

## **Proposal – April 2019**

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

#### **1. Introduction**

Section 37 of the *Planning Act* ('density bonusing') allows municipalities to secure "services, facilities or matters" (e.g. Community Benefit) as a condition of the approval for a rezoning application that increases building height and/or density above existing planning permissions. Section 37 benefits are 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 Policies 10.1.2.9 – 10.1.2.13 of the Vaughan Official Plan ("VOP 2010").

The purpose of this Guideline is to provide further direction on the application of Section 37 policies, as outlined below:

- Identify which developments will be eligible for consideration of a Section 37 requirement; and
- Describe the process for negotiating Section 37 Agreements

These guidelines are intended to assist in the implementation of the policies contained in Sections 10.1.2.9 – 10.1.2.13 of the VOP 2010 and read in conjunction with the policies of the VOP 2010.

The administration of the Section 37 policy shall be the responsibility of the Deputy City Manager, Planning and Growth Management in consultation with the other City Departments.

#### **2. Applying Section 37 policies through the Application Process**

Prior to the submission of an application to increase height and/or density, the Planning Department will discuss with the applicant the Guidelines regarding a Section 37 contribution and the process.

Requests for increases to height and/or density of development may be considered by Council in the context of rezoning applications. The provision of Section 37 Community Benefit does not exempt the requirement for an official plan amendment application, unless specifically identified within the VOP 2010 or a Secondary Plan.

The following is used to determine base density:

- The maximum height or density as outlined in VOP 2010; or
- Other site-specific policies, agreements or decisions approved by Council

The following shall determine when a Section 37 bonusing will be applied to a development proposal:

- Where proposed density will exceed 1,000 m<sup>2</sup> in Gross Floor Area ("GFA") over what would otherwise be permitted
- Where proposed development will exceed the maximum building height permissions even if the GFA is within the permitted density

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 Benefit.

The following uses are exempt from the provision of Section 37 Community Benefit:

- Single detached and semi-detached dwellings
- Non-residential uses proposed in a non-residential area defined as Employment Areas as per Schedule 1 of VOP 2010 (e.g. an industrial building in an industrial area)

Council may exempt the following developments from the provision of Section 37 Community Benefit:

- Social housing buildings
- Affordable rental housing buildings, as defined by York Region Affordable Housing Guideline

### **3. Principles to Determine a Section 37 Contribution**

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

Prior to determining whether a development should be subject to a Section 37 Agreement, planning staff need to assess if the development, and the increase in height and/or density, represents “good planning”. The proposed development shall be consistent with the Provincial Policy Statement and conform to the Provincial Growth Plan and York Region Official Plan. The following, as outlined within VOP 2010, shall be addressed by the proposed development:

- Urban design policies and objectives
- The relationship to its site context and the adjacent street(s)
- The creation of a good public realm and improvements to the public realm adjacent to the site
- Adequate infrastructure and servicing capacity
- Natural environment

#### **3.2 A reasonable relationship between the Community Benefit location and the Proposed Development**

This principle refers to the proximity of the Community Benefit to the proposed development.

The following shall be considered when negotiating a Community Benefit:

- Appropriate geographic relationship with the development (e.g. on the site, adjacent to the site or within the planning area of the site).
- Supports the objective of VOP 2010 and City strategic plans.
- Provides support for a City-wide or local area need (e.g. improvements to a park or broadly accessed amenities within the Vaughan Metropolitan Centre)
- Site Specific Priority Projects identified in Appendix 2
- General Project / ‘Bucket’ Projects identified in Appendix 2

#### **3.3 Enable portions of Community Benefit contributions from multiple sites to site-specific or general projects within a local area**

There may be a desire to request a portion of Community Benefit contributions from multiple sites to a site-specific priority project because the project has a large budget or benefits multiple properties within a local area.

Another scenario is to allocate a portion of the Community Benefit contribution from multiple sites to a general or 'bucket' project within a Local Area (e.g. 5% of all Community Benefit contributions within the Vaughan Mills Centre Secondary Plan area allocated to public realm improvements within Vaughan Mills).

Council endorsement is required to identify site-specific priority projects and general/'bucket' projects including the portion or percentage of Community Benefit contribution being sought from future development. These projects/'buckets' are identified in Appendix 2.

