

Further Revisions to the Official Plan Amendment to Authorize Section 37 Funding of Heritage Conservation District Studies Resulting from Comments Received

Date:	September 24, 2008
To:	City Council
From:	Chief Planner and Executive Director, City Planning
Wards:	All
Reference Number:	cc080061

SUMMARY

As directed by Planning and Growth Management Committee, City Planning and Legal staff have met with Mr. George Belza and Councillors Vaughan and Jenkins to discuss Mr. Belza's concerns. Mr. Bill Roberts also attended the meeting. Staff has addressed a number of Mr. Belza's concerns through wording changes to the draft OPA and to the Committee's recommendations, but not all his concerns have been addressed. Staff does not consider it necessary or advisable to include wording in the Official Plan to address a requirement to secure additional benefit types in addition to HCD funding in Secondary Plan areas when density or height maximums are exceeded, nor to address the process of amending the Schedules and maps when HCD studies are completed.

The revised portion of the draft OPA (main body text and Schedule A) is attached as Appendix A to this report. The recommendations are structured in such a manner as to be substituted for the recommendations of Planning and Growth Management Committee, and they incorporate both the additional revisions recommended by staff and the revisions already recommended by the Committee.

RECOMMENDATIONS

The City Planning Division recommends that:

1. The recommendations of Planning and Growth Management with respect to Item PG18.1 be struck and be replaced with the following:

- “1. In accordance with the directions of City Council, the Official Plan be amended substantially in accordance with the draft Official Plan Amendment submitted as Appendix A to the report (August 20, 2008) from the Chief Planner and Executive Director, City Planning, subject to:
 - a. substituting the revised main body text of the draft amendment and Schedule A, as contained in Appendix A to the report (September 24, 2008) to Council from the Chief Planner and Executive Director, City Planning; and
 - b. substituting the revised Maps 5 and 6 attached to the supplementary report (August 21, 2008) from the Chief Planner and Executive Director, City Planning.”
2. Council advise Members of Council and City staff involved in negotiating Section 37/45 community benefits that where funds for Heritage Conservation District studies are being secured, and there is a possibility that not all such funds may ultimately be needed for HCD studies, alternative purposes for such funds be specified in the Section 37 agreements in accordance with the policies of the Official Plan.”

Financial Impact

The recommendations of this report will have no financial impact.

DECISION HISTORY

A more complete decision history is set out in the report dated August 20, 2008 from the Chief Planner and Executive Director, City Planning Division, on this subject. At its September 10, 2008 meeting, Planning and Growth Management Committee recommended that:

1. In accordance with the directions of City Council, Council amend the Official Plan substantially in accordance with the draft Official Plan Amendment submitted as Appendix A to the report (August 20, 2008) from the Chief Planner and Executive Director, City Planning, subject to:
 - a. amending the fourth paragraph under item 1 of the attachment to Appendix A, entitled “Amendment No. 38 to the Official Plan”, to read:

“For clarity, funding of Heritage Conservation District studies is not an eligible Section 37 community benefit with respect to developments proposed within the North York Centre, Sheppard East Subway Corridor or *Central Finch Area Secondary Plans*.”

- b. substituting the revised Schedule A and Maps 5 and 6, respectively, attached to the supplementary report (August 21, 2008) from the Chief Planner and Executive Director, City Planning.
2. Council advise Members of Council and City staff involved in negotiating Section 37/45 community benefits that where funds for Heritage Conservation District studies are being secured, and there is a possibility that not all such funds may ultimately be needed for HCD studies, alternative purposes for such funds be specified in the Section 37 agreements.

ISSUE BACKGROUND

A report dated August 20, 2008 (Item PG18.1) and a Supplementary Report dated August 21, 2008 (Item PG18.1a), both from the Chief Planner and Executive Director, City Planning were before Planning and Growth Management Committee at the September 10, 2008 meeting of the Committee. The following are links to online versions of those reports, respectively: <http://www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-15304.pdf> and <http://www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-15306.pdf>.

On September 10, 2008, in addition to the decisions noted above, the Planning and Growth Management Committee also instructed staff to consult with Councillors and deputants regarding the proposed amendments in the communication (September 8, 2008) from George S. Belza, Partner, ANALOGICA, (Item PG18.1.4), and bring forward appropriate amendments to Council on September 24, 2008. This report is in response to that Committee direction.

COMMENTS

Changes to Accommodate Mr. Belza's Written Submission

On September 22, staff of City Planning and Legal Divisions met with Mr. George Belza and Mr. William Roberts, representatives of the interested ratepayer organizations, and Councillors Jenkins and Vaughan, to discuss the comments submitted by Mr. Belza. Mr. Belza's email communication dated September 8, 2008 to Planning and Growth Management Committee (Item 18.1.4) is reproduced as Appendix B to this report. While agreement on a number of wording issues was achieved, certain issues were not resolved.

Staff has addressed a number of the wording issues raised in Mr. Belza's September 8, 2008 communication, attached as Appendix B to this report. The revised proposed OPA is attached as Appendix A to this report. The revised OPA includes the Committee's direction to add the Central Finch Area Secondary Plan as a secondary plan within which S.37 funding of HCD studies would not be permitted. In addition, staff has addressed the concerns raised in items 5(a), (b), (c), part of (d), and (e) in Mr. Belza's communication. Part of item 5(d) and item 5(f) have not been addressed.

