

TORONTO STAFF REPORT

June 20, 2001

To: Planning and Transportation Committee

From: Commissioner of Urban Development Services

Subject: Status of the formulation of citywide Official Plan policy for the use of Section 37 of the Planning Act

Purpose:

Status report on the formulation of citywide Official Plan policy for the use of Section 37 of the Planning Act .

Financial Implications and Impact Statement:

None

Recommendations:

It is recommended that this report be received for information.

Background:

1. Section 37 of the Planning Act

Section 37 of the Planning Act permits municipalities to pass zoning by-laws to authorize increases in height and/or density beyond what is otherwise permitted in the Zoning By-law, in return for the provision of such facilities, services and matters as are set out in the bylaw authorizing the increase. The Act provides that Section 37 powers can be used only where there are official plan provisions in effect relating to the authorization of increases in height and density of development. The required Official Plan provisions can apply at the site, local area, or citywide level. The community benefits may be secured in an agreement that may be registered on title. (The full text of Section 37 of the Planning Act is contained in Appendix A to this report.)

The continued use of Section 37 is important to the City as a proactive and flexible legislative tool for helping to achieve services and facilities which enhance the liveability and economic

competitiveness of our communities. Its continued use must balance the interests of the City with those of the development community fairly, effectively and efficiently.

2. City's Use of Section 37

At its meeting of August 1-4, 2000, Council adopted two reports dated July 4 and July 27, 2000 from the Commissioner of Urban Development Services, which together recommended a citywide framework for the implementation of Section 37 of the Planning Act. It was intended to be used in the interim period prior to adoption of a new Official Plan, and to form the basis of the Plan's new Section 37 provisions. Since the adoption of the Implementation Framework, there have been Ontario Municipal Board (OMB) and Divisional Court decisions pertaining to the use of Section 37. The City Solicitor has previously reported on these decisions. In the meantime, staff and Council continue to use Section 37, by applying Official Plan provisions where they already exist, and through enactment of site-specific Official Plan and Zoning By-law provisions.

Comments:

Toward Citywide Official Plan Section 37 Policies

1) Planning Tools Reference Group

Staff intend to include provisions in the new Official Plan with respect to the use of Section 37. Given that the draft citywide Official Plan is anticipated to be released for public review in the Fall of this year, staff intends to include new Section 37 provisions in that draft. As part of the review of a number of planning "tools" potentially available to the City, a Planning Tools Reference Group was organized to provide advice and feedback to staff with respect to the use of such planning tools. This Group currently consists of representatives of the Greater Toronto Home Builders Association (GTHBA), the Urban Development Institute (UDI), the Canadian Institute of Public and Private Real Estate Companies (CIPPREC), independent developers, the Toronto Board of Trade, the legal profession, a planning consultant, and an architect.

The first tool dealt with by this Reference Group has been Section 37. There have been four formal meetings of the Group, and a number of smaller meetings and discussions with individuals and smaller sub-groups. The formal meetings began on January 15, 2001, with the fourth meeting held on May 24, 2001. At least one further meeting is anticipated. Staff have also participated in a joint UDI/CIPPREC meeting and a Board of Trade meeting to discuss Section 37. The intention is to gain an improved understanding of the industry's position and have that inform the future use of Section 37. Progress has been made toward establishing mutually acceptable principles for the use of Section 37.

2) Potential Official Plan Policy Approach for Use of Section 37

Based on Council's and the development industry's previously stated objectives that any policy provide clarity, certainty, and fairness, and based on the discussion to date with the Planning Tools Reference Group, the Official Plan policy approach for Section 37 that appears to offer the

greatest promise is a “two-pronged” one. The approach is generally described in the following paragraphs. There remain some unresolved issues, also discussed below.

The Official Plan would contain a general policy that would be applicable across the City, and would also contain area-specific provisions for identified areas. The general policy would contain a relatively broad list, or “menu”, of possible community benefits, from which the developer and the City would mutually select the appropriate package of benefits. The general policy would also provide direction regarding the quantitative relationship between the level of community benefits and the size of the density or height increase.

The Section 37 provisions for defined areas of the City could set out specific relationships of increments of increased density or height to increments of specific community benefits. The list of eligible community benefits and the relationship of the density or height increase to the level of community benefits will be tailored to the specific planning objectives of the defined area. An existing example of this area-specific Section 37 approach is the schedule contained in the Secondary Plan for the North York Centre. Area-specific provisions might in future be also deemed appropriate for other locations.

3) Issues Still Under Discussion

The following two issues remain the subject of discussion with the Planning Tools Reference Group:

a) The determination of the “quantum”, or level, of Section 37 community benefits.

The quantum alternatives range from a fixed percentage of increased land value resulting from the density or height increase to a fixed relationship between increments of density or height to increments or units of community benefits. There has been discussion of a variety of these alternatives and their implications. Some industry representatives have even raised the alternative of a “no-quantum” approach in which the level of community benefits for each application is the result of negotiation.

b) The base densities (or heights) from which the size of the density (or height) increase for Section 37 purposes is measured.

This issue is primarily of concern during the future “transition period” after adoption of the new, citywide Official Plan and prior to the citywide Zoning By-law being updated. Density and height limits are anticipated to primarily be contained in the Zoning By-law only, and not in the new, citywide Official Plan. The existing Zoning By-law density and height limits will thus be in effect until the Zoning By-law can be updated, and such updating will not occur concurrently with the adoption of the new Official Plan.

This is of particular concern where Zoning By-law limits are currently lower than the Official Plan density limits. Industry representatives have expressed the view that, in some locations, existing zoning density limits, or even the limits set out in the Official

Plan, are lower than what should fairly be considered as the starting point for evaluating the significance of a density increase for Section 37 purposes.

One alternative to address this problem during the transition period would be to “grandparent”, for Section 37 purposes only, the existing density limits as contained in the current Official Plans as the base densities. Height limits cannot be similarly addressed because height limits are generally not contained in existing Official Plans.

Conclusions:

The intention is to include Section 37 policies in the draft citywide Official Plan to be publicly released this Fall. In the meantime, staff and Council continue to use Section 37, applying existing Official Plan policies and enacting site-specific Official Plan and Zoning By-law amendments.

Discussions with the development industry through the Planning Tools Reference Group are progressing regarding proposed citywide Official Plan provisions for the use of Section 37. While agreement has been reached on a number of principles, discussion continues with respect to the quantum of community benefits to be provided and the base density or height from which the increase in density or height is measured for the purpose of using Section 37.

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List of Attachments:

Appendix A: Text of Section 37 of the Planning Act

APPENDIX A

Text of Section 37 of The Planning Act

37. (1) Increased density, etc., provision by-law

The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

37. (2) Condition

A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

37. (3) Agreements

Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

37. (4) Registration of agreement

Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. R.S.O. 1990, c. P.13, s. 37.