4. Height and density increases to be implemented by a site specific zoning by-law amendment

- Bylaw will identify facilities, services and matters (i.e. community benefits) to be provided

5. Community benefits will be secured through a “Section 37” agreement between the City and the owner

Section 37 Implementation Guidelines

Application Process

- Application to increase height and density above limits set in Official Plan to be subject to Section 37
- Exemptions to be identified by Council i.e. non profit development, or public facilities that benefit the community
- Size threshold: generally developments over 2000 sq m and 1000 sq m in additional density
- Planning Department administers the development approval process in consultation with Legal, Real Estate, and Finance Departments; and with the aid of other relevant departments

Section 37 Implementation Guidelines--Principles

Good Planning

- **Planning staff** will review the application to determine consistency with other OP policies: urban design, transportation, environment etc. i.e. consistency with principles of good planning



Section 37 Implementation Guidelines--Principles

Establish a Reasonable Planning Relationship Between:
Increase in Height and Density and Community Benefits

- Geographic proximity between development and community benefit
- First priority—in close proximity to the development
- May include community benefits within local community or contributions to City-wide funds for such things as public art or major capital facilities

Section 37 Implementation Guidelines--Valuation

Step 3—Determine Increase in Land Value

- City will seek to achieve a value for community benefits equal to between 20-35% of the increase in land value
- Community benefits to be over and above Development Charges or what can otherwise be secured under the Planning Act
- The Real Estate Department will hire an appraiser, paid for by the applicant, to determine increase in land value
- In case of dispute, developer can seek second opinion on appraisal

Section 37 Implementation Guidelines--Protocol

Protocol for Determining Benefits

- Planning staff to manage negotiations in consultation with the relevant municipal departments
- Need to determine exact benefits to be provided—total to equal the value to accrue to the City
- Consult local studies (if these have been prepared), Official Plan policies, City Departments (Parks, Recreation and Culture, Finance, Legal, etc.)
- Consult Ward Councillor and seek community feedback at public meeting(s)
- Details of value of benefits and negotiation process to be included in comprehensive technical report on application to ensure transparency

Section 37 Implementation Guidelines--Example

An account will need to be set up for Section 37 contributions by the **Finance Department**



Park Improvements



Community Facilities and
Libraries



Heritage Preservation



Cultural Facilities



Public Art

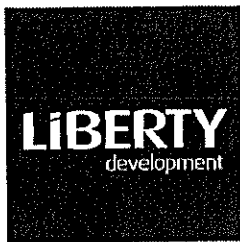
Site Specific Bylaw

- Contributions/benefits to be itemized in the site specific bylaw
- Requirement that owner enter into a Section 37 Agreement prior to the adoption of the site specific bylaw by Council
- The Agreement will be registered on title
- Cash contributions/benefits to be paid prior to release of building permit
- Cash payments to be placed in a special Section 37 Reserve Fund managed by the Finance Department

Section 37 Implementation Guidelines--Comparison

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/under review	City Planning staff to coordinate; Ward Councillor to be consulted prior to any discussions or negotiations	Priority given to on-site or in the local area
City of Ottawa	Greater than 7000 sq m; Density increase is 25% of 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 to address amenities and services in the local community
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 site; City wide benefits to be considered where fund exists
City of Burlington	No threshold specified	Not specified	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 (Proposed)	Generally greater than 2000 sq m; Density increase exceeds 1000 sq m	20-35%	Planning staff to manage negotiations; Ward Councillor to be consulted	Highest priority—immediate vicinity; next level—local area; City-wide needs to be considered where appropriate

Questions?



LIBERTY *for all*

C4 - CW (WS)
September 10/13
Item 2

September 9, 2013

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

Dear Sirs and Mesdames:

Re: Committee of the Whole Working Session
Report 38, Item 2
September 10, 2013

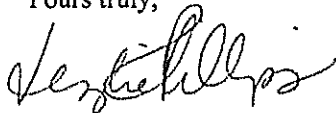
We are writing to provide comments on your policy report for Section 37 bonusing which is before your committee for consideration. We have reviewed the report and agree overall with the proposed policies. We do however have a concern with the implementation guideline requiring that the Section 37 Agreement be executed prior to the **enactment** of the zoning by-law amendment. The approval process for zoning and official plan amendments is already very lengthy. Developers typically do not go to market with a project until their zoning by-law has been passed by City Council. If zoning by-laws are now held up pending execution of a Section 37 Agreement, this could add many more months to the approval process and have a negative impact on the development as a whole, in terms of marketing and making the project a success. The appraisal process set out in the report, for determining the value of additional density can be very time consuming, hence additional delays.)

