

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

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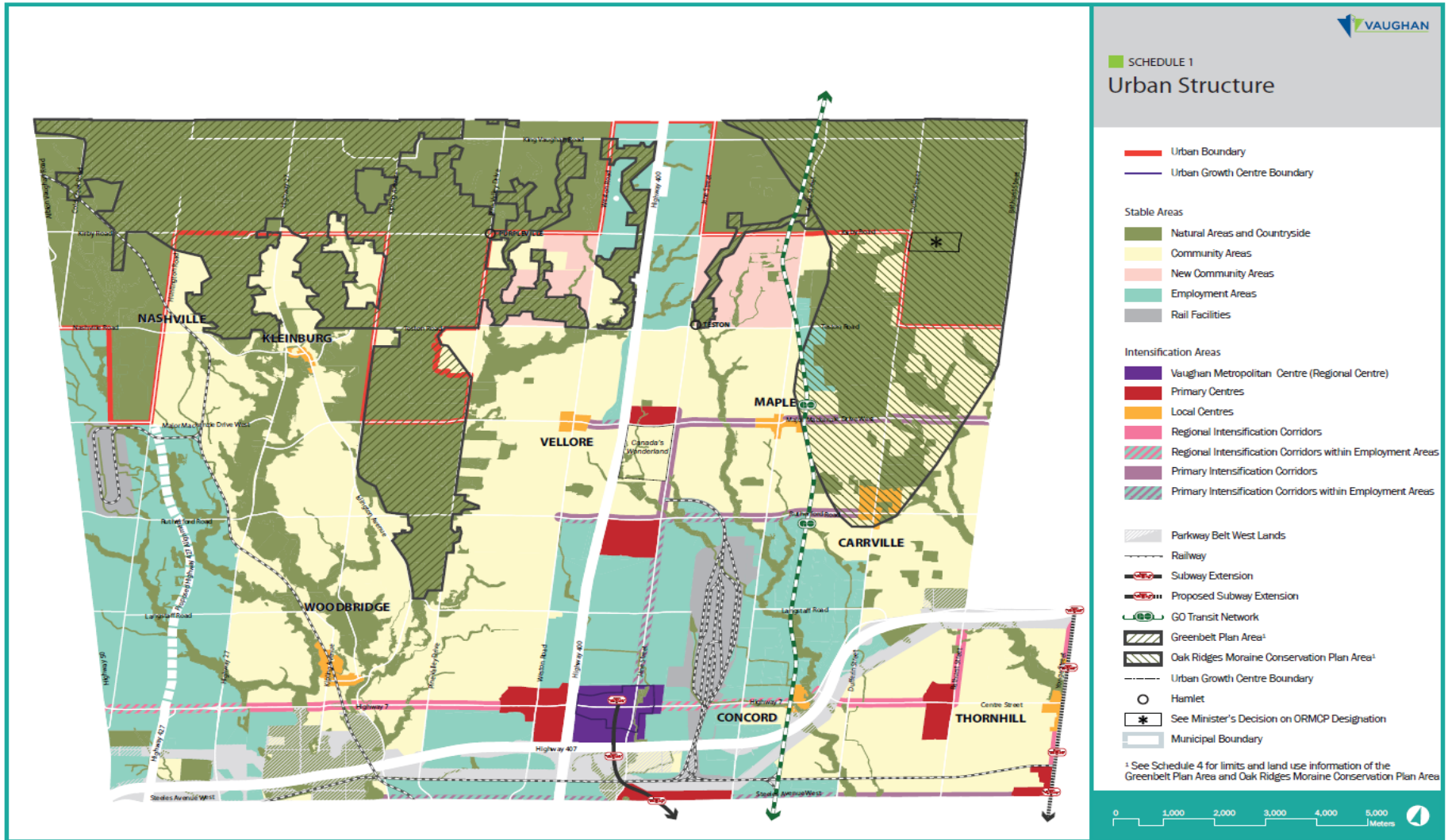
# Agenda

- 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 1<sup>st</sup>) 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.

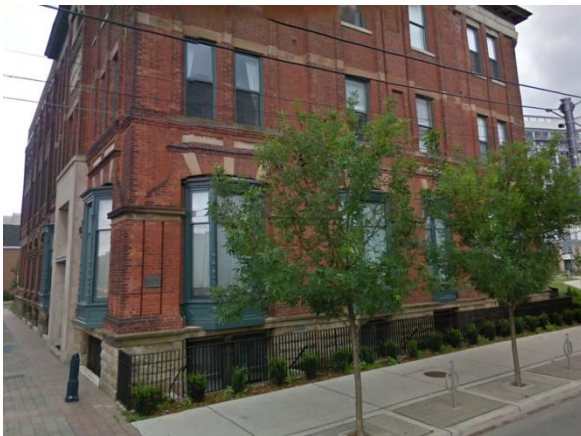
# The Dispute Protocol re. the Valuation of the Lands Subject to Section 37 Benefits (cont'd)

- 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



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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 m<sup>2</sup> 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

