

APPENDIX A

OFFICIAL PLAN

of the

TOWN OF MARKHAM PLANNING AREA

AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

INCREASED HEIGHT AND DENSITY PROVISION

September 2010

OFFICIAL PLAN
of the
MARKHAM PLANNING AREA
AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

This Official Plan Amendment was adopted by the Corporation of the Town of Markham, By-law No. _____ - ____ in accordance with the Planning Act, R.S.O., 1990 c.P.13, as amended, on the _____ *st OR nd OR rd OR th* day of _____, 2010.

Mayor

Town Clerk

THE CORPORATION OF THE TOWN OF MARKHAM

BY-LAW NO. _____

Being a by-law to adopt Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended.

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM, IN ACCORDANCE WITH THE PROVISIONS OF THE PLANNING ACT, R.S.O., 1990 HEREBY ENACTS AS FOLLOWS:

1. THAT Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended, attached hereto, is hereby adopted.
2. THAT this by-law shall come into force and take effect on the date of the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS _____ *st OR nd*
OR rd OR th DAY OF _____, (year)

TOWN CLERK

MAYOR

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PART I - INTRODUCTION

(This is not an operative part of Official Plan Amendment No. XXX)

PART I - INTRODUCTION

1.0 GENERAL

1.1 PART I - INTRODUCTION, is included for information purposes and is not an operative part of this Official Plan Amendment.

1.2 PART II - THE OFFICIAL PLAN AMENDMENT, constitutes Official Plan Amendment No. XXX. Part II is an operative part of this Official Plan Amendment.

2.0 LOCATION

The Amendment applies to all lands within the Town of Markham.

3.0 PURPOSE

The purpose of this Official Plan Amendment is to introduce new Official Plan provisions related to the use of Section 37 of the Planning Act.

4.0 BASIS OF THIS OFFICIAL PLAN AMENDMENT

The Town's Official Plan includes policies that outline provisions for negotiating community benefits in relation to increased height and density in accordance with Section 37 of the Planning Act. These provisions allow Council to enact a zoning by-law and apply Section 37 provisions to a development proposal requesting height and density increases. In return, the property owner granted the increases, shall be required to provide the facilities, services or matters as set out in the provisions of the by-law.

This amendment introduces new Official Plan provisions respecting the use of Section 37 of the Planning Act. If applied, these new provisions will assist the Town in obtaining certain facilities, services or matters which would not otherwise be secured under other provisions of the Planning Act or the Development Charges Act, and which may be of particular benefit to a specific area (or areas) within the Town or the Town as a whole.

The new provisions outline an expanded list of potential community benefits that could be achieved through negotiations with a property owner, and implemented by way of a site specific zoning by-law amendment and an agreement between the property owner and the Town provided:

- there is a reasonable planning relationship between the proposed benefit and the increase in height and density;
- the development represents good planning, is consistent with the other objectives of the Official Plan and meets all applicable built form and neighbourhood compatibility objectives; and
- there is adequate infrastructure available to support the increase in height and/or density.

The new provisions also clarify that the community benefits which are the subject of Section 37 By-laws will be determined based on local community needs, intensification issues in the area, and the objectives of the Official Plan with priority given to provision of benefits in proximity to the development proposal.

PART II - THE OFFICIAL PLAN AMENDMENT

(This is an operative part of Official Plan Amendment No. XXX)

PART II - THE OFFICIAL PLAN AMENDMENT

1.0 THE OFFICIAL PLAN AMENDMENT

- 1.1 Section 1.1.2 of Part II of the Official Plan (Revised 1987), as amended, is hereby amended by the addition of the number XXX to the list of amendments, to be placed in numerical order including any required grammatical and punctuation changes.
- 1.2 Section 7.3 d) of the Official Plan (Revised 1987), as amended, is hereby deleted and replaced with the following:

“7.3 d) Increased Height and Density Provision

- i. In accordance with Section 37 of the *Planning Act*, Council may, in a by-law passed under Section 34, authorize increases in the height and density of development otherwise permitted in the by-law 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 height and/or density of the proposed development; and,
 - b. the development must represent good planning, be consistent with the other objectives of this Plan and meet all applicable built form and neighbourhood compatibility objectives; and
 - c. there is adequate infrastructure to support the increase in height and/or density for the proposed development.
- ii. A by-law to implement Section 37 may be enacted by Council to achieve the Town'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 Town at large. Notwithstanding the generality of the foregoing, the intent of Council in passing such by-laws would be to attain facilities, services and matters such as, but not limited to the following:
 - the conservation and/or improvement of cultural heritage areas or buildings;
 - the preservation of woodlots, environmentally significant areas and enhancement areas, which would not be accepted as parkland dedication;
 - a substantial contribution to the urban forest on public lands;
 - provision of public access to ravines and valleys;
 - the provision of increased amounts of on-site open space or facilities such as day care centres, community centres, recreational facilities;
 - the provision of affordable and special needs housing including housing for senior citizens;

- conservation and replacement of rental housing;
 - enhanced connections to transit facilities;
 - enhanced improvements to transit facilities;
 - to achieve additional road or servicing improvements;
 - provision of public parking facilities;
 - protection of significant views;
 - public art;
 - non profit cultural facilities; and
 - other local improvements identified in Council initiated studies.
- iii. 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 or any Secondary Plan, with priority given to provision of community benefits in proximity to the proposed development.
- iv. Increased height and density provisions under Section 37 of the Planning Act will be implemented by site specific by-laws passed under Section 34. Such by-laws will contain the standards of the basic zoning category applicable to the parcel of land if the bonus is not awarded as well as the standards that would apply to the parcel of land in the event the bonus is awarded. The by-law will also specify the facilities, services and matters that are required to be provided or provided for before the Section 37 by-law provisions become applicable to a parcel of land.
- v. An agreement between the property owner and the Town shall be entered into in regard to the relevant facilities, services and matters, and when an owner is being awarded the increases in height and density and when the increased standards become applicable.”

2.0 IMPLEMENTATION AND INTERPRETATION

The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment, except as specifically provided for in this Amendment.

This Amendment to the Official Plan (Revised 1987), as amended, is subject to approval by the Region of York. Following approval, notice of the Region’s decision will be given in accordance with the Planning Act, and the decision of Council is final, if a notice of appeal is not received before or on the last day for filing an appeal.

Prior to Council’s decision becoming final, this Amendment may be modified to incorporate technical amendments to the text and schedule(s). Technical amendments are those minor changes that do not affect the policy or intent of the Amendment. For such technical amendments, the notice provisions of Section 7.13(c) of Part II of the Official Plan (Revised 1987), as amended, shall not apply.

PEITCED
2/1/08

APPENDIX B

Guidelines for the Implementation of Section 37 Benefits

These guidelines are intended to assist in the implementation of the policies contained in Section 7.3 d) of the Town of Markham Official Plan (Revised 1987). These guidelines must be read in conjunction with the policies of the Official Plan. If any conflicts arise between the Official Plan provisions and these guidelines, the Official Plan policies shall prevail.

1 **Good Planning**

Good planning includes addressing all policies contained in the Official Plan, including urban design policies and objectives, and all authorized requirements of the Town and public agencies. The relationship of a development to its context, the adjacent street, the creation of a good public realm (including off site improvements included under Section 41), providing any necessary improvements to municipal infrastructure, and a harmonious relationship to the natural environment, including sustainable design and good architecture should not be the subject of negotiations regarding height and/or density increases, but should constitute the foundation for all development in the Town. Design quality must not be compromised.

2 **Reasonable Planning Relationship**

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 on-site provision of community benefits. The next level of priority would be in the immediate vicinity of the site. Where there exists a Town wide fund or program to address particular needs which cannot be economically provided on-site, but which can be related to the development, such as the provision of affordable housing or public art, contributions to these funds or programs will be considered as eligible in return for increases in height and/or density.

3 **Geographic Applicability**

While site specific bylaws including Section 37 benefits may be passed in all parts of the Town, the focus for most Section 37 developments will be intensification areas identified in the Official Plan including, but not limited to: Markham Centre, the Langstaff Gateway, and other locations along the Yonge Street and Avenue 7 rapid transit corridors and other Major Corridors.

4 **Height and Density Threshold**

The height and/or density thresholds shall be set out in the Official Plan and/or Secondary Plan and the underlying zoning will need to reflect the development limit established for each Development Block.

