



Policy Issues: Section 37 Implementation

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To:

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Section 37 Issues

- The recent policy review, Bill 73, leading to An Act to Amend the Development Charges Act, 1997, and the Planning Act, did little to provide policy guidance to implementation.
- This lack of policy has lead to municipalities developing their own guidelines for implementation.
- Despite preparing guidelines there have been cases in some jurisdictions where the guidelines are not followed.

Section 37 Issues

- There are concerns about who leads municipal negotiations, especially the role of politicians.
- What is the process by which the quantum of the charge requested is determined?
- If the quantum is based on a percentage of the increased value, rather than the cost of additional services required due to the increased density, it may constitute a tax rather than a charge. If this application is used municipalities may not have this taxing authority.

Section 37 Issues

- Lack of policy direction has led to OMB appeals, where OMB decisions have focused on the “nexus test”.
- If the “nexus test” is used, i.e. the expenditures from the revenue collected should benefit the property, it is difficult to reconcile the application for affordable housing.
- The OMB approach raises conflicts with the application for affordable housing which is permissible under the Planning Act where municipalities identify affordable housing as one of the purposes that contributions will be required.

Section 37 Issues

- Seeking density bonus revenues can work at cross purpose to “good planning”, i.e. zoning property to meet planning principals such as transit supportive densities.
- What are the impact and compatibility issues with multiple exaction policies: Density Bonuses, Development Charges, Inclusionary Zoning (being considered by the Province), development levies (being considered by Toronto)
- Given all of these implementation issues, and others, there is need for well researched, equitable, and transparent policy direction.