It would be our suggestion that Council could enact a zoning by-law which would contain a "hold" not to be lifted until the Section 37 Agreement is executed. In this process the City is still protected, as the zoning by-law is not in full force or effect until the hold is lifted, and at the same time it allows the developer to go to market with a by-law that has been passed by Council.

The other comment we have is with respect to the City seeking to achieve a value for community benefits that represents a range between 20 – 35%. We believe this is too high.

We would request that you give consideration to our comments and if you need any additional information, don't hesitate to contact us.

Yours truly,



Lezlie Phillips



IBI Group
5th Floor - 230 Richmond Street West
Toronto ON M5V 1V6 Canada

Tel 416 596 1930
fax 416 596 0644

C5
CW(ws)
September 10/13
Item 2

September 9, 2013

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

Attention: Clerks Department

Dear Sir/Madame:

**VAUGHAN OFFICIAL PLAN - 2010
PROPOSED POLICIES FOR BONUSING FOR INCREASES IN HEIGHT OR DENSITY
(SECTION 37 OF THE PLANNING ACT) AND IMPLEMENTING GUIDELINES
FILE #25.6.1**

On behalf of our client Toromont Industries Ltd., IBI Group has reviewed the City's revised Official Plan Policies 10.1.2.9 - 10.1.2.12 regarding 'Bonusing for Increase in Height or Density (Section 37 of the Planning Act)' and its proposed Implementation Guidelines, as provided in the staff report to the Committee of the Whole. We have a number of concerns, in particular those detailed below.

Timing

- On August 22, 2013, the Minister of Municipal Affairs and Housing announced the Province's intention to launch a consultation process that (according the Minister) will have "**significant effects on the new housing and land development industry.**". One of the two consultation processes will be related to Development Charges and other municipal development-related fees and charges (including Section 37, cash-in-lieu etc.). In light of this provincial review and consultation process, it would seem premature to be implementing Section 37 policies as outlined in the staff report until such time as this comprehensive provincial undertaking is completed.

Overlap of Section 37 and Development Charges

- In the review of the draft policies contained within the staff report, there seems to be some significant overlap between what is funded through Development Charges and what the City is seeking through Section 37 charges. This overlap needs to be better clarified by staff and a better explanation needs to be provided in terms of what is a Development Charge matter and what is a Section 37 matter.

Application of Section 37 of the Planning Act

- In itself, the provision of Section 37 is helpful to both the development community and the City of Vaughan; however, the provisions need to be clearer than what has been provided by the City. Base level density uptakes should not be charged under Section 37.
- Page five of the staff report is somewhat vague as to when the bonus provisions will be applied. The staff report says "**...resulting from an increase in and/or density**

IBI Group

2

Clerks Department – September 9, 2013

over the limits identified in the Official Plan/Zoning By-law". Draft policy section 10.1.2.9 states that, "...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 ...". Given that the recommendation is for staff to be given the authority to deal with Section 37 then it needs to be very clear that Section 37 only deals with density bonusing above and beyond that permitted within the Official Plan (not zoning).

