



## STAFF REPORT ACTION REQUIRED

### Adoption of Official Plan Amendment to Authorize Section 37 Funding of Certain Studies as Eligible Community Benefits

<b>Date:</b>	September 18, 2007
<b>To:</b>	Planning and Growth Management Committee
<b>From:</b>	Chief Planner and Executive Director, City Planning
<b>Wards:</b>	All
<b>Reference Number:</b>	Pg070067

#### SUMMARY

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Planning and Growth Management Committee directed that City Planning staff process an amendment to the Official Plan that would authorize funding of Heritage Conservation District, Avenue and Secondary Plan studies as eligible benefits under Section 37 of the Planning Act. Staff was also directed to undertake a public consultation program with respect to the proposed amendment. Staff undertook a broad circulation of the proposed amendment with an invitation to submit comments and to attend a Community Consultation meeting held on September 5, 2007. The statutory public meeting of Planning and Growth Management Committee on the proposed amendment (attached as Appendix A to this report) is scheduled for October 4, 2007.

A number of written submissions have been received in addition to the comments made at the Community Consultation meeting, both in support of, and opposed to, the proposed amendment. This report summarizes the issues raised and implements the Planning and Growth Management Committee's direction from its meeting of June 28, 2007 to process this amendment.

## RECOMMENDATIONS

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### The City Planning Division recommends that:

1. In accordance with the direction of Planning and Growth Management Committee, City Council amend the Official Plan substantially in accordance with the draft Official Plan Amendment attached as Appendix A.

### Financial Impact

The recommendations of this report will have no financial impact.

## DECISION HISTORY

On May 3, 2007, Planning and Growth Management Committee requested the Chief Planner and Executive Director of City Planning to report on amending the Official Plan to authorize the securing of funding for Heritage Conservation Districts as a Section 37 community benefit, together with a consultation program and appropriate revisions to the proposed Section 37 Implementation Guidelines. Several other related recommendations involving further reports were also approved. A report dated June 13, 2007 was forwarded to the June 28, 2007 meeting of the Committee. The online link to that report is: <http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-4972.pdf> (report dated June 28, 2007). That report contains a more detailed history regarding this matter.

The Planning and Growth Management Committee on June 28, 2007 approved the following recommendations:

1. The proposed official plan amendment attached to this report as Appendix A, for the purpose of authorizing the funding of Heritage Conservation District studies as an eligible community benefit under Section 37 of the *Planning Act*, be used by City Planning staff as the basis for consultations, subject to amending Appendix A to add Avenue Studies and Secondary Plan Studies to the list of eligible benefits.
2. Staff schedule a community consultation meeting with interested representatives from the heritage community, the development industry, the ratepayer appellants to the Section 37 policies of the Official Plan, ratepayer, community and neighbourhood organizations, and the public, to obtain their comments.
3. Notice for the public meeting under the *Planning Act* be given in accordance with the regulations under the *Planning Act*.
4. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

## ISSUE BACKGROUND

The issue of funding Heritage Conservation District (HCD) studies using Section 37 (S.37) of the *Planning Act* first arose in the summer of 2006 during discussion of the proposed S.37 Implementation Guidelines. At the September, 2006 Council meeting, Council approved a settlement of the appeals of the S.37 Official Plan policies, and concurrently requested a report on funding HCD studies through S.37. Staff forwarded an information report to the February 15, 2007 meeting of Planning and Growth Management Committee. The online link to that report is: <http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-1539.pdf> (report dated January 29, 2007).

At the May 3, 2007 meeting of Planning and Growth Management Committee, a motion was considered (<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-3313.pdf>) and Committee requested reports on an amendment to the Official Plan to authorize S.37 funding of HCD studies, together with reports on several related matters. A report dated June 13, 2007 was forwarded to the June 28, 2007 meeting of the Committee, as indicated in the Decision History, above. Committee expanded the scope of the proposed amendment to also include funding of studies for *Avenues* and Secondary Plans, and authorized a public consultation program, including a community consultation meeting.

## COMMENTS

### Need for Amendment

City Planning staff has previously advised that the existing Section 37 policies of the Official Plan (section 5.1.1), which are reproduced as Appendix B to this report, require that Section 37 community benefits be capital facilities or cash contributions toward specific capital facilities. Studies are not capital facilities. If Council wishes to fund studies through use of Section 37, then an amendment to the existing Official Plan policies is required.

### Public Consultation Program

- a) Staff circulated the proposed Official Plan Amendment (OPA) to some 475 community, neighbourhood and business improvement area organizations on the City Clerk's general circulation list. Staff also circulated to approximately 60 organizations and individuals in the "heritage community", to the Building Industry and Land Development Association (BILD, formerly the GTHBA-UDI), and to the ratepayer organizations that were appellants to the Section 37 policies of the Official Plan. The notification included an invitation to submit written comments, as well as notification of the September 5, 2007 Community Consultation meeting and the October 4, 2007 statutory public meeting of Planning and Growth Management Committee.

- b) The Community Consultation meeting was held on September 5, 2007, and approximately 45 – 50 people attended. A newspaper advertisement was placed as a general notice of this meeting. Staff made a presentation and answered questions, some discussion took place, and many people made verbal comments. The majority of attendees identified themselves as being part of the “heritage community”. The comments and issues raised at the meeting are listed in summary form in Appendix C to this report.
- c) Staff has received thirteen written submissions before and after the Community Consultation meeting. The eight submissions in support of the proposed OPA are reproduced in attached Appendix D. The five submissions not supportive of the proposed OPA are reproduced in attached Appendix E.
- d) The statutory public meeting required under the Planning Act is scheduled for the October 4, 2007 meeting of Planning and Growth Management Committee. The City Clerk has placed the necessary public notice in the newspaper.

## **Issues Raised in Public Consultation Program**

The comments and issues raised at the Community Consultation meeting are attached as Appendix C and the written submissions received are attached as Appendix D (supportive) and Appendix E (non-supportive).