#### **4. Valuation of Community Benefit**

The valuation of Community Benefit shall represent a reasonable proportion of the increase in residual land value resulting from an increase in height or density over base height or density. The value of the Section 37 benefits will vary from project to project or from one area of the City to another. Appendix 1 outlines the methodology to determine the value of Community Benefit.

The Community Benefit will be over and above what could otherwise be achieved through Sections 41, 42, and 50 of the *Planning Act*, and Development Charges.

The City's Real Estate Department will oversee the land valuation process in accordance with the methodology provided in Appendix 1.

#### **5. Protocol for Determining Community Benefit**

##### **5.1 Development Planning Department will Manage the Negotiations Process**

Development Planning department is responsible for making recommendations on development applications to Vaughan Council, in accordance with the *Planning Act* and other Provincial policy. Development Planning staff will lead negotiations with the applicant on Section 37 Community Benefit. The Development Planning department will coordinate input from other departments and agencies on the appropriate provision(s) and value of Community Benefit.

##### **5.2 Consultation with Ward Councillor and the Community**

The Ward Councillor will be consulted by the Development Planning department in the early discussions with the applicant regarding suggestions on Community Benefit.

As part of the consultation, the Development Planning department will provide the Councillor with information on Community Benefit identified by other departments and the increase in land value for the proposed development. Community Benefit may also be discussed at community meetings and the public hearing held for the development application.

### **5.3 Transparency**

In the technical report to the Committee of the Whole, Development Planning department will include:

- Rationale to support increased building height and/or density
- Community Benefit to be secured
- Value of Community Benefit (whether cash contribution or in-kind)

The site-specific zoning by-law will include the requirement for the Section 37 Agreement and the Community Benefit secured.

### **6. Securing the Community Benefit**

Prior to the enactment of the implementing zoning by-law, the applicant will execute the Section 37 Agreement. The agreement will be registered on title and identify Community Benefit and monetary information. Cash contribution will be paid prior to the issuance of the earlier, foundation or full building permit for the respective development, or earlier if agreed to by the City and the applicant. The payment outlined in the agreement will be indexed to this date according to the Construction Price Index ("CPI") for the City of Toronto as published by Statistics Canada.

### **7. Financial reporting**

Section 37 contributions are to be maintained in special accounts with annual reports prepared and released publicly that show a detailed account of the monies collected and how they were spent.

Proceeds will be placed in a dedicated "Section 37 Reserve Fund" managed by Financial Planning and Development Finance. For tracking purposes, proceeds for specific negotiated benefits will be applied to a new or specified capital project as part of the City's annual budget process. 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 allocated to other projects or as identified within Schedule 2.

The allocation of excess funds and Section 37 Reserve investment revenues to other projects, shall be approved by Council through budget reviews.

## **APPENDIX 1**

### **Overview to Calculate the Value of Section 37 contributions**

**The following sections outline how to calculate the Section 37 contributions under different development scenarios.**

**Section A** outlines methodology to calculate Section 37 contribution for developments that increase the base building density, using the land value matrix.

**Section B** outlines methodology to calculate Section 37 contribution for developments that increase building height only, or an increase in the number of permitted units.

**Section C** outlines the methodology to calculate Section 37 contributions for developments on a site-specific basis not using the land value matrix. Typically, low rise residential development, commercial, office and hotel use.

**Section D** outlines the Terms of Reference for a site-specific land valuation outlined in Section C.

#### **A. “Increase in Land Value” Formula for Determining the Maximum Upset Limit for Section 37 Contributions**

An “increase in land value” approach sets the maximum upset limit for Section 37 contributions. The maximum contribution for Community Benefit represents the increase in the land value resulting from the added density over the ‘Base Density’ identified in the zoning by-law or the Official Plan.

The City recognizes that “increase in land value” formula cannot be the sole method used to determine the required Community Benefit. Determining benefits shall involve a site and area specific assessment of required Community Benefit bearing a relationship to the proposed development. The “increase in land value” approach provides the development community with a degree of certainty regarding the potential quantum of Section 37 contributions through a fair and equitable formula.