- Section 37 may be invoked when a proposed development results in increases to the height and density otherwise permitted by the Zoning By-law. The City of Vaughan Zoning By-law 1-88 is out of date and when originally drafted the types of heights and densities being sought for the Vaughan Metropolitan Centre (VMC) were not contemplated. The Zoning By-law will need to be brought into conformity with the new Official Plan (Volumes 1 and 2) and until such a transition policy should be prepared that uses the new Official Plan and VMC Secondary Plan as the baseline for measuring increases in height and density.
- On page six of the staff report, where it compares Section 37 policies across Ontario, it is noted that most common development threshold that triggers the application of Section 37 is between 5,000 and 10,000 sq. m. However, Vaughan staff is recommending 2,000 sq. m without any supporting justification. This threshold is too low both in comparison with other competing market areas and within the context of urban development, specifically within the Vaughan Metropolitan Centre (VMC). Given the City's desire to create a dynamic and vibrant downtown, a competitive threshold of 5,000 to 10,000 sq. m. is more appropriate.
- Notwithstanding the concerns raised in the June 2013 workshop, the 20-35% valuation remains high and could lead to specific areas (such as the VMC) becoming uncompetitive with surrounding municipalities. Furthermore, the process for the valuation is poorly explained and an agreed upon process to valuation needs to be clearly articulated to avoid a subjective and uncompetitive implementation of the "uptake" value.
- Specific to the VMC, there are a number of development criteria within public, semi-public and private development realms that are far and above the standards expected across the remainder of the City and/or in competing downtown areas (e.g. affordable housing, high architectural standards and sustainable design). It would be appropriate to include upgrades to these realms, above the typical City standard, as community benefits for Section 37 bonusing.
- Specific to the VMC, the market conditions for major office development that the City is seeking as part of its downtown vision remains problematic given the many requirements of the VMC secondary plan policies. Given the City's economic development objectives to promote the VMC as a major employment centre (integrated with residential for a true mixed-use community), the application of Section 37 bonusing as it relates to office development should not be the same as it is for residential development.

IBI Group

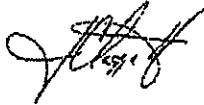
3

Clerks Department – September 9, 2013

We look forward to continuing to work with City staff on these matters. Thank you.

Yours truly

IBI GROUP

A handwritten signature in black ink, appearing to read 'Jay Claggett', with a stylized flourish at the end.

Jay Claggett
Director

cc: David Wetherald of Toromont Industries Ltd.

COMMITTEE OF THE WHOLE (WORKING SESSION) SEPTEMBER 10, 2013

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

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.

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 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 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 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:

- 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.

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 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
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.

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:

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Respectfully submitted,

JOHN MACKENZIE
Commissioner of Planning

1.0 THE OFFICIAL PLAN AMENDMENT

1. Section 10.1.2.9 Bonusing for Increases in Height and Density (Section 37 of the *Planning Act*) :

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, 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 through Development Charges under the Development Charges Act, and through 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;

- 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 the 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, from contribution of additional community benefits under the Section 37 Policy and Guidelines.

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.

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.

3.3 Section 37 to apply to the City as a whole, with a focus on intensification areas

Site specific by-laws including Section 37 benefits may be enacted by Vaughan Council throughout the City, however, the focus for most Section 37 developments will be the Intensification Areas as identified on Schedule 1 “Urban Structure” of the Vaughan Official Plan.

4. Size Threshold

Density incentives will generally be applied to projects which are larger than 2,000 sq m² and where the proposed density will exceed 1,000 m² over what would otherwise be permitted.

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. 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. 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 Ward Councillors and Communities

The Ward Councillor will be consulted by the Planning Department 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. As part of the consultation, the Planning Department will provide the Ward Councillor 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. In addition, consideration will also be given to the financial sustainability of any given community benefit, including regard for its maintenance over the long term.

Community benefits may also be discussed and identified during the community meetings/Public Hearing held for the development application in question.

Planning staff will consult with all affected departments in finalizing the benefit selection; and in each case with assigned staff from the Finance and Legal Commissions.

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.

