

Density Bonuses: Section 37 Implementation Issues in Ontario and British Columbia The City of Vaughan Experience

John MacKenzie, M.Sc.(PI) MCIP, RPP
Deputy City Manager, Planning and Growth Management
City of Vaughan
March 7, 2016



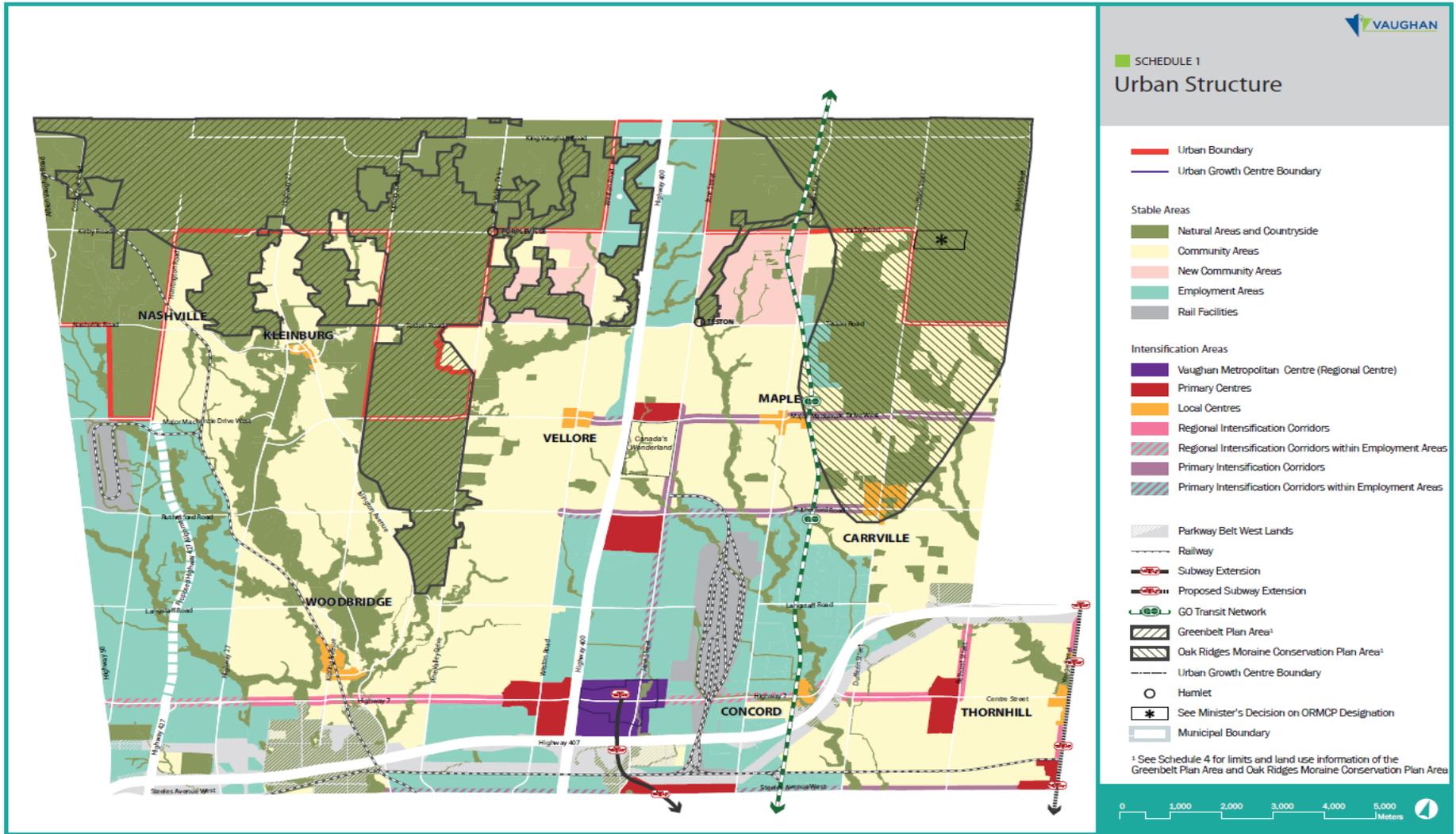
Agenda

- Vaughan's Section 37 Official Plan Policy
- Section 37 Implementation Guidelines
- Case Studies
- Opportunities and Challenges
- Discussion and Next Steps

Why did we review our Vaughan Official Plan (VOP) 2010 Section 37 policies?