Below are the steps for the Increase in Land Value formula.

- #1** – Determine Base Density
- #2** – Determine the Buildable Gross Floor Area (GFA) from Base Density
- #3** – Determine the Land Value that corresponds to Base Density
- #4** – Determine the Land Value that corresponds to the Proposed Density  
*(i.e. density to be approved based on good planning principles)*
- #5** – Calculate the Increase in Land Value and Maximum Section 37 Contribution (being 20% to 30% of the increase in land value resulting from the increase in density)

**#1 – Determine Base Density**

Base Density is the maximum density as outlined below:

- The Vaughan Official Plan 2010 (VOP 2010) designation and policy;
- If maximum density is not specified in the VOP 2010, the maximum density referred to in the prevailing Secondary Plan shall apply.

**#2 – Determine Buildable Gross Floor Area (GFA) from Base Density**

$$\text{Lot Area (SF)} \times \text{Base Density (FSI)} = \text{Buildable GFA from Base Density}$$

**#3 – Determine Land Value that corresponds to Base Density**

Using the predetermined land values assembled in the Land Value Matrix, City staff will select an appropriate value per square foot according to the location and permitted buildable GFA of the subject lands and this value will be multiplied by the Base Density.

The values provided in the Land Value Matrix will be comprised of estimates provided by a qualified real estate appraiser selected by the City. In each case, the land value rate selected will correspond to the proposed/approved density.

The total value of the development site according to Base Density will be calculated as follows:

$$\text{Buildable GFA from Base Density} \times \text{Est. Value GFA (Sq.ft.) (from Land Value Matrix)} = \text{Total Land Value under Base Density}$$

**#4 – Determine the Land Value that corresponds to the Proposed Density (i.e. density to be approved based on good planning principles)**

Using the predetermined land values assembled in the Land Value Matrix, City staff will select an appropriate value per square foot (PSF) according to the location and proposed buildable GFA of the development and this value will be multiplied by the proposed the Proposed GFA.

$$\text{Buildable GFA from Proposed Density} \times \text{Est. Value PSF of GFA (from Land Value Matrix)} = \text{Total Land Value under Proposed Density}$$

**#5 – Calculate the Land Lift and ensuing Maximum Section 37 Contribution**

This is the difference between the Total Land Value from Proposed and Base Density multiplied by a percentage of the increase in land value.

$$\text{Total Land Value under Proposed Density} - \text{Total Land Value under Base Density} = \text{Increase in Land Value} \times \text{Maximum Portion (20% to 30\%)} = \text{Maximum Upset Limit for Section 37 Contributions}$$

## Phased Developments

The appraisal for phased developments will proceed in stages. As construction proceeds, the City will appraise each phase of development on the issuance of the earlier of a foundation or full building permit. Using this approach, each phase of development can be appraised, and Section 37 benefits collected in stages, according to the timing of each separate phase.

## Land Valuation

The City will rely on the Land Value Matrix to determine the value unit rates (per sq. ft). The Land Value Matrix will be updated by a qualified real estate appraiser at the City's discretion. The time lapse between updates should not exceed 3 years.

The land value unit rates included in the matrix will reflect the baseline averages for high density residential development land throughout the City (i.e. approximately 90% to 95% residential with a 5% to 10% retail component at-grade). To account for size and locational influences, the Land Value Matrix will include a range of unit rates according to development size (e.g. quantum of buildable gross floor area) for a variety of homogeneous market areas. Below is an example of the matrix:

### EXAMPLE OF THE LAND VALUE MATRIX

*(land value unit rates = price per sq.ft. of buildable gross floor area)*

LAND VALUE MATRIX <i>(as of January 1<sup>st</sup>, 2018)</i>								
Buildable GFA (square feet)	Sub-Area # 1		Sub-Area # 2		Sub-Area # 3		Sub-Area # 4	
	VMC Secondary Plan & Vaughan Mills Centre Area		Yonge Street Corridor, Steeles West & Promenade Mall Area		Woodbridge Centre. ("Local Centre" Area)		All Other Areas in Vaughan	
	Low	High	Low	High	Low	High	Low	High
399,999 SF and Below	\$55	\$65	\$80	\$100	\$40	\$55	\$35	\$45
400,000 to 999,000 SF	\$50	\$60	\$75	\$95	\$35	\$50	\$30	\$40
1,000,000 to 1,499,000 SF	\$45	\$55	\$70	\$90	\$30	\$45	\$25	\$35
1,500,000+ SF	\$40	\$50	\$60	\$80	\$25	\$35	\$20	\$30