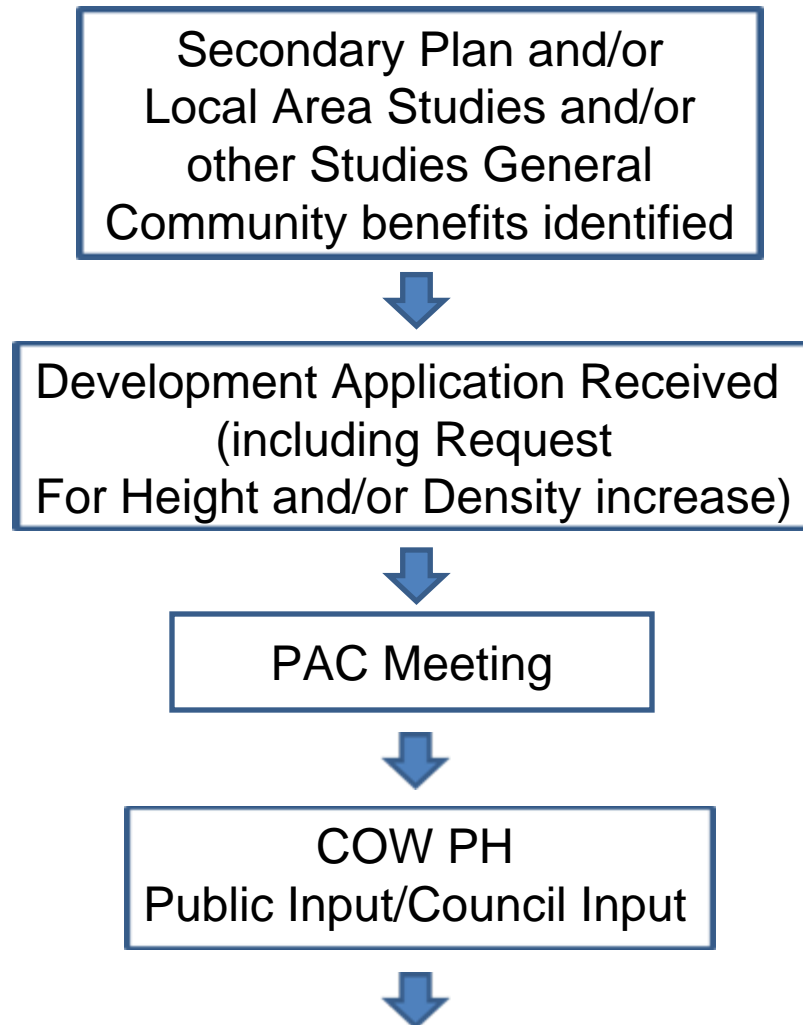
The contributions/benefits paid to the City will be indexed to current land value using the date of execution of the agreement as the base value, and indexing the value difference between the date of the execution of the agreement and the issuance date of the building permit, as set out in the Section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

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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



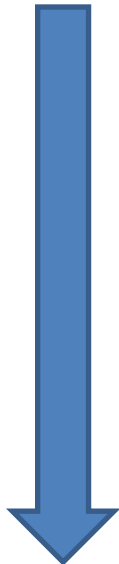
Landowner agrees to fund appraisal of increase to property value