In some instances, it may be possible to permit individual buildings on development parcels within a Development Block to achieve more or less than the maximum development limit established in the underlying zoning by-law, provided the development represents “good planning”, all built form and compatibility objectives are maintained, and there is a zoning by-law amendment where:

- the increase in height and/or density does not exceed the overall maximum density for the Development Block;
- the increase in height and/or density may be achieved through density and height transfers within the Development Block; and
- the increase in height and/or density may be considered eligible for Section 37 community benefits.

In other instances, Council may consider an Official Plan Amendment and Zoning By-law to permit the increase in height and/or density in excess of the maximum density for the Development Block, to achieve additional development incentives or Section 37 community benefits, provided the development represents good planning, is consistent with the other objectives of the Official Plan and meets all applicable built form and compatibility objectives, and there is adequate infrastructure available to support the increase.

The rationale in both instances is that the process of changing the development limits, above what they were in the Secondary Plan, represents an increase in height and/or density as described in Section 37 of the Planning Act and therefore meets the criteria in the Planning Act for applying Section 37 benefits.

5 Size Threshold

Density incentives will be applied mainly to projects which are generally larger than 5,000 sq m gross floor area and where the proposed density will generally exceed 1,500 sq m gross floor area over what would otherwise be permitted. All developments that are under 4 storeys in height and all non-profit developments will be exempt.

6 Local Area Studies

Where Council has approved studies or plans for particular geographic areas of the Town, including Secondary Plans, outlining the range of community facilities, services or matters that should be provided or supported on a priority basis, these will inform negotiations regarding the provision of Section 37 benefits for these areas. In the absence of such studies, it would be advisable to have the local Councillor and local community to identify potential Section 37 benefits.

7 Valuation of Community Benefits

The development bonus and community benefits relating to a Section 37 agreement will be negotiated between the Town and the proponent of a development project on a case by case basis, based on an agreed relationship between the bonus resulting from the increase in height and/or density granted by the Town and an appropriate benefit responding to identified community needs. In this regard, the height and/or density bonus can vary in relation to the benefit to the community on a case by case basis.

A determination of community needs by the Town will serve as a guideline for negotiating appropriate community benefits, in relation to the development bonus in height and/or density. A statement will be incorporated into the report recommending approval of the Section 37 arrangement, summarizing the development bonus to be granted and the community benefits to be secured, including the value and timing of provision of the benefits.

8 Section 37 Benefits are above Development Charges and Planning Act Contributions

The additional community benefits secured through the use of Section 37 are intended for facilities, services and matters that are not typically funded through Development Charges or other Planning Act Contributions.

9 Cash Contributions

Cash contributions may be secured towards infrastructure services and facilities that address service needs or deficiencies in the existing community or services for future growth, either of which cannot be funded or are only partly funded by Development Charges or other Planning Act Contribution tools.

The Section 37 agreement will contain unwinding provisions for zoning and community benefits, including the return of any cash contributions, in the event that a project is never built in accordance with the Section 37 zoning by-law within a prescribed period of time.

10 Protocol for Negotiating Section 37 Benefits

In development areas, it is advantageous to determine local priorities and needs for community benefits in advance of development applications, to the extent practicable. (See Section 6 above).

An analysis and identification of existing and potential needs and services in a development area would assist in determining the appropriate type(s) and priority of community benefits to be considered eligible for Section 37 contributions.

This analysis would also identify the appropriate provision and costing of the community benefits.

To prepare for a possible application of Section 37 and address the issue of transparency, it is critical to have the local Councillor and other Councillors who may be interested, in consultation with Town staff, the local community and the relevant service providers, identify local and Town-wide priorities for potential community benefits.

Density increases will be approved by an amendment to the Zoning By-law and after due process including public consultation. A Section 37 agreement will be entered into between the proponent of development and the Town prior to the enactment of the Zoning By-law.

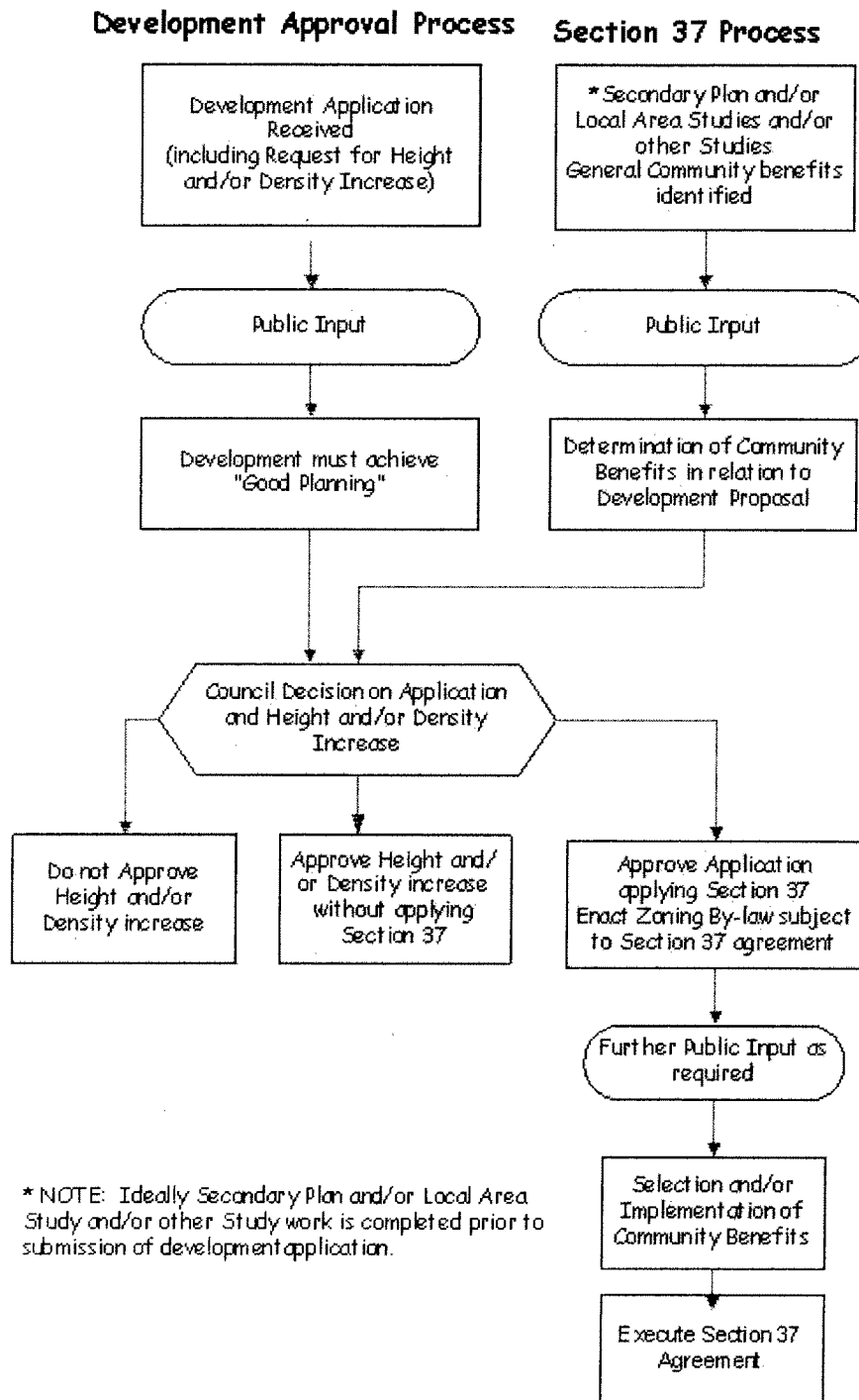
Planning Staff who are responsible for making recommendations on development applications to Council in accordance with the Planning Act and other Provincial policy, will be the lead negotiators in regard to developments that are the subject of Section 37 bonus discussions. Where applicable, Planning staff will declare early on in the development approval process the Town's interest in the potential application of Section 37 benefits for a proposed development seeking increases in height and/or density.

Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits. Local Councillors will be consulted regarding Section 37 negotiations and will provide input on behalf of local communities into the nature of community benefits that might be appropriate in particular circumstances. Local communities will be consulted, as appropriate.

10 Agreements

In addition to securing community benefits that are directly related to density and/or height increases, Section 37 agreements may include other matters that may be important to the Town to meet its Official Plan objectives, but which may fall outside of the purview of other agreements, such as the protection of rental housing or heritage features. These matters may be secured in a Section 37 agreement as a legal matter.