Once staff have selected an appropriate land value unit rate according to the size and location attributes of the subject site, the rate will be indexed to the date of the draft Section 37 agreement according to the rate of monthly market inflation determined by the Toronto Real Estate Board Market Watch Report (derived according to the monthly change in the average sale price for residential dwellings (all types) sold throughout the Board's jurisdiction (typically published on the last page of the Market Watch Report)).

### **B. Calculating Section 37 Contribution on Increase in Height Only or an Increase in the Number of Permitted Units**

**Increase in Height Only**

Under this scenario the Official Plan and/or zoning establishes a maximum FSI and Height permission. The applicant proposes to not exceed FSI maximum permission but exceed maximum building height permission. The following formula is used calculate Section 37 contribution based on applicant’s proposal.

$$\begin{array}{r}
 \text{Proposed GFA} \\
 \text{above permitted} \\
 \text{height}
 \end{array}
 \times
 \begin{array}{r}
 \text{Est. Value PSF} \\
 \text{of GFA} \\
 \text{(from Land Value} \\
 \text{Matrix)}
 \end{array}
 =
 \begin{array}{r}
 \text{Increase} \\
 \text{in Land} \\
 \text{Value}
 \end{array}
 \times
 \begin{array}{r}
 \text{Maximum} \\
 \text{Portion} \\
 \text{(20\% to} \\
 \text{30\%)}
 \end{array}
 =
 \begin{array}{r}
 \text{Maximum Upset} \\
 \text{Limit for Section} \\
 \text{37 Contributions}
 \end{array}$$

**Increase in Maximum Number of Units**

Under this scenario the Official Plan and/or zoning by-law establishes a maximum number of units permitted on the site. The applicant proposes to exceed the maximum number of units. Using the applicant’s development proposal, the average unit size is calculated. The proposed GFA above existing permissions is determined based on the applicant’s average unit size, multiplied by the number of units exceeding the maximum units established by the official plan and/or zoning. The following formula is used to calculate the Section 37 contribution based on the applicant’s proposal:

$$\begin{array}{r}
 \text{Average Unit} \\
 \text{Size of} \\
 \text{Proposed} \\
 \text{Development}
 \end{array}
 \times
 \begin{array}{r}
 \text{Number of} \\
 \text{Units} \\
 \text{exceeding} \\
 \text{permission}
 \end{array}
 \times
 \begin{array}{r}
 \text{Est. Value} \\
 \text{PSF of GFA} \\
 \text{(from Land} \\
 \text{Value} \\
 \text{Matrix)}
 \end{array}
 =
 \begin{array}{r}
 \text{Increase} \\
 \text{in Land} \\
 \text{Value}
 \end{array}
 \times
 \begin{array}{r}
 \text{Maximum} \\
 \text{Portion} \\
 \text{(20\% to} \\
 \text{30\%)}
 \end{array}
 =
 \begin{array}{r}
 \text{Maximum Upset} \\
 \text{Limit for Section} \\
 \text{37 Contributions}
 \end{array}$$

**C. Site Specific Methodology**

Some developments may not fit the criteria of the Land Value Matrix and require a site-specific appraisal. The City or the applicant can request a site-specific narrative appraisal to be completed by a qualified real estate appraiser (AACI designation). The City shall be responsible for commissioning the narrative appraisal report, including the selection of the appraiser in accordance with their prequalified list of AACI-certified real estate appraisers. The City will provide the appraiser with the terms of reference for the appraisal, including the Base Density and Proposed Density. The initial fee for the narrative appraisal report shall be paid for by the applicant and subsequent narrative appraisals by the party requesting the report.

The effective date of appraisal shall be consistent with the anticipated date of the draft Section 37 agreement. If there is a lapse in time between the completion of the appraisal and final agreement, the appraised value will be indexed to the date of the final agreement according to the monthly index determined by the Toronto Real Estate Board Market Watch Report.