The following is a summary list of the issues raised in both the verbal and written submissions received to date by staff in the public consultation process.

### **Summary of Issues Raised in Support of Proposed Amendment**

- HCD studies will help alleviate the adverse impact that indiscriminate development will have on heritage buildings
- Staff at City is insufficient to deal with barrage of development applications
- City has been short-sighted in not conducting a comprehensive study to determine areas and buildings of heritage importance
- Official Plan has no tools or teeth to recognize and protect special areas
- HCD studies serve to preserve city’s architectural and community heritage, and thus property values, tax base, social integrity and identity, aesthetics and tourism base
- S.37 funding of HCD studies facilitates good development by reducing reflexive opposition, producing a mix of heritage buildings and stunning new architecture
- Without S.37 funding of HCD studies, neighbourhood protection and heritage preservation would not occur where development pressures are highest and community incomes are modest
- Neighbourhood protection should not be dependent upon a community’s ability to pay for lawyers and planners

- The results of HCD studies are as durable as a skating rink or recreation centre
- Planning studies help create a community and developer consensus around appropriate, orderly development and associated public amenities
- HCD studies create very tangible benefits for communities, with a relatively small dollar amount, and minimize costly, destructive battles over development
- Secondary Plans provide a framework for new developments which respect their surroundings
- Many former Secondary Plans were eliminated by the new Official Plan and are needed
- The general Official Plan has vague policies that leave communities defenceless against inappropriate and excessive development
- Until the City has the resources to produce Secondary Plans, S.37 benefits are the only hope
- Many areas of the City are vulnerable and in dire need of planning studies to inform/guide development
- Spot zoning and ad hoc development results from a lack of plans
- In an era of limited resources and cutbacks, S.37 funds are required for planning purposes
- Limitations on S.37 funding should not be based solely on tradition

### **Summary of Issues Raised in Opposition to Proposed Amendment**

- Proposed amendment would constitute a fundamental breach of the settlement on the Official Plan S.37 policies among the City and the developer and ratepayer appellants
- Proposed amendment undermines the principles that community benefits be capital facilities or cash for same, and must bear a reasonable planning relationship to the increase in height and/or density
- A less inappropriate, less harmful approach would be to amend the policies for specific, defined geographic areas where needed, rather than a citywide amendment to the general policies
- If the area-specific amendment approach is taken, benefits in some geographic areas could extend to Environmentally Significant Area studies because they are at least as important as HCD studies
- The proposed amendment is a cash grab, unsupported by any stated planning principle and entirely devoid of planning merit
- Proposed amendment is fundamentally contrary to City-building principles of new Official Plan and would have a serious, deleterious effect on quantity and quality of City-building achieved
- Proposed amendment represents a derogation from OMB-approved principles that S.37 must have a reasonable planning relationship to height/density increase, and that benefits should be capital facilities
- Council should increase funding to City Planning Division to ensure that resources are available for these kinds of planning studies
- Since HCD's are a desirable and important City objective, as a matter of principle, HCD study funding should come from the City's Operating Budget

- S.37 funding of HCD studies will only benefit the downtown wards that are currently experiencing major development and would leave a large part of the city without access to funding
- The addition of Avenue and Secondary Plan studies to the amendment compounds the problem of equity. Communities with no development occurring will not benefit
- Conducting studies that are a core planning function should not be linked to granting of increased height and/or density
- S.37 funding only occurs when planning limits are exceeded and does not provide a regular, predictable source of funding
- Funding for all three types of studies belongs in the City Planning budget
- Many of those who support HCD study funding reject the inclusion of funding for Avenue and Secondary Plan studies
- Communities that will be disadvantaged by the amendment include:
  - Stable communities with little development generating S.37 funds
  - Communities which do not allow density/height increases
  - Communities with Councillors who do not support heritage
  - Communities experiencing a cyclical downturn in development activity
- HCD studies should not be seen as a means of dealing with development pressure, but as recognition of heritage merit
- Broadening the uses of S.37 funds undermines the City’s ability to pay for core services for which funds are not otherwise available, and opens the door for abuses of S.37 funding
- S.37 funding of studies sets an undesirable precedent for funding of non-capital projects and could signal a return of “lets-make-a-deal” planning where those with the right connections get S.37 funding
- S.37 funding should address planning matters, not budget matters
- Development charges should be increased to pay for studies without compromising Official Plan
- Suburban communities will not benefit and permanent funding will be undermined

## **Draft Official Plan Amendment**

The Draft Official Plan Amendment is attached as Appendix A to this report. In order that the amendment can be seen in the context of the existing Section 37 policies of the Official Plan, those existing policies are attached as Appendix B. In accordance with the Committee’s direction, the attached draft amendment will incorporate an amendment to the Official Plan to provide for funding of Heritage Conservation District studies, Avenue studies and Secondary Plan studies as eligible community benefits under Section 37 of the Planning Act. This amendment is subject to appeal and until such time as it is in full force and effect, funds for these purposes will not be available.

## **HPS Staff Initiatives Regarding Identification of Potential HCD Study Areas and Study Costs**

At the May 3, 2007 meeting, Planning and Growth Management Committee:

“requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible, on a process for identifying Potential Heritage Study Areas;” and

“requested the Chief Planner and Executive Director, City Planning, to report to the Planning and Growth Management Committee as soon as possible, on the structure and cost of a program model to support Heritage Conservation District Studies.”

Heritage Preservation Services (HPS) staff has been working towards clarifying the process for the identification of potential HCD's. This work includes:

- Clarifying existing provincially regulated criteria for evaluation of heritage resources;
- Creating additional criteria for determining potential and qualifying HCD's;
- Receiving and assessing the Heritage Management Plan Phase 1 which includes recommendations for evaluating, funding and conserving HCD's;
- Beginning Phase 2 of the Heritage Management Plan which will include:
  - o A mapping exercise to identify areas of potential for HCDs across the entire city;
  - o Identifying alternate funding sources for HCD studies; and
  - o Identifying potential HCD's outside of the downtown.