Figure No. 1 - Process Flowchart





APPENDIX C

MINUTES DEVELOPERS' ROUND TABLE June 23, 2010 Council Chambers, Town of Markham

1. Section 37 Official Plan Policy and Guidelines

John Gladki of GHK International Ltd. provided Developers' Round Table with a presentation on Town of Markham Section 37 Official Plan Policies and Guidelines where he discussed the benefits and the protocol for staff and Council to follow. The amendment introduces new Official Plan provisions that will assist the Town in obtaining certain facilities, services or matters which would not otherwise be secured under other provisions and may be a benefit to a specific area or the Town as a whole.

The new provisions provide an expanded list of potential benefits that could be achieved through negotiations with the property owner and implemented through site specific zoning by-law amendments and an agreement between the owner and the Town. Some of the provisions that must be met are as follows:

- Reasonable planning relationship between the proposed benefit and the increase in height and density;
- The development represents good planning, is consistent with other neighbourhood compatibility objectives; and
- There is adequate infrastructure available to support the increase.

The size threshold will be applied mainly to projects which are larger than 5,000 sq m and where the proposed density will exceed 1,500 sq m over what would otherwise be permitted.

Development bonus and community benefits will be negotiated between the Town and the proponent of a development on a case by case basis based on an agreed relationship between the bonus resulting from the increase in height and/or density.

There will be no exemptions for developments subject to Section 37 Agreements from Development Charges or parks contributions.

Developers wanted to know if the Town is asking for funding for a project as per this protocol what happens to the funds that have been provided if the project is never built. Jim Baird advised that if the Section 37 zoning by-law were triggered (i.e. building permit application) the money would generally not be refunded however, the money would remain in the area for valley land enhancements, public housing and the arts, etc. Staff have subsequently found instances where a section 37 zoning by-law was never triggered by a building permit application and the Section 37 agreement contained unwinding provisions for the zoning and community benefits in the event a project was never built in accordance with the Section 37 zoning by-law.

Discussion took place regarding the Region's new Official Plan and certain density and FSI provisions. A development lawyer asked if the Town came across an application which meets the Region's density and FSI provisions, would a similar increase be granted by the Town and how would Section 37 apply. Developers were advised that the Town will continue to do as they are doing now and that each development application will be considered under the Town's current Official Plan and/or Secondary Plan provisions which may or may not provide an opportunity for the application of a Section 37 zoning by-law and the provision of additional community benefits. Jim Baird mentioned that the Section 37 zoning by-law would generally apply to a density and height increment above and beyond the base intensification density and height in the Official Plan and/or Secondary Plan for identified intensification areas such as Cornell Centre, Markham Centre, the Langstaff Gateway and the Yonge Steeles Corridor, etc.

2. Built Form Height and Massing Study

Ronji Borooah introduced Mark Sterling of &Co who provided DRT with a presentation and advised that the Guidelines had been endorsed in principle and are to be used as a reference point only. The principles will be embedded in Markham's revised Official Plan, and area Secondary Plans and Zoning By-law in order to ensure conformity with the Growth Management Strategy. Developers were advised that the Guidelines were available on the Town Website and it was suggested that they read the whole document, as it assists in visualizing and focusing on the intensification component of the Growth Management Strategy and related built form guidelines that control and guide growth, i.e. what is minimum acreage in built-up areas and providing guidance when developing lands in built-up areas.

This document will also assist the Town with the Urban Design Guidelines for different intensification areas and will help with applications being submitted for approval.

Mark Sterling explained the study content and structure and broke down the key principles that each development area will be assessed, Public Realm, Streets and Blocks, Building Location, Built Form, Tall Buildings, Transition, Parking and Loading, Implementation, and Next Steps. Discussion took place regarding the minimum of 40 m tower separation and the maximum floorplate of 800 m². It was suggested that these guidelines and policies should be more generalized as the Town's policies are becoming too strict and making it harder for developers and the Town should keep this separate from the zoning by-law and to keep it strictly as a guideline only.

Ronji Borooah suggested that Developers read the document in its entirety and asked Donna Harris to send the document link out to DRT members.

Ronji Borooah offered to setup a Working Group if Developer's were interested they must provide their names to Donna. Sal Crimi and Nik Mracic advised were interested.

3. Servicing Allocation

Biju Karumanchery provided DRT with an update presentation concerning servicing allocation and has advised the members of the DRT that distribution is by use of ranking and approved criteria. DRT was all advised that Council has approved the "Use It or Lose It" policy and the criteria also includes a LEED benefit for high density developments.

The Region has assigned a conditional allocation for 2013 to local municipalities and Markham's share is 11,259 people, however this is conditional on receiving Council resolution from Area Municipalities stating the following:

- That the municipality will in partnership with the Region participate in the Regional Inflow and Infiltration (I/I) reduction Task Force
- Continue to seek out sources of I/I
- Adopt standards and guidelines intended to reduce I/I in new developments and within existing systems
- Develop funding and cost sharing principles to address future remediation projects
- Continue to support Regional water efficiency plans and policies, and
- Endorse and promote participation in both the Sustainable Development Through LEED program for high-rise residential development and Sustainable Homes Incentive Program (SHIP) for ground related residential development.

Biju provided a draft summary of the distribution for discussion purposes. The final assignment will be presented Committee/Council in the fall.

Staff agreed to meet with a smaller group of developers representing high density and low density developments to discuss principles used for this distribution.

Biju provided an update on the SHIP program. Members want a better understanding of the Region's LEED and SHIP programs. Alan Brown suggested that the Region be invited to the next DRT to discuss.

Alan advised the Developers that Staff were submitting a report back to Development Services Committee regarding I/I on September 13, 2010.

4. New Business

There was discussion denoting concerns regarding engineering drawing approval and agreement approvals time frames and the developers were asking for a separate meeting to discuss these concerns. Alan Brown advised that he would arrange a meeting between the development community and Town staff. Planning and Urban Design staff and Catherine Conrad will be asked to attend.

5. Meeting adjourned 11:10 a.m.

APPENDIX D



BUILDING A GREATER GTA
Building Industry and Land
Development Association

July 30, 2010

Murray Boyce
Senior Policy Coordinator
Planning and Urban Design Department
Town of Markham
101 Town Centre Blvd.
Markham, ON L3Y 3K5
Tel: 905-477-7000 ext. 2094
Email: mboyce@markham.ca

**Re: Recommended Section 37 Official Plan Policies and Guidelines for
Implementation**

Dear Mr. Boyce,

The Building Industry and Land Development Association (BILD) is in receipt of the Town of Markham's Draft Official Plan Amendment (OPA) and the Guidelines for Implementation of Section 37 (*Planning Act*), and submits the following comments for your review and consideration.

BILD recognizes that the draft OPA includes policies that outline provisions for negotiating community benefits in relation to increased height and density, in accordance with Section 37 of the Planning Act, and that these provisions allow Council to enact a zoning by-law and apply Section 37 provisions to a development proposal requesting height and density increases. In return, the owner granted the increases, shall be required to provide the facilities, services or matters as set out in the provisions of the by-law.

Fundamentally, BILD believes that Section 37 guidelines should prioritize early consultation and dialogue with the builder/developer to ensure that all parties are well informed early in the process. This will allow for a builder/developer to incorporate the Town's community benefits into their development proforma and in turn more certainty is added to the development process.

BILD believes that Section 37 agreements should be discussed primarily under the context of the Secondary Plan process (versus the Regional Official Plan process or the Town's Official Plan process), mainly due to the fact that at the Secondary Plan process – the Town's community benefits are determined and established in its greatest detail.

BILD is concerned that implementation of Section 37 agreements may lead to a freeze in as-of-right zoning provisions, especially in light of the recently adopted intensification targets within the built boundary. BILD strongly recommends that Council must not rely on Section 37 agreements to achieve the Town's intensification targets.

BILD believes that the application of Section 37 agreements should primarily apply to intensification areas where bonusing is used to support transit nodes and corridors. As any application of Section 37 agreements outside of these intensification areas would not provide these future community benefits for the greatest concentration of the Town's population.

BILD is concerned that the objective of Section 37 agreements are to negotiate for additional height and density on a site specific basis; however we note that the proposed Guidelines indicate a specific size threshold of generally more than 5,000 sq m and where the proposed density will exceed 1,500 sq m over what would otherwise be permitted. BILD would request that no specific size (height and density) thresholds be indicated in these Guidelines to allow for flexibility in the development process. In the event that these specific size thresholds are maintained, BILD would request that the wording "***generally applies***" be prioritized in the above noted statement.

BILD is concerned that the Guidelines indicate that there will be no exemptions for development charges or parks dedications. Again, BILD recommends that the Town reconsider this statement to allow for flexibility in the development process.

BILD is concerned that the financial administration of this draft OPA is unclear. BILD requests that additional information be included in these Guidelines to indicate how the funds will be collected. BILD would also request assurance that if a development project does not proceed then builder/developer will have the funding returned back to them.