If the City and applicant do not come to an agreement concerning the increase in land value, the City will commission a second appraisal report in accordance with the process outlined above. Should the second appraisal report result in a value up to 15 percent (above or below) from the value opined in the first site specific appraisal (indexed to the date of the second appraisal), the



mid-point of the values opined shall apply. If the value exceeds 15 percent (above or below), and the City/applicant are unable to agree to a value, either party may request a peer review of the two appraisals (to be commissioned by the City in accordance with the process outlined above), which will form the final determination related to the increase in land value.

**D. Terms of Reference for Site-Specific Land Valuations Required for Section 37 Purposes**

The following is the generic Terms of Reference for appraisers conducting site-specific land valuations for Section 37 “increase in land value” calculations. The Terms of Reference sets out the reporting requirements, standards for each appraisal report, and background information.

**1. Purpose of the Appraisal Report**

The purpose of the report is to estimate the increase in land value resulting from an increase in development density and/or height permitted through a Zoning By-law Amendment (required for Section 37 purposes). The appraiser will provide:

- Land value based on “as of right” maximum height and/or density (i.e. Base Height/Density)
- Land value based on “as proposed” height and/or density

The difference between the “as of right” and “as proposed” is the increase in land value and is what the appraiser will provide to The City of Vaughan.

The “as of right” maximum height/density and the “as proposed” height/density will be provided to the appraiser by the City’s Real Estate Department.

**2. Function of the Appraisal Report**

The function of the appraisal is to assist the City of Vaughan to negotiate Section 37 benefits as outlined in the *Planning Act*.

**3. Executive Summary of Important Facts and Conclusions**

**4. Definition of the Appraisal Problem**

**5. Type of Report**

The appraisal shall be a self-contained Narrative Appraisal Report prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP).

**6. Definition of Market Value**

This section of the report should be included after an acceptable definition of market value, under CUSPAP.

## 7. Effective Date Appraisal

The effective date of the appraisal is the date of inspection or the date provided to the appraiser by the City's Real Estate Department.

## 8. Scope of the Self-Contained Narrative Appraisal Report

The appraisal report must conform to the CUSPAP (AIC) requirements and include a registry search to confirm the current ownership of the fee simple interest in the subject property as well as other interests and/or restrictive covenants that may affect its land value. Unless instructed otherwise, the fee appraiser/consultant must:

- Provide a brief history of the property including its last conveyance. If the last conveyance occurred during the past year, and if there is a value difference between the purchase price and the appraised value, the appraiser/consultant should provide comments on this differential
- Provide any relative information concerning the amendments to the Official Plan and Zoning By-law designations required to permit the development proposed for the subject property
- Include in the valuation sections other methods of valuation in addition to the Direct Comparison Approach; "*See Valuation*"
- Confirm or verify the comparable sales at the land registry office and provide a narrative analysis of the sales used in the appraisal. The depth of analysis and discussion on the comparable sales and value conclusions should be like a full narrative appraisal report. Information provided on the comparable sales should include data on the zoning designations and permitted maximum site coverage/densities
- Photographs of the subject property including street-views, and interior photos for improved properties
- Photographs and sketches of each comparable sale, and if value in contribution, sketches of benefiting abutting properties
- Sales location map
- Any other plans relevant to the valuation such as flood plain maps, topographical maps etc., as required
- Assume that the subject property is clean relative to an environmental condition unless an environmental report to the contrary is available
- Provide a notation that the "*Terms of Reference*" were provided via e-mail from the City of Vaughan
- Provide data research, verification and validation of comparables. Discussions with market participants and consultants in industry
- Provide and explain support for all "*Quantitative*" adjustments and reasoning for all "*Qualitative*" analysis/adjustments in the Direct Comparison Approach
- Any "*Extraordinary Assumptions*" and/or "*Hypothetical Conditions*" due to the intended use and the unique City related appraisal problem are to be discussed between City staff and appraiser before insertion

## **9. Property Valuation**

The objective of this section is to estimate the increase in land value resulting from an increase in development density and/or height permitted through a Zoning By-law Amendment.