Future HPS staff considerations for HCD's include:

- Examining costs and cost forecasting for HCD studies; and
- Standardizing the reporting standards and process for HCD's to ensure consistent approach for research, documentation, and conservation.

## **Conclusion**

This report implements the Planning and Growth Management Committee's direction from its meeting of June 28, 2007 to process this amendment.

## **CONTACT**

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## **SIGNATURE**

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Ted Tyndorf  
Chief Planner and Executive Director  
City Planning Division

## **ATTACHMENTS**

Appendix A: Draft Official Plan Amendment  
Appendix B: Official Plan Section 37 Policies  
Appendix C: Issues and Comments Raised at Community Consultation Meeting  
Appendix D: Written Comments Received, Supportive of Proposed Amendment  
Appendix E: Written Comments Received, Non-Supportive of Proposed Amendment

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## Appendix A

### Draft Official Plan Amendment

Authority: Planning and Growth Management Committee Item PG\_\_, adopted by City of Toronto Council on \_\_\_\_\_

Enacted by Council: \_\_\_\_\_

### CITY OF TORONTO

#### BY-LAW No. XXXX-2007

**To adopt Amendment No. 38 to the Official Plan with respect to authorizing funding of Heritage Conservation District, Avenue, and Secondary Plan studies as eligible community benefits under Section 37 of the *Planning Act*.**

WHEREAS authority is given to Council by the *Planning Act*, R.S.O. 1990, c.P.13, as amended, to pass this by-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The text attached hereto as Schedule "A" is hereby adopted as an amendment to the Official Plan of the City of Toronto.
2. This is Official Plan Amendment No. 38.

ENACTED AND PASSED this \_\_\_\_ day of \_\_\_\_\_, A.D. 2007.

DAVID R. MILLER,  
Mayor

ULLI S. WATKISS  
City Clerk

(Corporate Seal)

## SCHEDULE “A”

### AMENDMENT NO. 38 TO THE OFFICIAL PLAN OF THE CITY OF TORONTO

#### Authorizing funding of Heritage Conservation District, *Avenue*, and Secondary Plan studies as eligible community benefits under Section 37 of the *Planning Act*

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The following text constitutes Amendment No. 38 to the City of Toronto Official Plan, being an amendment to section 5.1.1, Height and/or Density Incentives.

The section headed ‘Purpose and Location’ is explanatory only and shall not constitute part of this amendment.

#### **PURPOSE AND LOCATION:**

This amendment to the Official Plan for the City of Toronto is for the purpose of authorizing, as eligible community benefits under Section 37 of the *Planning Act*, cash contributions to the City for the purpose of funding Heritage Conservation District studies, *Avenue* studies and Secondary Plan studies. The amendment will apply to the entire geographic area of the City of Toronto.

#### **OFFICAL PLAN AMENDMENT:**

Section 5.1.1, Height and/or Density Incentives, is amended by adding the following new policy:

- “10. Despite the policies in this section which otherwise restrict community benefits to capital facilities or cash contributions toward specific capital facilities, cash contributions to the City for the purpose of funding Heritage Conservation District studies, *Avenue* studies and Secondary Plan studies are deemed to be eligible community benefits under Section 37 of the *Planning Act*, subject to all other aspects of the policies.”

## Appendix B

### Official Plan Section 37 Policies

#### Section 5.1.1: Height and/or Density Incentives

1. Zoning by-laws, pursuant to Section 37 of the *Planning Act*, may be enacted to permit more height and/or density for a use than is otherwise permitted by the zoning by-law for that use in return for the provision of community benefits in the form of capital facilities to be set out in the zoning by-law together with the related increase in height and/or density, subject to the following:
  - a) the capital facilities must bear a reasonable planning relationship to the increase in the height and/or density of a proposed development including, at a minimum, having an appropriate geographic relationship to the development and addressing planning issues associated with the development;
  - b) the development must constitute good planning, be consistent with the objectives and policies of this Plan, and comply with the built form policies and all applicable neighbourhood protection polices; and
  - c) the use of Section 37 must be contingent upon adequate infrastructure to support the development.
2. Subject to the provisions of Policy 3, an owner may elect either to develop at such increased height and/or density as may be permitted by the Official Plan in return for providing specified capital facilities in accordance with Policy 1 or else to develop in accordance with the height and density permitted by the zoning by-law in the absence of any such increase(s). Where the owner elects to provide the capital facilities, they will be secured in one or more agreements that are registered on title to the lands.
3. Except as contemplated in Policy 5, if the applicable zoning has not been updated to implement this Plan or where a change of use is proposed, then the City will consider whether additional height and/or density beyond that permitted by the zoning by-law for the use is warranted without recourse to Section 37 of the *Planning Act*. However, in all cases, where a Secondary Plan or area specific policy contains an explicitly stated base value from which increased height and/or density may be permitted in return for certain capital facilities, then that base value will be used instead of the density permitted by the zoning by-law.
4. Except as contemplated in Policy 5, Section 37 may be used for development, excepting non-profit developments, with more than 10,000 square metres of gross floor area where the zoning by-law amendment increases the permitted density by at least 1,500 square metres and/or significantly increases the permitted height. Where the zoning by-law measures residential density in units per hectare (UPH), the units are to

be converted to gross floor area at the rate of 100 square metres per unit in order to determine whether these thresholds are exceeded.