BILD recognizes that this OPA is intended to be tabled at Committee and Council for adoption in September. Therefore, we encourage you to contact us if you have any questions in relation to this letter before such time.

Sincerely,



Danielle Chin, *BURPI*
Building Industry and Land Development Association

cc: *BILD York Chapter Members*



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Please refer to: **Aaron I. Platt**
e-mail: aaronp@davieshowe.com

July 29, 2010

By E-mail (kkitteringham@markham.ca)

Mayor and Members of Council
Town of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Attn: Kimberley Kitteringham, Town Clerk

Dear Mayor and Members of Council,

Re: Toward a Markham Growth Strategy: Proposed Section 37 Official Plan Policies and Implementation Guidelines

We are counsel to Bayview Summit Developments Limited. This letter is further to our letter of July 16, 2009, a copy of which is enclosed for your reference.

We have reviewed staff's May 4, 2010 report to the Development Services Committee on the Town of Markham's proposed official plan amendment regarding section 37 policies (the "Proposed OPA"). We also attended the Developers' Roundtable Meeting on June 23, 2010, where the undersigned voiced several issues regarding the form of the Proposed OPA. We note that none of the comments contained in our July 2009 letter or raised at the Developers' Roundtable Meeting were integrated into the Proposed OPA. Below is a summary of some of our client's key concerns with the Proposed OPA.

Base Density/Height Threshold

The Proposed OPA remains without any policies for determining the threshold above which section 37 of the *Planning Act* may be utilized to permit additional density and/or height in return for contribution(s) to a community benefit. The Proposed OPA also lacks any policies clarifying the "base" density and/or height to be used where the zoning by-law has not been updated to reflect a property's Official Plan designation. Such thresholds provide necessary clarity and transparency in understanding what development proposals will be subject to the Proposed OPA. Furthermore, the lack of any such thresholds may lead to inconsistencies in how the Proposed OPA's policies and the associated implementation guidelines such policies are interpreted and applied.



Davies
Howe
Partners

The proposed implementation guidelines appended to staff's May 4, 2010 report (the "Implementation Guidelines") propose using height and density thresholds set out in the Official Plan and/or applicable Secondary Plan. However, these thresholds are fundamental to the overall scheme of the Proposed OPA. Relegating such fundamental matters to the Implementation Guidelines is inappropriate. Among other issues, it permits significant inconsistencies in implementation and allows for *ad hoc* decision-making.

Valuation

As currently drafted, the Implementation Guidelines provide that s.37 contributions will be based on a reasonable relationship between the increased residential and employment activity resulting from the increase in height and/or density and an appropriate benefit to identified community needs. The previous draft of the Implementation Guidelines drew a relationship between the value to the developer of a proposed increase in height and/or density and the value of a s.37 contribution. While the previous draft may have been inappropriate, the revised valuation method provides little, if any, guidance to landowners in assessing the value of a potential s.37 contribution.

As with the thresholds for density and/or height, the method of valuation is fundamental to the Proposed OPA's overall scheme and should not be relegated to a non-statutory guideline document. The undersigned raised the inclusion of policies within the Proposed OPA for height/density thresholds and valuation methods at the recent Developers' Roundtable Meeting at which time staff confirmed these were significant issues that mandated further thought and analysis.

Geographic Proximity

Our previous submission on this subject included a recommendation that "geographic proximity" be included as a component of a "reasonable planning relationship" within the Proposed OPA. There should be an objective nexus, including a geographic proximity, between a proposed increase in permitted height and/or density and the community benefit to be provided pursuant to s.37 of the *Planning Act*. We submit that the Proposed OPA should include policies requiring the community benefits granted pursuant to the Proposed OPA be located within the community sharing a geographic proximity to the proposed development.

Davies
Howe
Partners

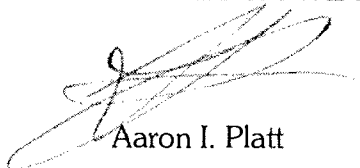
Cash Contributions

The Town may wish to undertake initiatives for community benefits that are large in scope, requiring contributions from landowners. As such, the Town may wish to request cash contributions be applied to a particular larger initiative. Thus, the Proposed OPA should contain explicit language identifying "cash" for identified community benefits as a potential form of contribution.

Finally, we hereby request notice of any future public meetings and/or staff reports regarding this matter and that we receive notice of any decision made by Council in respect of the Proposed OPA or any current or future revisions to the Implementation Guidelines.

Yours sincerely,

DAVIES HOWE PARTNERS



Aaron I. Platt

Copy: Client

Tim Lambe – Manager of Policy and Research, *Town of Markham*

Murray Boyce – Senior Policy Coordinator, *Town of Markham*

Biju Karumanchery – Acting Director of Planning and Urban Design, *Town of Markham*

I am commenting on the policy paper presented to Council, by staff in the planning department, regarding the potential use of s.37 of the Planning Act to permit "bonusing" in new developments in Markham.

As Chair of the Grandview Area Residents Association I have had first hand experience with the negotiations that take place between Town staff, Council, residents and developers. We have been involved for four years with the Liberty development on Yonge and Doncaster Ave. We have also met with other rate payer groups that are concerned with the huge developments planned for Langstaff Gate and Shops on Steeles. We are all concerned about the recent decision by Council to allow development in the White Belt, and the resulting implications for the use of s.37 in that area.

My comments will be brief, as I have already made an oral deputation to the Development Services Committee on this issue in June, 2010.

Our primary position is that we do NOT think that Markham should follow the example of the City of Toronto and use s.37 of the Planning Act to permit increased height and density in new developments. We feel that Markham's density figures are already too high in certain areas, that developers already have too much power and influence, that the use of s.37 benefits only the developers, and that existing communities will always lose out when bonusing is permitted. There are no amenities that can be provided to a community that will make up for the increased congestion, decreased quality of life, and infrastructure problems created by over-building.

The policy document refers over and over to the fact that "bonusing" will only be permitted in cases where there is adherence to "good planning principles". In all of the meetings that I have attended over the years I have never heard anyone provide a convincing and useful definition of what "good planning" means. I have heard many people give their versions of it, but not to the satisfaction of anyone else in the room.

At this point, most members of the public have no confidence that "good planning" actually takes into account what is best for existing Markham communities. The focus is all on growth. Developments are approved before there is mass transit to support them. Developments are approved before there is infrastructure to support them. Developments are approved before there are traffic infiltration plans in place to protect existing communities, (where that is even possible). Developments are approved in order to avoid going to the Ontario Municipal Board. Where are the "principles of good planning" that we are supposed to feel protected by? Why would we want Markham to use s. 37 to allow greater height and density when we do not feel that the Town is handling developments that fall within the existing Official Plan in a manner with which we are comfortable?

Now, on the assumption that section 37 bonusing will be permitted, since we honestly do not believe that citizens' views will influence the decision of this Council on this issue, we have the following suggestions:

1. There should be absolute limits placed on the amount of height and density that can be added to any given development. This is fair to the community and serves as advance notice to developers of what is permitted in Markham. It also provides some assurance to the existing residents that there are limits on how much the influence of developers and their lobbyists can achieve.

2. "Good planning principles" should NOT permit one developer to be allowed bonusing just because another developer was able to do so. This is especially true where there will be future development in the same area, for example on Yonge Street in Thornhill. The fact that Liberty was able to go higher and denser should not mean that the next developer should necessarily get the same privilege. In fact, the assumption should be that the next developer will NOT get bonusing, since that community will already have to deal with the negative affects of the first larger development. We feel that this is a very important point, given that there will be enormous growth on the Vaughan side of Yonge Street as well, and that this growth will seemingly take place without significant coordination between Markham and Vaughn.

3. The policy paper states that there may be cases where the money provided by the developer, in exchange for the privilege of going higher and denser, could be used by the Town for amenities in some community other than where the development is taking place. This is a very poor idea and one that is likely to create ill will and suspicion among residents of the community where the development is taking place. The assumption should always be that the money for community amenities should be spent in the community where the development is taking place. That assumption should only be rebutted in very exceptional circumstances, and only after consultation with the community and its agreement to allow the money to be used elsewhere. (The situation could admittedly be different in cases where there is no existing community.)

4. It should go without saying that consultation with the community on how the bonusing money, (or land in lieu of), should be used will be a true consultation, with the community's views of its own needs being given priority. This is the only way that Markham can show that it has some concern for existing communities, and their livability, in spite of the fact that it is allowing the new, larger development to negatively impact those existing residents.