City Real Estate Department retains Appraiser and Uplift Value is determined

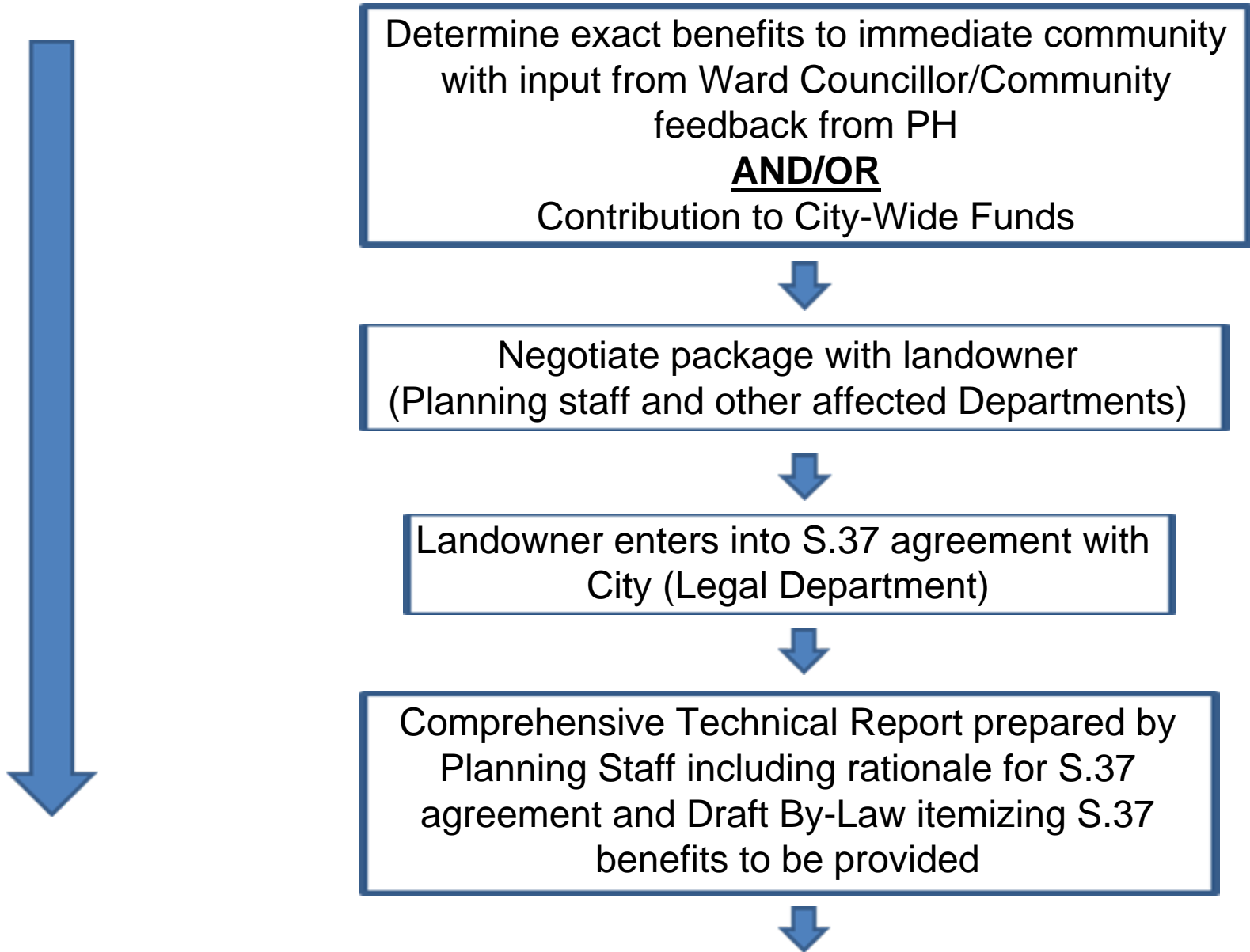


Determine proportion of Uplift land value to be provided towards Community Benefit (range 20-35%)