5. Despite Policies 3 and 4, Section 37 may be used, irrespective of the size of the project or the increase in height and/or density:
  - a) to conserve heritage resources or rental housing in accordance with the provisions of this Official Plan;
  - b) to replace rental housing in accordance with the provisions of this Official Plan;
  - c) where Secondary Plan or area specific policies in this Plan contain Section 37 provisions that prevail;
  - d) as a mechanism to secure capital facilities required to support development; or
  - e) as may otherwise be agreed upon, subject to the policies contained in this Section.
6. Section 37 community benefits are capital facilities and/or cash contributions toward specific capital facilities, above and beyond those that would otherwise be provided under the provisions of the *Planning Act* or the *Development Charges Act* or other statute, including:
  - a) the conservation of heritage resources that are designated and/or listed on the *City of Toronto Inventory of Heritage Properties*;
  - b) fully furnished and equipped non-profit child care facilities, including start-up funding;
  - c) public art;
  - d) other non-profit arts, cultural, community or institutional facilities;
  - e) park land, and/or park improvements;
  - f) public access to ravines and valleys;
  - g) streetscape improvements on the public boulevard not abutting the site;
  - h) rental housing to replace demolished rental housing, or preservation of existing rental housing;
  - i) purpose built rental housing with mid-range or affordable rents, land for affordable housing, or, at the discretion of the owner, cash-in-lieu of affordable rental units or land;
  - j) local improvements to transit facilities including rapid and surface transit and pedestrian connections to transit facilities;
  - k) land for other municipal purposes;
  - l) substantial contributions to the urban forest on public lands; and
  - m) other local improvements identified through Community Improvement Plans, Secondary Plans, *Avenue Studies*, environmental strategies, sustainable energy strategies, such as deep lake water cooling, the capital budget, community service and facility strategies, or other implementation plans or studies.

7. Section 37 community benefits will be selected on the basis of local community needs, intensification issues in the area, the nature of the development application, and the strategic objectives and policies of this Plan. Priority will be given to the provision of on-site or local community benefits.
8. Where a Secondary Plan or area specific policy identifies additional capital facilities that bear a reasonable planning relationship to greater height and/or density over an area defined in the Secondary Plan or area specific policy, any Section 37 increase in height and/or density anywhere in that defined area, and the community benefits (specified capital facilities or cash contributions toward the specified capital facilities) in return therefor, will be tied to the identified capital facilities in the manner prescribed by that Secondary Plan or area specific policy. In such circumstances, where appropriate, the prescription will be quantitatively formulated.
9. All zoning by-law provisions enacted pursuant to Section 37 and agreements in effect at the time that this policy comes into force are authorized by this Plan and deemed to comply with this Plan.

## Appendix C

Issues and Comments Raised at Community Consultation Meeting September 5, 2007

### 1. Comments/Issues Supportive of Proposed Amendment

- the principle in determining appropriate community benefits should be to spend scarce funds wisely, rather than having limitations based on tradition
- S.37 funding of previous HCD studies has worked well
- City must be proactive in funding HCD studies by means other than S.37 for outlying areas where little or no development occurs
- S.37 funds for HCD studies is not “hush” money and promotes a synergistic dialogue between the developer and the community that can result in better architecture that is more compatible with the community character
- heritage structures are not necessarily old, and without S.37 funding, many communities will not be able to protect heritage character
- neighbourhoods need help to protect heritage
- the status quo results in ad hoc planning because necessary planning studies are not being done
- there is value to establishing secondary plans; they provide a framework for new development
- in an ideal world, S.37 funds would be limited to capital facilities, but communities need secondary plans established in order to protect those communities
- many Secondary Plans were eliminated by the new Official Plan, and are needed, but there are no resources for the studies to establish them
- Secondary Plans better enable communities to defend against undesirable forms of development at the OMB
- the new Official Plan has left communities vulnerable with vague policies and fewer secondary plans
- there is no merit to limiting S.37 benefits to capital facilities
- any development causing change in a community should provide funds to mitigate the impact of the development
- S.37 funding of studies is not a great thing, but in many cases is all that is available

### 2. Comments/Issues Not Supportive of Proposed Amendment

- S.37 funding of studies not a panacea because by the time the funds are provided (at building permit) and the studies are completed, significant development can already have occurred
- S.37 funding of studies sets an undesirable precedent for funding of non-capital projects and funding of Councillors’ pet projects
- S.37 funding of non-capital facilities could signal return of “lets-make-a-deal” planning; those with the right connections get S.37 funding
- S.37 benefits should address planning matters, not budget matters
- development charges should be increased to pay for studies without compromising the Official Plan

- area-specific OPA's could establish a S.37 funding policy for areas under development pressure rather than a citywide amendment
- S.37 should be limited to capital facilities
- S.37 funding is not accessible to many communities and thus is not an equitable tool
- Addressing downtown problems will not provide funds to address suburban problems
- The City should fund studies through the budget process
- all S.37 funds should go toward affordable housing

### 3. Other Comments/Issues

- Objective criteria for identifying potential heritage conservation districts needed for entire City
- communities on the urban fringes should identify heritage structures that may not be very old
- City should prioritize where Avenue studies need to be done before S.37 funds are received, rather than creating a project because S.37 funds are available
- community needs to be able to comment on where Section 37 funds are being directed
- the use of Section 37 encourages higher densities
- City staff should advise in the report how far behind staff is with respect to needed studies and where demands for studies are coming from
- good development is the result of good planning, and good planning is the result of good consultation. Guidelines are needed to address the consultation issue.
- S.37 funding should stay in the local community
- In the U.S., community benefit agreements between the community and the developer are being used, resulting from negotiations directly between the two parties. If successful in Toronto, S.37 could be eliminated
- a S.37 protocol for negotiation of benefits is critical to how Councillors, staff, the community and the developer interact
- S.37 funds could be transferred to other communities, meaning that vulnerable communities could lose their S.37 money

## Appendix D

### Written Comments Received, Supportive of Proposed Amendment

#### 1. **Planning and Zoning Committee of the Annex Residents' Association** (Email dated September 5, 2007)

The Planning and Zoning Committee of the Annex Residents Association met last night. At that meeting we resolved as follows. A similar resolution will be presented to the full board of the ARA (with the recommendation of the Planning and Zoning Committee) and I will advise of the result.

