

Guidelines for the Implementation of Section 37 of the Planning Act

1. Introduction

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

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

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

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

2. Application Process

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

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

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

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

2.1 Section 37 to focus on the Intensification Areas of Vaughan

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

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

3. Planning Principles

3.1 The development must represent good planning

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

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

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

4. Size Threshold

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

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

5. Valuation of Community Benefits

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

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

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

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

6. Protocol for Determining Community Benefits

6.1 Planning Staff will manage the negotiations Process

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

6.2 Local Area Studies

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

6.3 Consultation with Councillors and Communities

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

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

6.4 Transparency

To ensure greater transparency, Planning staff will include the rationale for the allowance of the increased building height and density in the Comprehensive Technical Report to Committee of the Whole. Staff will also include an explanation of the nature of the community benefits to be secured and the value of each component (whether cash contribution or in-kind), as part of their technical report to Committee of the Whole recommending development approval of a Section 37 application. The recommended site specific zoning by-law will include sections addressing the requirement for the developer to enter into a Section 37 Agreement and listing the community benefits to be secured.

7. Securing the Community Benefit(s)

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

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

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

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