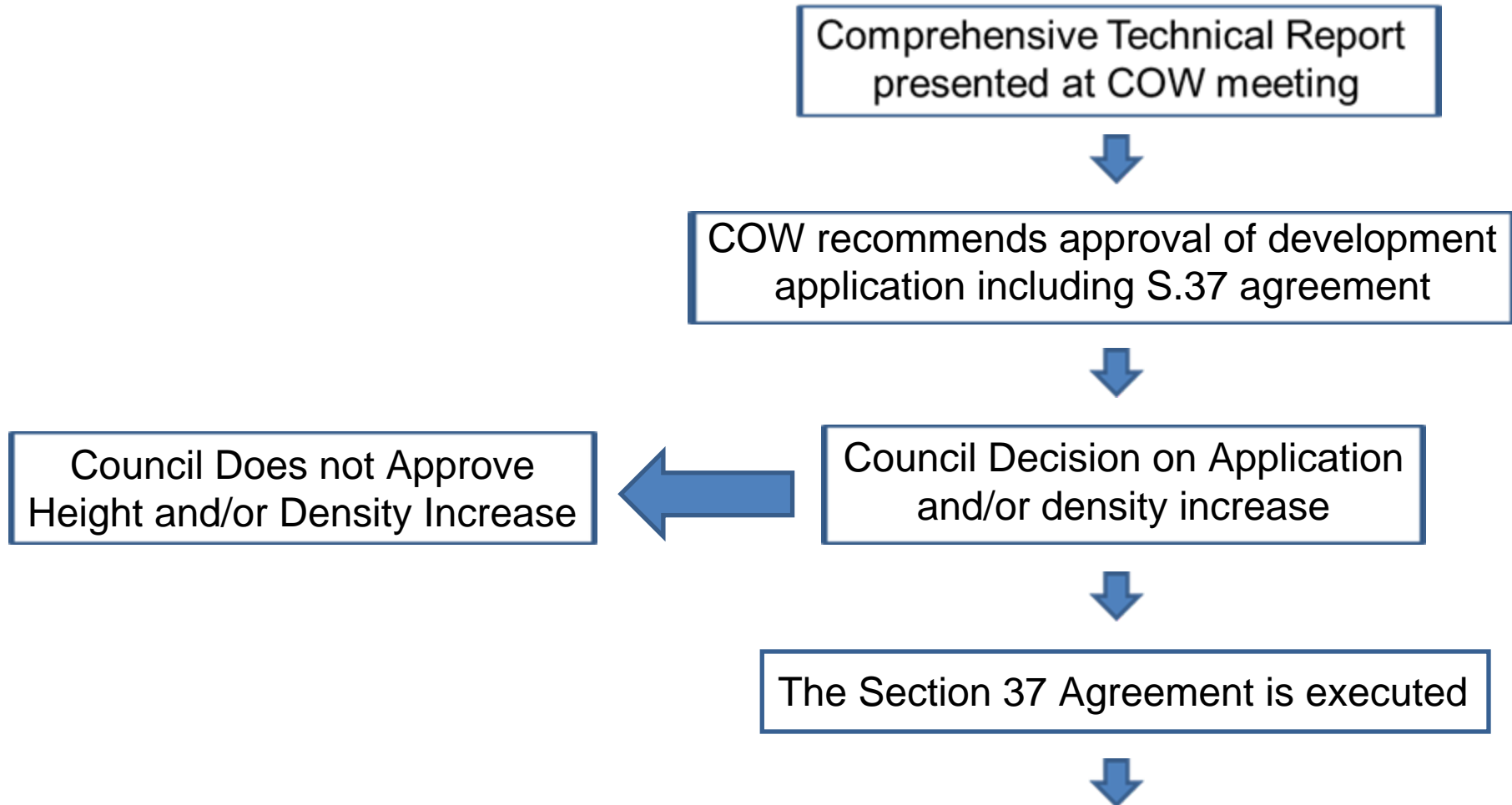
Development Approval Process

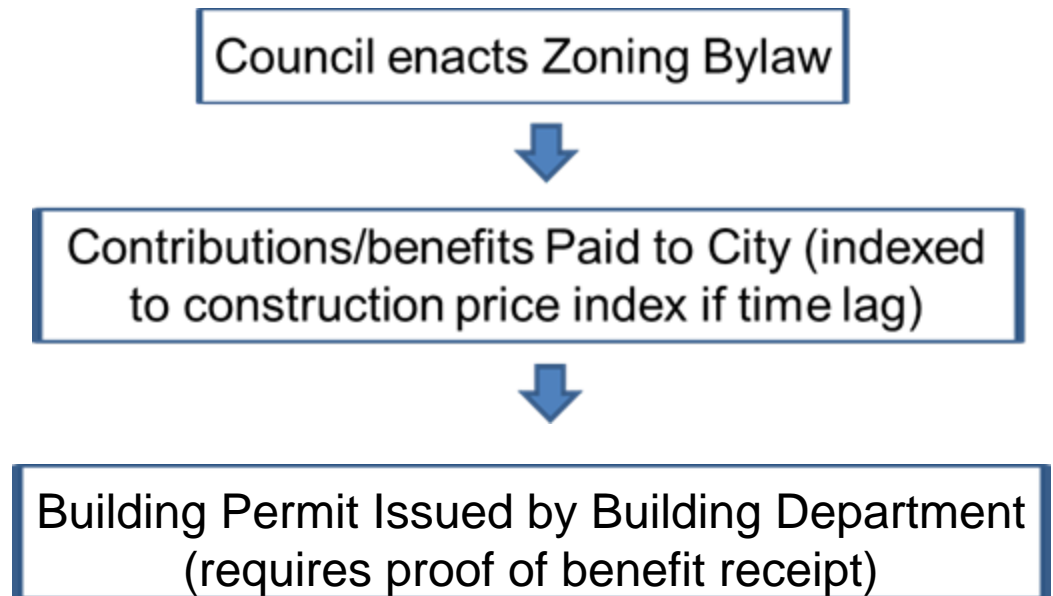
Section 37 Process/Protocol



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.