The Planning and Zoning Committee resolved to support the following amendment to the Official Plan

"Section 5.1.1, Height and/or Density Incentives, is amended by adding the following new policy:

10. Despite the policies in this section which otherwise restrict community benefits to capital facilities or cash contributions toward specific capital facilities, cash contributions to the City for the purpose of funding Heritage Conservation District studies, Avenue studies and Secondary Plan studies are deemed to be eligible community benefits under Section 37 of the Planning Act, subject to all other aspects of the policies."

#### 2. **Chairperson of Summerhill HCD** (Email dated September 5, 2007)

I fully support the use of Section 37 Funds as described in the Staff Report :Amendment to the Official Plan – Funding of Heritage Conservation District Studies as an Eligible Section 37 Community Benefit of June 13, 2007 and quoted below:

"pg#070053

#### SUMMARY

As directed by Planning and Growth Management Committee, a draft Official Plan Amendment (OPA) to authorize funding of Heritage Conservation District studies as an eligible community benefit under Section 37 of the Planning Act is forwarded for consideration. A public consultation program is recommended, including request for comments, a community consultation meeting in early September, 2007, and a statutory public meeting (October 4, 2007). The City Solicitor was consulted, and this report also addresses the legalities of funding such studies through development charges. The Committee had also requested reports on restricting such funding to developments within potential heritage study areas and the process for identifying such areas, as well as the structure and costs of a heritage study program. This information will take time to prepare, and will be forwarded to the Planning and Growth Management Committee in the fall of 2007. Staff felt that the forwarding of the draft OPA should not be delayed, however."



As Chairperson of the Summerhill HCD. , we are desperate to establish the heritage importance of our neighbourhood and the impact that indiscriminate development will have on our cherished buildings. This devastation is occurring all over the City at the moment.

There is insufficient staff to deal with the barrage of development applications and in short-sighted fashion, this City has not done a comprehensive study to determine not only, the areas and buildings of importance - but the new Official Plan, which promised to recognize SPECIAL AREAS - has no tools to do so nor, teeth to deal with it (especially against the OMB).

I would suggest further, that these funds be put in place and the studies done NOW, as inevitable delay will lead to more destruction of Heritage properties and neighbourhoods. Since it is the development that causes the most damage, so it is fitting that these studies be paid for by these funds.

It is not just tourism which is impacted by the loss of our neighbourhoods, but also the quality of life for all of us who live in this City. Many of us volunteer countless hours already- so these funds will help the process of the protection of our CITY.

**3. R. L. (Email dated September 5, 2007)**

I will be attending this evening's meeting re Section 37 a proposed amendment to the Official Plan that would allow funding of heritage buildings and communities at Metro Hall this evening (as well as this morning's Planning and Growth Management Committee meeting, at City Hall, which will address the same issue.)

FYI I attach a copy of the statement made to the PGMC when this issue was discussed on May 3 last. (This statement was also attached to an email titled 'Section 37 funding of Heritage Conservation Districts' which was sent to Mayor Miller and all Councillors on May 22, 2007.)

In brief, as one of those who oversaw the creation of Harbord Village Heritage Conservation District in 2003-5, as the editor of the Harbord Village Heritage Conservation District Directory for Conservators and Restorers of Heritage Properties AND as one who favours the embrace of daring new architecture in Toronto, my arguments might be summed up thus:

- 1 Section 37 funding of Heritage initiatives serves to preserve Toronto's architectural and community heritage and thus the property value, the tax base, the social integrity and identity, the aesthetics and the tourist attraction of this city's heritage buildings and heritage neighbourhoods.
- 2 Section 37 funding of Heritage initiatives also serves to facilitate development by reducing the opposition (often poorly thought and reflexive) that tends to be displayed by the residents of established neighbourhoods towards new developments of any kind – especially towards developments that promise to incorporate more than four or five stories of 'height'.

- 3 Ideally, when heritage is conserved and restored with the help of Section 37 funding, everyone wins: heritage communities, developers and the city as a whole. Done right, with a determination to genuinely conserve and restore rather than 'renovate' on the part of heritage communities and sufficient architectural daring on the part of developers, the city evolves into a mix of conserved and restored heritage and stunning new architecture.
- 4 Thus, I enthusiastically favour the continued Section 37 funding of heritage conservation and restoration in Toronto.
- 5 Where developers may not be available to serve as 'white knights' in this process I urge the city to step in and facilitate, with funding of its own, the preservation of heritage buildings that would otherwise be 'orphaned'. (The 'problem' that attaches to the fact that some of these buildings might be relatively new and thus at risk of being considered not worth preserving should be accepted, enthusiastically, as a challenge and an opportunity to a city that respects its past as it plunges fearlessly into the future.

(Think: the Bulova Tower at the CNE, the Inn on the Park (both lost), Eberhard Zeidler's Forum at Ontario Place – replaced by the Molson box, the Skydome - since its renaming 'the Rogers Centre' - hidden from view by the City Corp condos and the Bata Building and the Riverdale Hospital Half Round - both at risk of demolition for lack of appreciation of their architectural and heritage value.)

I look forward to this evening's meeting and to meeting you there.

**4. S. D.** (Email dated September 6, 2007)

I regret being unable to attend last night's session. I am a representative on the Willcocks section of the Harbord Village HCD, and an active participant in my community's planning, both locally and in connection with the University of Toronto Area Liaison Committee. But I wish to speak on my own behalf.

I attended a meeting at city hall some time ago and had an extended exchange with Councillor Fletcher on this issue. My view then was section 37 may not be a perfect instrument, but without it, neighbourhood protection and heritage preservation would not take place in parts of the city where development pressures are highest and incomes are modest. Protection should not be dependent on a community's ability to pay for lawyers and planners.