The appraiser will provide:

- Land value based on “as of right” maximum height and/or density (Base Height/Density)
- Land value based on “as proposed” maximum height and/or density (Proposed Height/Density)
- The differential between the “As of Right” and “As Proposed” is the increase in land value and is what the appraiser will provide to The City of Vaughan
- Include a value estimate according to the “Direct Comparison Approach” (where applicable)
- Include a value estimate according to the “Land Development Approach” (where applicable)
- Include a value estimate according to the “Land Value Multiplier” (where applicable)
- Explain why a particular methodology was not utilized or given much weight, when it is normally an important part of the analysis. An example is the non-use of a Floor Space Index (FSI) in a location where density has an influence on value
- The valuation section of the report should contain a separate sheet for each comparable utilized showing all applicable data for the comparable
- In the analysis of comparable sales, comment (where applicable) if the comparable sale sold with a value based on the “Principle of Anticipation”. While some properties in Vaughan trade at a value commensurate with the uses/density permitted under the existing Land Use Controls, some may trade at a price that corresponds to the anticipated opportunity for higher density due to the “Principle of Anticipation”. In each case, the appraiser must analyze the site/sale to determine the appropriate expectations at the time of sale. Upon reconciling the appropriate unit rate to be applied to the subject site (i.e. the price per buildable gross floor area), this unit rate shall be applied to the buildable gross floor area generated from Base Density and the buildable gross floor area generated from the Proposed Density (with adjustments to account for size influences where appropriate). The resulting difference in value represents the increase in land value.

## **10. Site Description/Analysis**

Include a clear well labeled site plan with dimensions, north arrow and appropriate reference points such as the street the property fronts onto and other features.

## **11. Description of the Proposed Development**

Meet with the applicant and representatives from the City’s Real Estate Department to discuss the specific attributes of the proposed development. Include a description of the proposed development and the site plan development statistics.

## **12. Services Available to the Site**

Identify the location and availability of all services (water, sewers, gas, electricity) to the site.

## **13. Land Use Regulations**

Include the official plan designation and the zoning description for both the current land use and the proposed land use. Note the proposed amendments to the Official Plan and zoning within the land use analysis section of the appraisal report.

## **14. Highest and Best Use Analysis (may not be applicable)**

The “Highest and Best Use” is not applicable when the purpose of the report is to estimate the increase in land value resulting from an increase in density and/or height permitted through a Zoning By-law Amendment (required for Section 37 purposes). The appraiser will provide:

- Land value based on “as of right” maximum height and/or density (i.e. Base Height/Density).
- Land value based on “as proposed” height and/or density (i.e. Proposed Height/Density).

## **15. The differential between the “As of Right” and “As Proposed” is the “Increase in Land Value” Reconciliation**

A “*Reconciliation*” is required when the value indications are derived using two or more approaches:

- The “*Reconciliation*” is to include an opinion of value as identified in the definition of the appraisal problem and an explanation of the calculation for the final indication of value
- An explanation on what approach(s) received the most weight and why, which approaches are not applicable to the valuation and why and which comparable sales received the most weight in the analysis and why
- Provide an explanation as to why, if your final indication of value falls outside your value range
- The “*Reconciliation*” should be consistent, comparing unadjusted sale prices with unadjusted sale prices and adjusted sale prices with adjusted sale prices
- Include comparable sales not utilized in the report and an explanation as to why these sales were not utilized. This assures the reader that these comparable sales were found and considered

## **16. Sign-off of Appraisal Report**

This report is to be signed by \_\_\_\_\_, AACI, an Accredited Appraiser, Canadian Institute. \_\_\_\_\_ is to inspect the subject property and the comparable land sales, as the appraiser and not simply as a reviewer of the work.

### **17. Copies of the Narrative Appraisal Report**

- **3-hard copies** of the Narrative Appraisal Report are to be provided; and, in addition,
- an **“ADOBE PDF”** version saved onto a memory stick sent via e-mail to Manager of Real Estate Department

### **18. Client**

The “Client” is the City of Vaughan with any instructions to the appraiser to only come from the Real Estate Department.

**APPENDIX 2**

**List of Site-Specific Priority Projects and General/'Bucket' Projects**