Thank you for this opportunity to comment.

Marilyn Ginsburg, Chair, Grandview Area Residents Association

#6

German Mills Residents Association Thornhill : Deputation to DSC May 11, 2010

Section 37 : Height and Density Bonusing.

We wish to remind committee that if bonusing was not so overwhelmingly beneficial for developers, developers would not be so eager to ask for it. Only 10-30% of the increase in value resulting from bonusing goes towards benefits, the rest, 70-90%, goes to the developer.

A major principle bonusing infringes for us is the principle of good planning. If planners use good planning to set height and density maxima, then x % higher or denser must represent something other than good planning. Any other explanation is illogical.

And what exactly is the x factor? We have a suggested set minimum but no suggested maximum, no set percentage, not even a suggested range. We remind the committee that we have a self-admitted "bold", some people have called it "aggressive" approach to growth at Development Services and that we are already facing unprecedented intensification unlike anywhere else in the GTA. Committee would be wise to decide on a modest percentage, which could then be applied equitably, rather than leaving the degree of bonusing up to the discretion of planning staff. That way people know what to expect, there are no unpleasant surprises, no unexplained differences between similar developments and no accusations of unfair treatment.

Which leads to the next point. In Appendix C, Guidelines For Implementation, Guideline 3. Geographic Applicability, we would like to know why Steeles Avenue is singled out and included with Growth Centres, Key Development Areas and Regional Corridors as focus for extra height and density. Of all the Major Corridors, Steeles Avenue is the least appropriate to receive the highest degree of intensification and then extra height and density bonusing on top.

Steeles Avenue from near Yonge to Taunton Road is 95% stable low density residential on both sides, north and south. High density residential development with extra height and density bonusing is not appropriate. At Shops On Steeles in Thornhill we have an application where 32 storey condo point towers on the north side of Steeles are juxtapositioned across from 3 storey townhomes on the south side of Steeles in Toronto. How inappropriate is that?

Steeles Avenue is the only Major Corridor where Markham does not control both sides of the road. It requires sensitive treatment so as to complement mostly established low density residential on the south side of the road, not aggressive treatment with the highest level of intensification with added bonusing, regardless of landuse on the south side in Toronto.

In any case, what is the point of developing a hierarchy where height and density are stepped down category by category if the hierarchy is collapsed so that areas lower down on the hierarchy such as Steeles Avenue can be treated the same way as the areas in the top category? We might as well call all intensification areas, including the parking lot at Shops On Steeles, Growth Centres and do away with the hierarchy altogether.

If the Town does decide to adopt bonusing, it should consult area residents prior to beginning negotiations, as well as throughout the process. We can imagine nothing worse than planners negotiating on behalf of a community, an agreement they do not want. Again, if the Town does

(We see from the flow diagram that this prior consultation is indeed planned for and we are very pleased to see that. Well done staff! because)

decide to go ahead with bonusing the geographic relationship of the benefit to the site should be extended from onsite and in proximity to the site to local area such as Thornhill or Milliken, so that the residents who suffer the consequences of bonusing are within a relatively short distance of the benefit and can use and enjoy it.

And please, no public art, apart from the fact that what one person perceives as beauty, another person would consider hideous, it is only too often the object of graffiti, vandalism and bird droppings.

Eileen Liasi.

(on behalf of German Mills Residents Association)



APPENDIX E

Report to: Development Services Committee

Report Date: May 4, 2010

SUBJECT: Recommended Section 37 Official Plan Policies and Guidelines for Implementation

PREPARED BY: Murray Boyce, Senior Policy Coordinator
Planning and Urban Design Department

RECOMMENDATION:

THAT the Report dated May 4, 2010 entitled “Recommended Section 37 Official Plan Policies and Guidelines for Implementation” be received, and be posted on the Town website and circulated to those members of the public requesting further notification and information on the item;

THAT the draft Official Plan Amendment and the draft Guidelines for Implementation of Section 37 Benefits be forwarded to the next Developers’ Roundtable meeting and anyone requesting notice for review and comment;

THAT following the Developers’ Roundtable meeting, Staff report back to the Development Services Committee with final recommendations on the draft Official Plan Amendment and the Guidelines for Implementation of Section 37;

AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

Section 37 of the Planning Act is a planning tool that allows the municipality to grant an increase in height and/or density and receive additional services, facilities and matters (community benefits) from the owner of a contributing development. Any increase is subject to adherence to “good planning” principles, neighbourhood compatibility and a reasonable relationship between the negotiated benefit and the approved height and/or density.

Support on proper planning grounds, and meeting all of the requirements of Town Departments and other public agencies, is a requirement of any development proposal regardless of whether Section 37 is applied. To be considered “good planning”, the development resulting from a height and/or density increase must meet acceptable planning standards, particularly as they relate to built form, compatibility of adjacent uses, and adequacy of infrastructure, while addressing all other relevant planning policies of the Official Plan. Section 37 benefits are not expected to mitigate the potential affects of development and hence, anything that is necessary to mitigate potential impacts attributed to development is considered necessary for “good planning” and not considered to be eligible for community benefits. Section 37 benefits can expand or enhance elements of planning approval, but can not compensate for measures that would otherwise be required under the Planning Act, the Official Plan and other statutory documents.

It is at the discretion of Council and the owner to determine whether additional community benefits should be provided concurrent with approval of a development and whether or not it is appropriate to formally recognize those benefits through the use of Section 37. Council's decision on whether the planning merits of an increase in height and/or density are acceptable can and should remain independent of a decision on whether additional community benefits should be provided in the development through the use of Section 37.

The benefits achieved through the use of Section 37 may be used to obtain and fund facilities, services and matters that are not typically funded through development charges or other Planning Act contribution tools. Provided all Official Plan policies are satisfied, Section 37 community benefits in the form of cash contributions or services in kind may be secured towards infrastructure services and facilities that address service needs or deficiencies in the existing community or services for new growth, either of which cannot be funded or are only partly funded by development charges and other planning contributions.

There should be a reasonable planning relationship between the Section 37 benefits and the increase in height and/or density in the contributing development. The provision of community benefits on-site or within close geographic proximity would be a priority. The services, facilities or matters provided may also benefit the immediate community or the Town as a whole. The threshold for height and density increases shall be set out in the Official Plan and/or Secondary Plan and any zoning by-law in excess of the base development limit (where established) or the maximum development limit established in said plans may be considered eligible for Section 37 community benefits.

Intensification, or increasing the height and/or density of development, within the Town's current settlement area is a key component of the Town's emerging growth management strategy. Directing new growth to identified intensification areas on rapid transit corridors is supported on planning grounds, assists in mitigating the potential impacts of increased height and/or density, and improves the compatibility of new development with existing Markham neighbourhoods. Section 37 can play a key role in delivery of the Town's Intensification Strategy by providing the opportunity for the Town to obtain additional community benefits in areas of increased residential and employment activity.

The proposed Official Plan Amendment introduces new provisions respecting the use of Section 37, including an expanded list of community benefits that could be achieved based on local community needs, intensification issues in the area, and the objectives of the Official Plan with priority given to provision of benefits in proximity to the development proposal. (See Appendix 'B'). The proposed Guidelines for Implementation of Section 37 Benefits are intended to assist staff and potential contributing landowners in their negotiations of potential Section 37 benefits. (See Appendix 'C'). Among other things, the proposed policy framework and guidelines establish a protocol for negotiating and securing Section 37 benefits which provides staff, the development community and the public, with a clear and consistent direction on the use of Section 37 and the objectives that Council would like to achieve through its application.

Staff are recommending that the proposed Official Plan Amendment and the proposed Guidelines for Implementation of Section 37 Benefits be forwarded to the next Developers' Roundtable meeting and to those requesting notice, for review and comment.

PURPOSE:

The purpose of this report is to provide Development Services Committee with additional information on proposed new Official Plan provisions respecting the use of Section 37 of the Planning Act. This report also provides an update on a set of proposed Guidelines for Implementation of Section 37 Benefits, which are intended to guide Section 37 negotiations and structure agreements. As well, response is provided to feedback received at the public meeting held on June 2, 2009.

BACKGROUND:

At its meeting of May 5, 2009, Development Services Committee received a staff report entitled "Toward a Growth Management Strategy: Section 37 Official Plan and Guidelines." The report outlined a Town-initiated review of the existing Official Plan policies respecting the use of Section 37 of the Planning Act and recommended a new policy framework and guidelines for the use of Section 37, to assist the Town in implementing its Intensification Strategy within the context of Markham's emerging Growth Management Strategy. The Committee also requested that a public meeting be held to consider a Town-initiated Official Plan Amendment to amend the Official Plan policies regarding the use of Section 37 of the Planning Act.