I believe such studies have as durable an outcome as a skating rink or recreation centre or park. They lead to the preservation of neighbourhoods and can lead to community building through public participation in corridor studies, neighbourhood studies and heritage conservation studies. They can lead to preservation and enhancement of built form.

The entire downtown core faces profound change, particularly because many of our neighbourhoods abut major streets. Up to now, there has been a tendency to leave zoning in place, to treat applications as single entities. The result, in part because of the unpredictability of the OMB, in part because zoning rules are blunt instruments, has been a patchwork. The trend has clearly been to the destruction of low-rise, demographically diverse, family friendly neighbourhoods.

In a presentation to the committee last spring, one city official said there had been no neighbourhoods in support of using section 37 moneys to do heritage studies. Indeed, my neighbourhood benefited greatly by our use of section 37 moneys to bring into being a Heritage Conservation district. Without that investment from the public realm, our HCD could never have happened because we simply would not have been able to raise the money necessary.

Now we are benefiting similarly in the Bloor Corridor Visioning Process, also funded by s. 37 moneys. It seeks to put order into what has been spot development of building along the Bloor Corridor. The study has involved citizens in a remarkable process which, if successful, will lead to a consensus on real physical changes to the public domain and the desired city goal of intensification. If carried out, the decisions of the study would also pedestrianize, improve the public realm, apply sustainability objectives to the corridor, and set up a mechanism through which the community can move toward the realization of the objectives-- all of which are beyond the scope of zoning regulations.

These studies, and I include Part II plans, enable citizens to fully participate in the formulation of public policy and gives them a specific voice in the streetscape against which they play out their lives. They enable finer scale planning, on a neighbourhood level, so distinct communities can realize an expression of themselves in the public realm, their streets and their buildings. Such precision is a buttress against eccentric decisions by the OMB, refines the objectives in the City of Toronto Official plan, and should be a mandated part of the democratic process.

I urge you to retain s. 37 benefits for part II plans, for corridor studies, and for heritage studies, because they are an essential final stage of the planning process, an extension of the democratic process and they give hope that the built form of our city will be something that we have participated in and can be proud of.

**5. Wellington Place Neighbourhood Association** (Email dated September 6, 2007)

The Wellington Place Neighbourhood Association (WPNA) endorses the recommendations of the Planning and Growth Management Committee relating to the funding of Heritage Conservation Districts (HCDs) through Section 37 agreements.

WPNA represents the interests of the residential and business community in the area bounded by King, Spadina, Front and Bathurst Streets. Our focus is to work with the City and area developers to improve urban design and public amenities, respect the rich heritage

of the area, and ensure that new development and public initiatives contribute to the form and character of the neighbourhood.

The revised King Spadina Secondary Plan, adopted by Council in August, 2006, recommends that Wellington Place be considered for Heritage Conservation District status. This is high on the community's list of Public Realm Priorities in this rapidly developing area, and Section 37s would seem an appropriate source of funding for an initiative aimed at providing concrete guidelines for community building.

HCDs provide very tangible benefits for communities. The relatively small amount of money required to do these studies enables all parties to have a better understanding of the resources in heritage areas and minimize costly and destructive struggles over development.

Section 37 agreements are a logical source of funding to create HCDs and represent an excellent investment.

**6. D. B. B.** (Email dated September 6, 2007)

My name is D. B. B. and I am here as a member of the Annex Residents' Association.

The issue before us today defies logic. I'm here to urge the City to adopt recommendations to permit funds generated by development to be used to better plan development. But we live in illogical times, under the predictable fall-out of provincial policies that drained the City's coffers and have left us searching for scheckels wherever we can find them. It wasn't always like this.

In the early 80's, in response to development proposals which threatened the character of the Annex, the City's planners conducted studies to develop a new plan for our community. The resulting secondary plan provided a framework for new developments which respected their surroundings. The success of this plan is demonstrated both by large scale projects such as 4 Prince Arthur and 95 Prince Arthur, as well as victorious OMB appeals such as the 50 Prince Arthur and 546 Huron proposals.

In spite of its success, the Annex secondary plan was removed from the recently adopted Official Plan. In its place are vague policies that have left our community defenceless. I won't waste your time arguing the case that the Annex is vulnerable. The City's planners are already aware of more than 10 major projects approved or contemplated for the area between Avenue Road, Bathurst, Bloor and the CPR tracks. These numbers speak for themselves.

Referring to conditions like the Annex where significant intensification is proposed, the new Official Plan seeks to protect us by giving Council the authority "at the earliest point in the process" to create a secondary plan based on an Avenue or area-based study. The Official Plan doesn't provide funds for such studies, nor does it say where the money for this plan should come from. The underlying assumption is that the funds will be found.

However, our planners have told us that they haven't got the resources to conduct the necessary studies, and so, the Official Plan's protections for our community are toothless.

In an ideal world, I would happily see our Section 37 benefits go toward amenities such as a new community centre or street improvements or public art. But, until the City has its own resources to implement the Official Plan's provisions to produce secondary plans, Section 37 benefits are our only hope. I urge the City to amend the Official Plan to allow Section 37 to fund secondary plan studies, and Avenue studies and Heritage Conservation studies as well.

Thank you.

**7. M. L.** (Fax dated September 7, 2007)

I am in favour of amending funding for Section 37 Community Benefits to include drawing up a master development plan for the areas around Bay Street.

**8. S. T.** (Fax dated September 10, 2007)

- I am writing to support the proposed official plan amendment by Councillors Vaughan and Rae
- many areas of the city are in dire need of planning studies (HCD, Avenue, secondary plans) to inform/guide future development
- in the absence of these plans, the default is spot zoning and ad hoc planning, which does not serve the city and its neighbourhoods well
- in this era of limited resources and cutbacks, Section 37 funds are required and necessary for planning purposes
- this amendment is a reasonable, well-considered option to address the current problem & therefore it should be adopted

## Appendix E

### Written Comments Received, Non-Supportive of Proposed Amendment

**1. Solicitor for the Confederation of Resident and Ratepayer Associations (CORRA)** (Letter dated August 21, 2007)

As you know, I represented the Confederation of Resident and Ratepayer Associations in Toronto (CORRA) in respect of its appeal of the new Official Plan and the various settlements negotiated between the City and CORRA, the GTHBA/UDI and the Willowdale group of ratepayer associations.