- Growth in Intensification Areas of the City prompting significantly higher number of S. 37 opportunities
- Wanted a clear, reproducible approach for processing S. 37 requests to address stakeholders concerns

Schedule 1: Vaughan's Urban Structure (VOP)



The City began review of Section 37 policies, and the development of the Section 37 Implementation Guidelines in early 2013 with the assistance of Gladki Planning Associates

Policies 10.1.2.9 - 10.1.2.12 of the VOP 2010 were subsequently revised to include:

- Paragraphs to describe when S. 37 could be considered - ie. good planning, good design, appropriate nexus argument, adequate infrastructure to support increased density, etc.
- Reference to S. 37 Implementation Guidelines
- The purpose and nature of the S. 37 Agreement

Stakeholder Consultation and Approval Process (cont'd)

- Council adopts revised S. 37 OP policies - September 30, 2013, and receives draft Implementation Guidelines
- City retains GSI Real Estate Planning Advisors Inc. Mark Penney to develop a property valuation methodology
- OMB approves revised S. 37 policies - September 30, 2014
- Multiple stakeholder meetings to discuss Implementation Guidelines and present the proposed property valuation methodology throughout

Stakeholder Consultation and Approval Process (cont'd)

- Committee of the Whole meeting with invitation to all Stakeholders on the proposed S. 37 Implementation Guidelines, including valuation methodology - February 3, 2015
- Council approval of S. 37 Implementation Guidelines as City Corporate Policy – February 17, 2015

Section 37 Proposed Revisions to Official Plan Policy

1. Increased height and density may be authorized in return for provision of community benefits provided:
 - There is a reasonable planning relationship between the increase in height and density and the community benefits
 - The development represents good planning
 - Infrastructure can support the increase

Section 37 Official Plan Policy

2. Benefits would be over and above what can be otherwise secured through the Planning Act (park contributions) and DCs and may include:

- Public art
- Non profit/public cultural facilities
- Park improvements above City standard
- Upgrades to community facilities above City standards
- Enhanced off-site access to natural/environmental features
- Access to public transit
- Non profit day care
- Upgrades to cultural heritage facilities
- Public Parking
- District energy
- Land for municipal purposes
- Other improvements identified in local plans

Section 37 Official Plan Policy

3. Benefits to be determined based on:

- Objectives of the Official Plan
- Local community needs
- Unique needs based on intensification issues
- Priority given to benefits in geographic proximity to the development representing a “reasonable planning relationship”

Section 37 Revisions to Official Plan Policy

4. Height and density increases to be implemented by a site specific zoning by-law amendment

- Bylaw will identify facilities, services and matters (i.e. community benefits) to be provided

Section 37 Proposed Revisions to Official Plan Policy

5. Community benefits will be secured through a “Section 37” agreement between the City and the owner

Key Lesson Learned:

Stakeholder support for OP Policy was largely dependent on details of Implementation Guidelines

The Section 37 Implementation Guidelines

The guidelines provide direction on how to apply the S. 37 policies of the VOP 2010.

- Ensure the S. 37 policies will meet overall objectives of the Official Plan
- Identify which developments will be eligible for consideration of S. 37 application. Describe the negotiations process and the staff and City officials involved
- Describe the property valuation methodology for lands subject to S. 37 requests; and provide the percentage range of the increase in property value resulting from the increased density/height, that will be required as a S.37 benefit

Section 37 Implementation Guidelines – Protocol

Protocol for Determining Benefits

- Planning staff to manage negotiations in consultation with the relevant municipal departments
- Need to determine exact benefits to be provided—total to equal the value to accrue to the City
- Consult local studies (if these have been prepared), Official Plan policies, City Departments (Parks, Recreation and Culture, Finance, Legal, etc.)
- Consult Ward Councillor and seek community feedback at public meeting(s)
- Details of value of benefits and negotiation process to be included in comprehensive Committee of the Whole technical report on application to ensure transparency

The Valuation Methodology

- As a first step, staff must assess whether the proposed increase in density and/or height represents good planning



The Valuation Methodology (cont'd)

- If S. 37 request proceeds through the development approval process after step one, a site and area specific assessment of the community needs in the area of the development lands, vis-à-vis the community benefit list provided in the VOP 2010 and/or the relevant Secondary Plan is conducted. This will determine the benefit(s) towards which the monies collected through S. 37 will be used.

The increase in land value as a result of the increase in density and/or height is determined as follows:

Step 1

Determine base density (the maximum density permitted by the VOP 2010 or applicable Secondary Plan).

Step 2

Determine the buildable gross floor area (GFA) from the base density.

Step 3

Determine the land value that corresponds to the base density (through use of the “Land Value Matrix”).

Step 4

Determine the land value that corresponds to the proposed density.

Step 5

Increase in Land Value = proposed density land value – base density land value.

* S. 37 benefit contribution will be 20 – 35% of the increase in land value.

The Valuation Methodology (cont'd)

- The valuation methodology then permits a dollar value to be assigned towards the required S. 37 community benefit(s).