At a public meeting held on June 2, 2009, Development Services Committee received comments on a draft Official Plan amendment to introduce new Official Plan provisions respecting the use of Section 37 of the Planning Act. At the meeting, there were a number of written and oral comments requesting further information and clarification of the new policy framework and guidelines for implementation of Section 37 increases in height and density. At that time, staff were directed to report back to the Development Services Committee with appropriate recommendations.

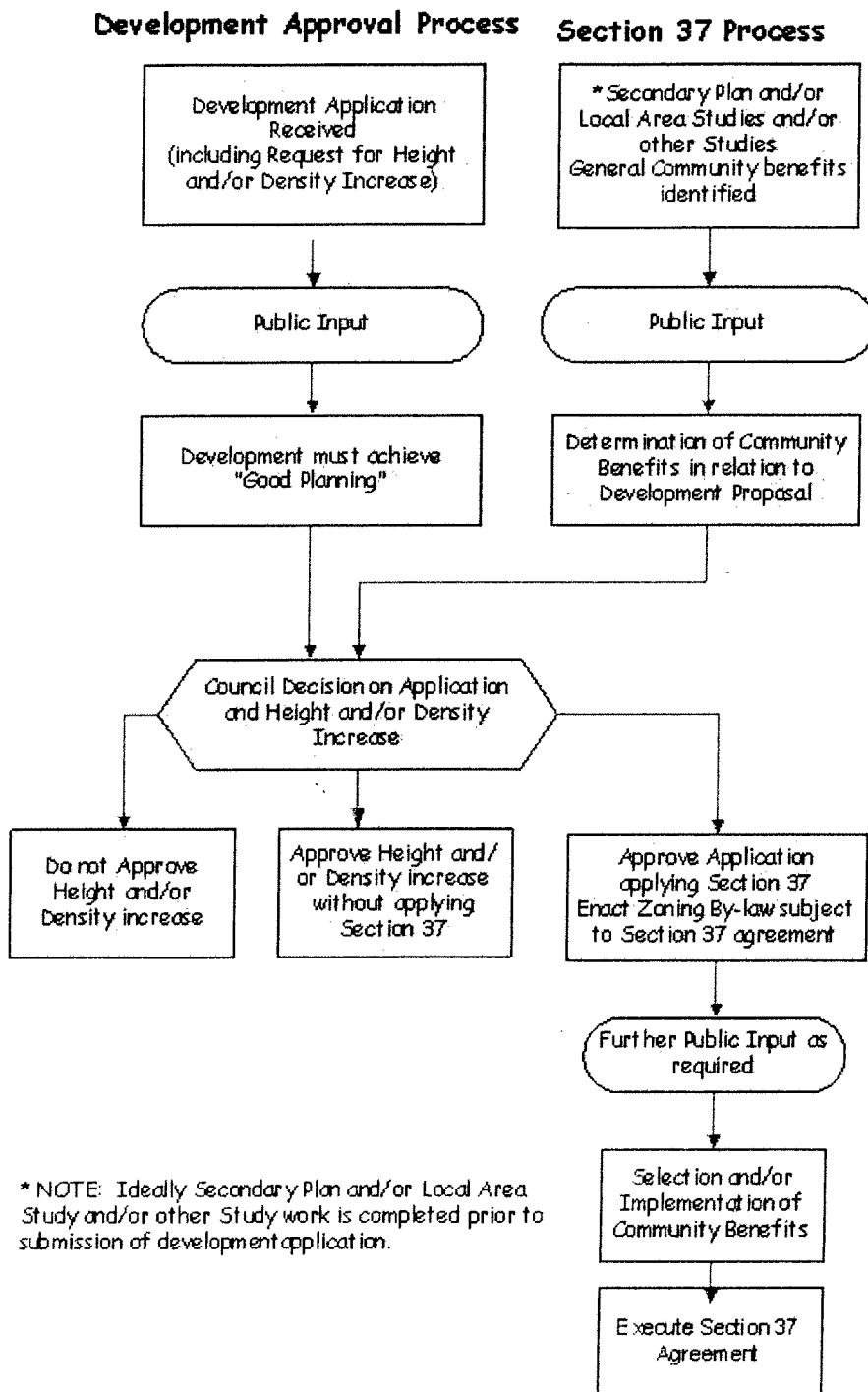
DISCUSSION:

Draft Policy Framework and Guidelines for Implementation of Section 37

A draft Official Plan Amendment and draft set of Guidelines for Implementation of Section 37 Benefits are included in Appendices 'B' and 'C' attached to this report. The proposed policy framework outlines new provisions respecting the use of Section 37 while the proposed guidelines establish a protocol for negotiating and securing Section 37 benefits.

Taken together, the policies and guidelines provide staff, the development community and the public, with a framework for the use of Section 37 and the objectives that Council would like to achieve through its application. Highlights of the documents are outlined in this report.

As well, a process flowchart outlining how Section 37 could be applied to a development application requesting a height and/or density increase is included. In summary, the Development Approval Process and Section 37 Process are linked timing wise only if Council agrees that the development achieves "good planning" and Council and the Owner formally agree to apply Section 37 and enact a zoning by-law, subject to a Section 37 agreement, to achieve additional community benefits.



Role of Section 37

Subject to appropriate Official Plan provisions, Section 37 of the Planning Act authorizes municipalities to pass zoning by-laws to increase the height and/or density of development beyond current zoning permissions, where the increase does not compromise “good planning”. In return for permitting an increase in height and/or density under a Section 37 zoning by-law, Council can request the provision of community benefits by the owner of the development. The community benefits obtained through the Section 37 zoning by-law are those that would not otherwise be provided for through the Planning Act or the Development Charges Act and may be of particular benefit to a specific area and/or the municipality as whole. The owner of the development must agree to the use of a Section 37 zoning by-law to permit the increases and is required to enter into a Section 37 agreement with the municipality to secure the community benefits.

Past practice with Section 37

The Town’s Official Plan currently includes policies that allow Council to enact a zoning by-law and apply Section 37 provisions to a development proposal requesting height and/or density increases. In return, the owner granted the Section 37 increase in development rights is required to provide the facilities, services or matters as set out in the provisions of the by-law and an agreement between the Town and the owner. Appendix ‘A’ outlines the current Official Plan provisions for use of Section 37.

Over the years Markham has been successful in negotiating a variety of additional community benefits as part of the development approval process (ie. park development funds, ravine access, valleyland conveyance, servicing infrastructure, etc.). Typically these development approvals have not resulted in significant increases in height and/or density of development above those permitted in Secondary Plans, and Council has chosen not to negotiate a Section 37 zoning by-law and agreement with the owner to permit the increase in development rights.

Current practice with Section 37

In 2008, Council approved a Section 37 zoning by-law approach for the Liberty development in the Yonge Steeles Corridor area, to permit an increase in height and density, subject to, among other things, the owner entering in a Section 37 agreement with the Town to secure a contribution valued at \$2 million towards community services within Ward 1 or Thornhill, as a first priority. The Section 37 negotiations between the Town and the owner took place only after a settlement was reached on the appropriate height and density of the development proposal. Therefore, Council and the owners agreement was negotiated after an acceptable development proposal representing “good planning” was achieved. The potential application of Section 37 benefits is also under discussion relative to a number of more recent development applications in identified intensification nodes and corridors.

Potential application of Section 37

In response to a Provincial, Regional and Town policy shift toward growth management that encourages intensification within the built up area, there have been a number of

requests from development proponents for increases in height and/or density, above that currently provided for in the Town's Secondary Plans and Zoning By-laws. These include development applications throughout the Town's identified intensification areas including Markham Centre, the Langstaff Gateway, Cornell Centre, the Yonge/Steeles Corridor, Milliken Centre, Kennedy Road, the Avenue 7 Corridor and Steeles East Corridor.

Intensification, or increasing the height and/or density of development, within the Town's current settlement area is a key component of the Town's emerging growth management strategy. The intent of Markham's Intensification Strategy is to direct residential and employment intensification to appropriate locations within the current settlement area; away from existing residential areas to urban centres and corridors that support public transit. Directing new growth to identified intensification areas on rapid transit corridors is supported on planning grounds, assists in mitigating potential impacts of increased height and/or density, and improves the compatibility of new development with existing Markham neighbourhoods. Section 37 can play a key role in delivery of the Town's Intensification Strategy by providing the opportunity for the Town to obtain additional community benefits in areas of increased residential and employment activity.