Among these settlements, none is more delicately balanced than the Section 37 policies settlement. The above-captioned proposed Official Plan Amendment would constitute a fundamental breach of that settlement, undermining the principle that Section 37 community benefits must take the form of capital facilities, or cash contributions toward specific capital facilities, that bear a reasonable planning relationship to the increase in the height and/or density of a proposed development. As a party to the Section 37 policies settlement, CORRA is opposed to the proposed amendment.

Should the City nevertheless still feel the need for Official Plan provisions allowing non-capital Section 37 community benefits, such as the funding of Heritage Conservation District studies, I would point out – without agreeing with the appropriateness of the same – that any such provisions should form part of area specific policies that are tailored to, and only applicable to, defined geographic areas; and, not take the form of general policy. Further, it might be appropriate to include therein a set of criteria that would trigger, for the geographic area governed by a particular area specific policy, its eligibility for non-capital benefits, which benefits in some geographic areas could extend to studies of Environmentally Significant Areas contemplated for potential addition to Map 12, ESA studies being of at least equal importance to HCD studies.

**2. Development Consultant representing Edithvale-Yonge Community Association, Lansing Community Association, Silverview Community Association, South of Sheppard Preservation Group and Willowdale Central Ratepayers' Association**  
(Emails dated August 12, 2007 and August 15, 2007)

In response to your e-mail below, my comments are as follows:

1. The proposed amendment to the new Toronto Official Plan simply represents a cash grab, as acknowledged in the originating Notice of Motion. It is unsupported by any stated planning principle and entirely devoid of planning merit.

2. The proposed amendment is fundamentally contrary to the City-building principles of the new Official Plan. Its adoption would, over time, have a serious deleterious effect on the quantity and quality of City-building accomplished there under.
3. Adoption of the proposed amendment, with or without the limitation to Heritage Conservation District study areas, would constitute *a fundamental breach of the s 37 settlement agreement* between the City and the ratepayer and developer appellants at the new Official Plan OMB hearing.
4. If, notwithstanding the foregoing, and other opposing submissions, the City elects to adopt the proposed amendment, then it might be less harmful to do so if the amendment were restricted to Heritage Conservation District study areas.
5. Kindly provide notice to the recipients of this e-mail of any statutory public meeting or adoption of any amendment respecting this matter.

Addendum (Aug. 15/07):

One clarification to my comment "4." (above)

The words "if the amendment were restricted to Heritage Conservation District study areas" should be interpreted to mean that each such study area would be governed by an area specific policy, contained in Vol 3 of the new Official Plan, that included part or all of the proposed amendment - there would be no change to the general s 37 policies contained in Vol 1 of the new Official Plan.

This clarification is in no way to be interpreted as an endorsement of the proposed amendment, even if so reformulated.

**3. Building Industry and Land Development Association (BILD, formerly GTHBA-UDI) (Email dated August 24, 2007)**

The Building Industry and Land Development Association (BILD), formerly known as the Greater Toronto Home Builders' Association - Urban Development Institute (GTHBA-UDI) has had the opportunity to review the above-captioned proposed Official Plan Amendment and presents the following comments in association with its' Toronto Chapter.

***BILD remains opposed to the proposed Official Plan Amendment and does not support the funding of Secondary Plan Studies, Avenue Road Studies and Heritage Conservation District Studies - whether or not they are associated to a particular geographic area - as an eligible Section 37 Community Benefit.***

As you are aware, BILD was an appellant to the Official Plan S.37 policies where successful negotiations resulted in a settlement being approved by the OMB. The proposed Official Plan represents a derogation from the OMB approved principle that Section 37 must have a reasonable planning relationship to the increase in the height and/or density of a proposed development and that the contribution must take the form of, or should be

towards, a capital facility. The use of Section 37 monies to fund studies also runs contrary to their intended use as per the *Planning Act*. Both principles are reflected in the OMB approved S.37 Settlement and S.37 Implementation Guidelines.

In addition, we wish to reiterate the points made in our correspondence of September 12, 2006, March 12 and May 3, 2007 on this matter (attached for your reference), and to reinforce that BILD concurs with staffs position (as expressed in the January 29, 2007 staff report) which does not support a proposed Official Plan Amendment to allow Heritage Conservation District Studies to become eligible community benefits for the following reasons:

- *"the historical practice in Toronto in the use of S.37, pre- and post-amalgamation, has been to generally limit S.37 benefits to capital facilities;*
- *the intent of the former City of Toronto Official Plan S.37 policies was to limit benefits to capital facilities;*
- *the S.37 Implementation Framework adopted by Council in 2000 specified that S.37 benefits were to be capital facilities;*
- *other jurisdictions, such as the City of Vancouver's density incentives, limit benefits to capital facilities;*
- *the Official Plan S.37 policies adopted in 2002 limited S.37 benefits to capital facilities;*
- *community benefits should be durable, physical assets;*
- *developers who contribute the funds are generally opposed to non-capital facilities as benefits (as are many residents' organizations);*
- *including HDC studies as eligible S.37 benefits would set an undesirable precedent for inclusion of other studies or other program/operating matters;*
- *Council's adopted policy on donations for community benefits outside the planning and procurement processes also requires such benefits to be capital facilities and maintains a consistent approach; and*
- *HDC study financing should be provided through the City budget process."*

#### **4. Chair, Etobicoke York Heritage Round Table** (Email dated September 6, 2007)

##### **Recommendations:**

That Council not support the proposed Official Plan Amendment making HCD Studies, Secondary Plan Studies and Avenue Studies eligible S. 37 benefits; and

That Council support an increase in funding to the Planning Division to ensure that resources are available for these three kinds of planning studies.