The Land Value Matrix

- The land value in Step 3 will be determined using a “Land Value Matrix” which provides the low and high dollar values of homogenous market areas of the City on a “per square foot of buildable gross floor area basis”.
- The Land Value Matrix is updated annually (as of January 1st) by a qualified real estate appraiser and monthly adjustments are made according to rate of monthly inflation as determined by the Toronto Real Estate Board Market Watch Report.

Payment of Section 37 Community Benefit

- The payment of the S. 37 contributions is due the day before the issuance of the first above-grade building permit.
- Payment is indexed to issuance of permit date according to the CPI index for the City of Toronto.

Main Stakeholder Concerns re. Valuation Methodology

- i. The range of 20% - 35% of the increase in land value for the community benefit is too high.
- ii. The Land Value Matrix is not flexible enough to take into account site specific qualities and unique circumstances of a development site.
- iii. The process of agreeing on the “base land value” will cause significant delays.

The Dispute Protocol re. the Valuation of the Lands Subject to Section 37 Benefits

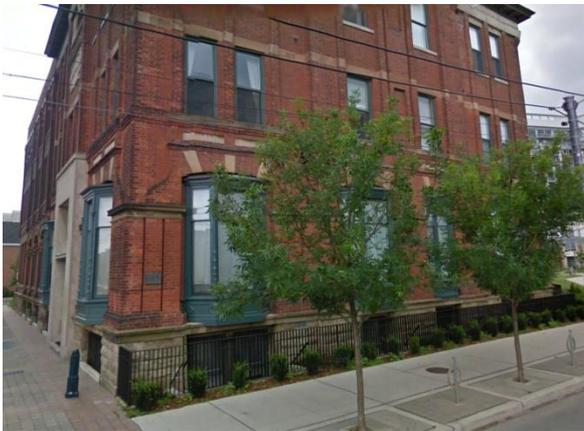
- i. If the Matrix value is contested, a site specific appraisal can be requested.
- ii. If the City and landowner still do not come to an agreement concerning the land value, the City will commission a second appraisal report.
- iii. If the second appraisal report is within 15% of the first site specific appraisal, the mid- point of the difference between the two values provided shall apply.

The Dispute Protocol re. the Valuation of the Lands Subject to Section 37 Benefits (cont'd)

- iv. If the difference is greater than 15 % and the City and landowner are unable to agree on a value, either party may request a peer review of the two appraisals. This will determine the final “base land value” to be used.
- v. If there is further disagreement, the landowner may choose to appeal the development application to the OMB.

Section 37 Implementation Guidelines – Examples

An account was established for Section 37 contributions by the Finance Department



24

Section 37 used for “over and above” levels of service

Section 37 Implementation Guidelines – Securing the Benefit

Site Specific Bylaw

- Contributions/benefits to be itemized in the site specific bylaw
- Requirement that owner enter into a Section 37 Agreement prior to the adoption of the site specific bylaw by Council
- The Agreement will be registered on title
- Cash contributions/benefits to be paid prior to release of building permit
- Cash payments placed in a special Section 37 Reserve Fund managed by the Finance Department

BAIF

- 1.41 ha site (4.35 FSI)
- Access
 - Bathurst Street / Beverley Glen Blvd.
 - Future Bus Rapid Transit Route along Bathurst Street and Centre Street
- Residential with ground floor retail
 - 797 apartment units
 - 586 m² of retail
- Section 37 Contribution
 - Vaughan Guidelines
 - \$350,000 Public Art Installation
 - \$350,000 Community Services/Facilities Installation
 - \$50,000 YRT/Viva transit passes to condominium purchasers



Section 37 Implementation Guidelines – Discussion

- What percentage in the range of 20-35% should apply? Where?
- How do we value height?
- How much detail should be provided to the public and when?
- Who determines community benefits?
- How do you establish baseline land value and resolve differences?

The Met

- 1.1 ha site (4.15 FSI)
- Access
 - Jane Street / Portage Parkway
 - Highway 400 and 407
 - VMC Subway Station
 - YRRTC Bus Terminal
- Residential
 - 531 apartment units
 - 62 townhouse units
- Section 37 Contribution
 - Vaughan Guidelines
 - \$135,000.00



How did we do it? Stakeholder Engagement was Key

- Sound research on best practices to inform approach
- Multiple presentations of S. 37 principles/best practices to stakeholders and discussions with community stakeholders including York Chapter of BILD
- Commitment to Council and stakeholders on continuous improvement



Next Steps for Section 37 in Vaughan

- Council directed a status report to be provided to a Committee of the Whole (Working Session) one year following the use of the “S. 37 Implementation Guidelines” Policy (Q1 2017).
- The report will discuss issues/successes, and any required modifications
- Suggestions for improvement are welcome