Determination of applicability of Section 37

The Town can choose to engage in the application of Section 37, or not, depending on its suitability in a particular circumstance. If applied, the terms of a Section 37 agreement are determined through negotiations between the owner and the Town. In considering requests for height and/or density increases, Council not only wants to ensure the development meets Town policy objectives and has the necessary infrastructure in place to support it, but also ensures that opportunities for additional community benefits, beyond what may be obtained through development approvals, can be realized.

Good Planning is a pre-requisite of applying Section 37

In order to be considered eligible for the application of Section 37, the proposed development must first be considered to represent "good planning." Good planning includes addressing all other policies contained in the Official Plan, including implementing plans and other documents and urban design policies and objectives (ie. Secondary Plan, Intensification Strategy, and Built Form, Massing and Height policies and guidelines, etc.) Planning policy objectives, and the recommended form and conditions of the development approval, should be established prior to Town staff entering into negotiations with the owner regarding what additional community benefits might be obtained through applying the Town's Section 37 provisions.

Matters required to comply with authorized requirements of the Town and public agencies should be provided by the owner as a base condition of development approval notwithstanding any use of Section 37. This would include any matters necessary to mitigate the potential impacts of the development and include, among other things, the relationship of a development to its context, the adjacent street, the creation of a good public realm, providing any necessary improvements to municipal infrastructure, and a harmonious relationship to the natural environment. Under the Planning Act, sustainable

design and good architecture are expected in all developments and are not eligible as Section 37 benefits.

Section 37 benefits are above Development Charges and Planning Act contributions

The benefits achieved through the use of Section 37 may be used for facilities, services and matters that are not typically funded through development charges or other Planning Act contribution tools. For example, Section 37 can be utilized to provide for community services and facilities, public parking facilities and enhanced public transit, and a range of other benefits which are over and above what could normally be financed through development charges and beyond improvements directly attributable to developments.

Provided all Official Plan policies are satisfied, Section 37 community benefits in the form of cash contributions may be secured towards infrastructure services and facilities that address service needs or deficiencies in the existing community or services for future growth, either of which cannot be funded or are only partly funded by development charges. Section 37 can also be utilized to provide for infrastructure not normally covered by Plan of Subdivision or Site Plan approvals such as increased amounts of on-site open space or facilities such as day care centres, community centres, recreational facilities, environmental restoration and enhancement, affordable housing including housing for seniors, and public art. There will be no exemptions for developments subject to Section 37 Agreements from development charges or parks contributions under Section 42 of the Planning Act.

On or off site provision of Section 37 benefits

There should be a reasonable planning relationship between the Section 37 benefits and the increase in height and/or density in the contributing development. The provision of community benefits on-site or within close geographic proximity would be a priority. The services, facilities or matters provided may also benefit the immediate community or the Town as a whole. Where there exists a Town wide fund or program to address particular needs which cannot be economically provided on site, but which can be related to the development, such as the provision of affordable housing or public art, contributions to these funds or programs can be considered a benefit to the Town through Section 37.

Threshold height and density and Threshold size of developments under Section 37

Most municipalities have density provisions in their Official Plans (Secondary Plans) as well as their zoning by-laws. In Markham, it has been a recent practice to include both height and density provisions in the Secondary Plan and the Zoning By-law. Under this scenario, the detailed Secondary Plan provisions establish conditions for achieving “good planning” within a maximum height and density threshold often linked to the provision of adequate infrastructure and level of service. This often results in the establishment of different stages of development permissions in the Secondary Plan that are directly related to infrastructure and service level delivery. Consequently, the zoning by-law may correspond to the maximum development permissions as outlined in the Secondary Plan, but be linked to the provision of infrastructure or other phasing requirements to be implemented through (H) Holding provisions in the Zoning By-law.

Where maximum height and density thresholds are provided in Secondary Plans, they are often defined by built form, urban design objectives, community resources, infrastructure capacity and compatibility with land uses and areas within and beyond the Secondary Plan boundaries. These maximum development permissions are usually assigned to a Development Block which may comprise one or more development parcels of developable land, exclusive of public roads and parks and open space. The underlying zoning by-law for the area will need to reflect the development limit established in the Secondary Plan for each Development Block.

In some instances, individual buildings on development parcels within a Development Block, may achieve more or less than the maximum development limit established in the underlying zoning by-law, provided the development is supportable on planning grounds, and the built form and compatibility objectives are maintained, and there is a zoning by-law amendment where:

- the increase in height and/or density does not exceed the overall maximum density for the Development Block;
- the increase in height and/or density may be achieved through density and height transfers within the Development Block; and
- the increase in height and/or density may be considered eligible for Section 37 community benefits.

In other instances, Council may consider an Official Plan Amendment and Zoning By-law to permit the increase in height and/or density in excess of the maximum density for the Development Block, to achieve additional development incentives or Section 37 community benefits, provided the development is consistent with the other objectives of the Official Plan and meets all applicable built form and compatibility objectives, and there is adequate infrastructure available to support the increase.

The rationale in both instances is that the process of changing the development limits, above what they were in the Secondary Plan, represents an increase in height and/or density as described in Section 37 of the Planning Act and therefore meets the criteria in the Planning Act for applying Section 37 benefits.

It is proposed, as a guideline for the application of Section 37, that the size threshold for the contributing development must be larger than 5000 sq m, and where there is an increase in density regardless of whether there is an increase in height, the proposed density must exceed 1500 sq m over and above what would otherwise be permitted. In general, Section 37 will not apply to non-profit development and developments that are under 4 storeys in height.

Determination of appropriate Section 37 Benefits

The Section 37 benefits will be negotiated with the owner on a case by case basis and will be based on a reasonable relationship between the increased residential and employment activity resulting from the Town granting the increase in height and/or density, and an appropriate benefit to identified community needs. In this regard, the

community benefits in relation to the height and/or density increases granted will vary from project to project or from one area of the Town to another. A determination of community needs in response to the increased activities resulting from an increase in height and/or density of a development will be used as a guideline for negotiating an appropriate Section 37 benefit.

Determination of appropriate types of Section 37 Benefits

In intensification areas, it is advantageous to determine local priorities and needs for community benefits in advance of development applications. An analysis and identification of existing and potential needs and services in an intensification area would assist in determining the appropriate type(s) and priority of community benefits to be considered eligible for Section 37 contributions. This analysis could be compiled at the Secondary Plan stage and also identify the appropriate provision and costing of the community benefits.

To prepare for a possible application of Section 37 and address the issue of transparency, it is critical to have the local Councillor and other Councillors who may be interested, in consultation with Town staff, the local community and the relevant service providers, identify local and Town-wide priorities for potential community benefits.

Among other things, a list of potential Section 37 community benefit priorities will:

- provide the Town with a better position for negotiating Section 37 benefits
- result in timely, efficient discussions with owners of contributing development
- avoid ad hoc, uncoordinated decisions by Town staff, Council and the community
- assist the community in realizing greater benefits
- enhance consistency and credibility of the use of Section 37
- assist in the implementation of existing plans, strategies, studies (ie. Secondary Plans, Intensification Strategy, Local Area Studies)
- augment the capital budget process (ie. Identify alternate sources of revenue)
- identify local projects (ie. Park improvements)
- assist other Departments/agencies in establishing priorities for services, facilities and matters (Community Benefits)

An example of a local priority or need for community benefits identified through a public process is the Markham Centre Greenlands Master Plan. This Master Plan was developed, with input from the Markham Centre Advisory Committee (ie. Greenlands Working Sub-Group), to address issues related to the restoration, management and patterns of use of the corridors of the Rouge River and its tributaries. Through the Master Plan process, a number of initiatives are identified that are not typically funded through the development charges or other Planning Act contribution tools. Therefore, it will be at the discretion of Council and a Markham Centre landowner to determine whether additional community benefits in the form of Greenlands Master Plan initiatives should be provided concurrent with the approval of a Markham Centre development involving an acceptable height and/or density increase.