##### **Background**

The Etobicoke York Heritage Round Table was established to bring together all of the heritage and preservation groups active in the Etobicoke York community council area, as well as members of City-wide and Provincial groups such as the Toronto Historical Association and the Ontario Archaeological Society. Currently 26 groups are members of



the Round Table. Tomorrow, September 6, the Round Table is hosting its second annual heritage fair at Montgomery's Inn, which is a member of the Round Table.

I deputed on behalf of the Round Table on May 3, 2007 urging the Planning and Growth Management Committee to reject the motion before it at that time. It proposed an Official Plan Amendment (OPA) to make Heritage Conservation Districts (HCD) Studies an eligible S. 37 benefit. We said in May: "Since the establishment of Heritage Conservation Districts is a desirable objective on the part of the City and of the heritage community in Toronto, and is consistent with the heritage policy contained in the Official Plan, as a matter of principle public funding for HCD studies should come directly from the Operating Budget in acknowledgement of the importance of preserving the historic fabric of all parts of the city."

The Round Table's position regarding HCD Studies has not changed since May. The contents of our May 3<sup>rd</sup> deputation still apply, and our core issue remains equity of access to funding.

The invitation to depute at this meeting about the now-amended proposed OPA was discussed by members of the Round Table last week, on Tuesday, August 28. There was one dissenting vote from the agreement otherwise expressed by the members present that on its behalf, I urge you to recommend that the OPA not be adopted.

Staff stated unequivocally in a January/07 report that "**HCD study funding should be provided through the City budget process**" [bolding and underlining as in the report].

We continue to support that position because it is not in the interests of our community council area, or of many other parts of the city outside of the downtown core. While residents of the downtown wards that are currently experiencing major development may benefit from the proposal and are therefore supporting the OPA, it leaves large parts of the city without even theoretical access to funding.

In our view, the addition of Avenue Studies and Secondary Plan Studies to the proposed OPA compounds the problem of equity that we identified in May because for some of us, it means that there will be three, not one, kind of planning study that is less likely to happen in our areas. It also raises new questions about why conducting studies that are already a core function of City Planning would be linked in any way with granting increases in height and density that exceed what is allowable under the Official Plan. S. 37 is inherently problematic both because it only comes into play when planning limits are exceeded, and because it does not provide a regular, predictable source of funding for community benefits of any kind, especially given the cyclical nature of the development industry.

The funding for all three of these studies belongs in the City Planning budget. Even those of our members who support S. 37 funding for HCD Studies completely reject the inclusion in the OPA of Avenue and Secondary Plan Studies.

City-wide access to public funding for HCD Studies is so important that despite the City's financial state at this time, we urge Council to create a line in the budget for HCD Studies, and increase the resources available for Avenue and Secondary Plan Studies. The alternative, should the OPA be adopted by Council, is in all likelihood an appeal to the OMB by the developers who have already supported the S. 37 Implementation Guidelines,

prior to the introduction of this proposed OPA. We would prefer to see the funding that would otherwise be spent at an OMB hearing put directly into the City's Operating Budget so funding for all three of these kinds of studies is available across the city on an equitable basis.

The losers in the scenario that will be created if this OPA is adopted fall into several camps.

The top four: first, those communities which are stable and not experiencing the scale of development that generates S. 37 funding; second, the communities that do not choose to allow what is by definition excessive development in return for community benefits; third, communities with councillors who do not support heritage; and fourth, downtown communities that will cease to have access to S. 37 funding when there is a downturn in development, since building booms don't last forever. HCDs must not be seen as a means of dealing with neighbourhood development pressures, but as recognition of heritage merit. I was asked to make one final appeal regarding the S. 37 Guidelines in general: that the process of generating and disbursing all S. 37 funds be entirely transparent and open to public scrutiny.

## **Conclusion**

The Etobicoke York Heritage Round Table urges the Planning and Growth Management Committee and City Council to reject the proposed OPA. Embedded in the Implementation Guidelines for use of S. 37 funds is the principle that S. 37 benefits be limited to capital projects. We urge Council to adhere to that principle, and to ensure that City Planning is provided with sufficient resources to fund HCD, Avenue and Secondary Plan Studies.

## **5. New Toronto Good Neighbours (Email dated September 8, 2007)**

I am writing on behalf of New Toronto Good Neighbours, a community association. Our goal is to create an environment of safety, quality of life, and improvement through advocacy, education, public meetings, open communication and partnership within our community and with the municipal, provincial and federal governments.

We attended the consultation on the proposed Official Plan amendment for Section 37 guidelines.

We do not support broadening or changing the guidelines for Section 37 funds to include Heritage Conservation District studies, Secondary Plans or Avenue studies as eligible community benefits.

When asked to report on amending the Section 37 guidelines, the City of Toronto Planning Staff recommended making no changes.

Why is the City pushing ahead to amend Section 37 eligible benefits when their own experts have advised against it? In view of Planning Staff's recommendation, this seems to be an irresponsible course of action.

We support the Planning Department's recommendation that no changes should be made to increase the eligible community benefits under Section 37.

The proposed amendments appear to be a desperate grab for cash, precipitated by the City of Toronto's budget crisis.

Broadening the uses of Section 37 funds undermines the City's ability to pay for core services. Services which the City does not have the money to provide. Section 37 funds have given our communities benefits like parkland that wouldn't otherwise exist.

Authorizing the use of section 37 funds for studies will cost communities dearly. Broadening the list of eligible benefits opens the door for abuses of Section 37 funding.

We believe Heritage Areas do need protection, and Secondary Plans and Avenue Studies are important to the development of our City. Using Section 37 Funds to provide these studies is not the answer.

The ends do not justify the means.

Thank you for taking the time to review our concerns and suggestions regarding the proposed amendments to the Section 37 community benefit guidelines.