

CUR POLICY SEMINAR

Density Bonuses: Implementation Issues in Ontario, Section 37, and British Columbia
Monday, March 7, 2016

Introductory Presentation

By: Patrick J. Devine, Partner

History of Section 37 of the Planning Act

DATE	EVENT
1946	Original <i>Planning Act</i> enacted by Provincial Legislature
1975 - 1981	<i>Planning Act</i> Review Committee established, Ministry issues a White Paper on the <i>Planning Act</i> , significant discussions about revisions occurred
January, 1983	<i>Planning Act</i> , 1983 was adopted and received Royal Assent First enactment of what was then Section 36, now Section 37 <i>Planning Act</i>

Purpose of Enacting then-Section 36, Now Section 37

- From the beginning , municipalities had legal authority in the *Planning Act* to require developers to enter into a Subdivision Agreement to be registered on title binding subsequent owners
- Where landowner is not required to go through a plan of subdivision process (if only required a rezoning), then no legal authority to require such an agreement
- During Legislative Committee hearings in 1981/1982, one M.P.P. referenced a municipality in his riding which required all rezoning applicants to go through a “dummy plan of subdivision” process

Purpose of Enacting then-Section 36, Now Section 37 (continued)

- This was occurring at the same point in time as development was shifting from being primarily “horizontal” (i.e. plans of subdivision) to more “vertical” (i.e. increases in height and density)
- Section 37 is the “vertical” equivalent of the more “horizontal” subdivision agreement
- Same planning considerations should apply to Section 37 Agreements as are applied to Subdivision Agreements

City of Toronto Practice re: Section 37

- No discussion of Section 37 until the details (height, density, parking, setback, etc.) are established
- Leaves Section 37 decisions to the very last minute in the approval process
- Final Report drafted by staff dealing with all the fundamentals and only Section 37 part is left blank
- Planning staff advises that Final Report almost complete, but cannot be put on the next Agenda until Section 37 matters are resolved
- Often leaves a very limited window for discussion (sometimes as little as two weeks)

City of Toronto Practice re: Section 37 (continued)

- In many cases, all Planning staff does is simply obtain from Real Estate Services the value of the economic uplift created by the rezoning
- Based upon the value, per square metre, of additional density above the existing as-of-right zoning
- This information provided to the ward councillor (with no disclosure to the applicant) and the final determination of the required community or public benefit is left in the hands of the ward councillor

It's Not Just the Icing, It's Part of the Cake



Alternative to this “Ad Hoc” Process

- Rather than an afterthought (i.e. the “icing” added to a “cake” that has already been baked), need to understand that Section 37 is an integral part of the process
- A vehicle for appropriate pro-active land use planning is a Secondary Plan
- Secondary Plan policies could identify the priority items for directing funds to community or public benefits; a priority list for that area could be created

Alternative to this “Ad Hoc” Process (continued)

- Current City of Toronto “ad hoc” process places considerable and unsupervised power in the hands of individual ward councillors
- Topic for another day is the need for governance reform at City of Toronto
- At the very least, one must ask “Is such a process really “good planning”?”

Could It Get Any More Arbitrary and Less Transparent?

- New provision added to Section 37 By-laws and Agreements:

In the event the Section 37 cash contribution has not been used for the intended purposes within three (3) years of this By-law coming into full force and effect, all or part of the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director of City Planning, in consultation with the local Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the lot.

Comparison of City of Vaughan's Objectives and Current Practices of the City of Toronto

OBJECTIVE	CITY OF TORONTO	CITY OF VAUGHAN
Transparent	No (value determined by Real Estate Services and not provided to the applicant)	Yes
Consistent	No (often Councillor-driven)	Yes
Best Practice	No	Could be

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