Expanding the list of eligible Section 37 benefits

The range of community benefits currently listed in the Official Plan that could be eligible for Section 37 benefits is quite limited (see current Official Plan provisions outlined in Appendix 'A'). It is proposed that the current list of community benefits be expanded to also include:

1. The conservation and improvement of cultural heritage areas or buildings. This would include preservation of cultural heritage areas and buildings by securing both conservation and improvements within a prescribed timeframe.
2. The preservation of woodlots, environmentally significant areas and enhancement areas which would not be accepted as parkland dedication. This would include enhancement areas identified through the Town's Environmental Policy Review and Consolidation.
3. A substantial contribution to the urban forest on public land. This could include cash contributions to the Town-wide Markham Trees for Tomorrow tree planting program.
4. The provision of public access to ravines and valleys. This would assist in the implementation of a linked Natural Heritage System.
5. The provision of affordable and special needs housing including housing for seniors. This would include new affordable rental and ownership housing units either on site or, at the owner's discretion and where the Town is in agreement, a cash contribution to a benefit fund for affordable and special needs housing.
6. The conservation and replacement of rental housing. This would include preservation of existing rental housing by securing both rental tenure and improvements to ensure the on-going viability.
7. Enhanced connections to transit facilities. This would include enhanced pedestrian and cycling connections, public access across private land, and internal transit connections (transit circulator).
8. Enhanced improvements to transit facilities. This would include enhanced improvements such as multi-modal hub transit concourse connections.
9. Provision of Public Parking Facilities. This would include the construction of municipally controlled public parking garages.
10. Protection of Significant Views. This would secure one or more significant views to an important natural or built feature.
11. Public Art. This would include an on-site public art installation or a cash contribution to either a specific off-site installation or a fund for public art purposes.

12. Non profit cultural facilities. This would include expansion of existing Town cultural facilities and the addition of new cultural facilities including library facilities.
13. Other improvements identified in Council initiated studies. This would allow the Town to identify other improvements emerging through local area studies or other opportunities arising through Council initiated studies.

Protocol for negotiating and securing Section 37 Benefits

Density increases will be approved by an amendment to the Zoning By-law and after due process including public consultation. A Section 37 agreement will be entered into between the developer and the City prior to the enactment of the Zoning By-law.

Planning staff, who are responsible for making recommendations on development applications to Council in accordance with the Planning Act and other Provincial policy, will be the lead negotiators with developments that are the subject of Section 37 bonus discussions. Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits. Local Councillors will be consulted regarding Section 37 negotiations and will provide input into the nature of community benefits that might be appropriate in particular circumstances. Local communities also will be consulted, as appropriate.

In addition to securing community benefits that are directly related to density and/or height increases, Section 37 agreements may include other matters that may be important to the Town to meet its Official Plan objectives, but which may fall outside of the purview of other agreements, such as the protection of rental housing or heritage features. These matters may be secured in a Section 37 agreement as a legal matter.

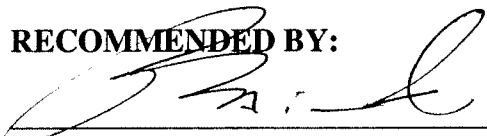
FINANCIAL CONSIDERATIONS:

There are no financial implications at this time.

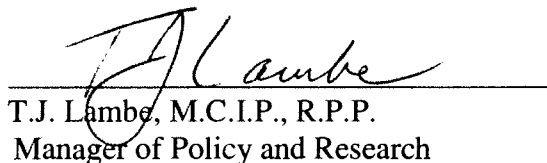
BUSINESS UNITS CONSULTED AND AFFECTED:

The Town Solicitor has been engaged in discussions on the application of Section 37 policies as well as the review of the proposed policy framework and guidelines for use of Section 37 of the Planning Act.

RECOMMENDED BY:



Jim Baird, M.C.I.P., R.P.P.
Commissioner of Development Services



T.J. Lambe, M.C.I.P., R.P.P.
Manager of Policy and Research

ATTACHMENTS:

- Appendix 'A' - Existing Official Plan Provisions
- Appendix 'B' - Draft Official Plan Amendment
- Appendix 'C' - Draft Guidelines for the Implementation of Section 37 Benefits

APPENDIX A

EXISTING TOWN OF MARKHAM OFFICIAL PLAN PROVISIONS AS APPROVED BY THE REGION OF YORK OCT 22, 1998

Section 7.3

d) Increased Height and Density (Bonus) Provision

- i) In accordance with Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, Council may, in a by-law passed under Section 34, authorize increases in the height and density of development otherwise permitted in the by-law. In return, the owner granted the bonus, shall be required to provide the facilities, services and matters as set in the bonus provisions by-law.
- ii) A bonus provisions by-law may be enacted by Council to achieve the Town's objective of obtaining certain facilities, servicing or other matters which would not otherwise be secured by the normal development process and which may be of particular benefit to a specific area or the Town at large. Notwithstanding the generality of the foregoing, the intent of Council in passing such by-laws would be to encourage attainment of one or more of the following objectives:
 - to preserve the unique character of a certain area or buildings of architectural or historical significance;
 - the provision of housing for senior citizens;
 - the provision of increased amounts of on-site open space or facilities such as day care centres, community centres, recreational facilities;
 - the preservation of woodlots or environmentally significant areas which would not be accepted as parkland dedication and;
 - to achieve additional road or servicing improvements.
- iii) Increased height and density (bonus) provisions under Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, will be implemented by by-laws passed under Section 34. Such a by-law will contain the standards of the basic zoning category applicable to the site if the bonus is not awarded as well as the standards that would apply when the bonus is awarded. The by-law will also specify the facilities, services and matters that are required to be provided before the bonus standards become applicable.

An agreement between the owner and the Town shall be entered into in regard to the relevant facilities, services and matters when an owner is being awarded the bonus and the bonus standards become applicable.

APPENDIX B

OFFICIAL PLAN

of the

TOWN OF MARKHAM PLANNING AREA

AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

INCREASED HEIGHT AND DENSITY PROVISION

May 2010

OFFICIAL PLAN
of the
MARKHAM PLANNING AREA
AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

This Official Plan Amendment was adopted by the Corporation of the Town of Markham, By-law No. _____ - ____ in accordance with the Planning Act, R.S.O., 1990 c.P.13, as amended, on the _____ ~~st~~ **OR nd** **OR rd** **OR th** day of _____, 2010.

Mayor

Town Clerk

THE CORPORATION OF THE TOWN OF MARKHAM

BY-LAW NO. _____

Being a by-law to adopt Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended.

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM, IN ACCORDANCE WITH THE PROVISIONS OF THE PLANNING ACT, R.S.O., 1990 HEREBY ENACTS AS FOLLOWS:

1. THAT Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended, attached hereto, is hereby adopted.
2. THAT this by-law shall come into force and take effect on the date of the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS _____ st ~~OR~~ nd
~~OR~~ rd ~~OR~~ th DAY OF _____, (year)

TOWN CLERK

MAYOR

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PART I - INTRODUCTION

(This is not an operative part of Official Plan Amendment No. XXX)

PART I - I NTRODUCTION

1.0 GENERAL

- 1.1** PART I - INTRODUCTION, is included for information purposes and is not an operative part of this Official Plan Amendment.
- 1.2** PART II - THE OFFICIAL PLAN AMENDMENT, constitutes Official Plan Amendment No. XXX. Part II is an operative part of this Official Plan Amendment.

2.0 LOCATION

The Amendment applies to all lands within the Town of Markham.

3.0 PURPOSE

The purpose of this Official Plan Amendment is to introduce new Official Plan provisions related to the use of Section 37 of the Planning Act.

4.0 BASIS OF THIS OFFICIAL PLAN AMENDMENT

The Town's Official Plan includes policies that outline provisions for negotiating community benefits in relation to increased height and density in accordance with Section 37 of the Planning Act. These provisions allow Council to enact a zoning by-law and apply Section 37 provisions to a development proposal requesting height and density increases. In return, the owner granted the increases, shall be required to provide the facilities, services or matters as set out in the provisions of the by-law.

This amendment introduces new Official Plan provisions respecting the use of Section 37 of the Planning Act. If applied, these new provisions will assist the Town in obtaining certain facilities, services or matters which would not otherwise be secured under other provisions of the Planning Act or the Development Charges Act, and which may be of particular benefit to a specific area (or areas) within the Town or the Town as a whole.

The new provisions outline an expanded list of potential community benefits that could be achieved through negotiations with a property owner, and implemented by way of a site specific zoning by-law amendment and an agreement between the owner and the Town provided:

- there is a reasonable planning relationship between the proposed benefit and the increase in height and density;
- the development represents good planning, is consistent with the other objectives of the Official Plan and meets all applicable built form and neighbourhood compatibility objectives; and
- there is adequate infrastructure available to support the increase.

The new provisions also clarify that the community benefits which are the subject of Section 37 By-laws will be determined based on local community needs, intensification issues in the area, and the objectives of the Official Plan with priority given to provision of benefits in proximity to the development proposal.

DECLASSIFIED

PART II - THE OFFICIAL PLAN AMENDMENT

(This is an operative part of Official Plan Amendment No. XXX)