In item 5(d) of Mr. Belza's submission, and in subsequent clarifications, he requests that developments within Secondary Plan areas be treated differently in that HCD funding not be the only Section 37 benefit secured if the Secondary Plan maximum density and height limits are exceeded. Staff is of the opinion that this requirement has no planning basis. If the proposed increase represents good planning, the number and type of Section 37 benefits secured should not be fettered by such an Official Plan provision, provided they conform to the Official Plan in all other respects.

In item 5(f), Mr. Belza seeks additional wording that would require changes to Schedules A and B and the maps without an amendment to the Plan. Legal staff has advised, both at the September 10, 2008 Planning and Growth Management Committee meeting, and subsequently, that changes to the Schedules and maps require an Official Plan amendment. Apart from the procedural issue, staff does not agree that it is necessary to specify in the Official Plan when study funding will no longer be permitted for a Potential HCD, when a Potential HCD need be changed from one type to another, or when a Potential HCD need be removed from the Schedules and maps. The Schedules and maps will be updated from time to time by way of housekeeping amendments to the Official Plan. Normal administrative procedures will keep track of incoming contributions toward HCD studies and what studies have been completed.

To address the last, un-numbered concern expressed by Mr. Belza in his submission, a minor change has been recommended to Recommendation 2 of Planning and Growth Management Committee. The words "in accordance with the policies of the Official Plan" have been added to the end of the recommendation. This change does not affect the wording of the draft OPA.

Additional Changes

An additional change was agreed to at the September 22, 2008 meeting. The criteria for determining "close proximity" of proposed developments to Potential HCDs, set out in the August 20, 2008 report to Planning and Growth Management Committee, would be incorporated in the proposed OPA. Inclusion of these criteria in the proposed OPA will help ensure the existence of a reasonable planning relationship, including an appropriate geographic relationship, between the contributing development and the Potential HCD to be studied, in accordance with the principles of Official Plan Section 37 policy 5.1.1.1.

The revised Schedule A to the OPA as attached to the August 21, 2008 Supplementary Report contained a drafting error that has been corrected in the version attached to this report. Thus, the recommendation of this report is to adopt the attached version of Schedule A.

Conclusions

The recommendations of this report have been drafted to encompass the recommendations of Planning and Growth Management Committee as well as additional revisions to the draft OPA resulting from consideration of Mr. Belza's submission to Committee. The text revisions recommended by Committee and the subsequent additional text revisions recommended by staff are reflected in the portion of the draft

OPA attached as Appendix A to this report. The staff-recommended changes represent improvements and clarifications to the draft OPA. The recommendation is to strike the Planning and Growth Management Committee's recommendations and substitute the recommendations of this report.

CONTACT

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SIGNATURE

Gary Wright
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

- Appendix A: Revised Text of Main Body of Proposed Official Plan Amendment and Schedule A
- Appendix B: Comments (September 8, 2008) from George Belza, Partner, ANALOGICA

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Appendix A

Revised Text of Main Body of Proposed Official Plan Amendment and Schedule A

AMENDMENT NO. 38 TO THE OFFICIAL PLAN

Authorizing funding of Heritage Conservation District studies as eligible community benefits under Section 37 of the *Planning Act* in specified areas of the City

The Official Plan of the City of Toronto is amended as follows:

1. Chapter 7, Site and Area Specific Policies, is amended by adding Site and Area Specific Policy No. 305 for the lands identified on the accompanying maps and written descriptions that form part of the policy, as follows:

305. Areas where Funding of Heritage Conservation District Studies is an Eligible Section 37 Community Benefit

Where Section 37 of the *Planning Act* is used in developments within or in close proximity to those specific areas identified on the accompanying maps as Potential Heritage Conservation Districts, cash contributions to fund Heritage Conservation District studies will be eligible as community benefits. Such contributions will be:

- (a) subject to all provisions of Section 5.1.1 of this Plan except the requirement that community benefits be capital facilities and/or cash contributions toward specific capital facilities; and
- (b) used for no purpose other than the Heritage Conservation District studies specified in the relevant Section 37 agreements or such capital facilities as are specified in the relevant Section 37 agreements.

One or both of the following criteria must be satisfied in order that a proposed development be considered to be within or in close proximity to a Potential Heritage Conservation District:

- (a) the proposed development would likely have an impact on the heritage character of the Potential Heritage Conservation District; or
- (b) the proposed development would benefit from the preservation of the heritage character of the Potential Heritage Conservation District.

The accompanying maps show two types of Potential Heritage Conservation Districts: those where studies and study area boundaries

have not been authorized by City Council, identified on the accompanying maps by numbers; and those where Council has authorized Heritage Conservation District studies and has approved specific study area boundaries, identified on the accompanying maps by letters. The boundaries shown for the former type are symbolic and general in nature, and to the extent that the respective text description for a particular District in accompanying Schedule B provides greater specificity regarding the boundaries, the text description will take precedence over the symbolic boundaries. For the latter type, the specific study area boundaries authorized by Council are shown on the accompanying maps, and no text descriptions are provided.

For clarity, funding of Heritage Conservation District studies is not an eligible Section 37 community benefit with respect to developments proposed within the North York Centre, Sheppard East Subway Corridor or Central Finch Area Secondary Plans.

Schedules A and B below, and the attached maps, also form part of this policy.

2. Maps 24-34, Site and Area Specific Policies, are amended by adding the lands shown on the attached maps as Site and Area Specific Policy No. 305.

Schedule A: List of Potential Heritage Conservation Districts

Map No.	Potential Heritage Conservation District	Map No.	Potential Heritage Conservation District
1	Alderwood	55	Corktown
2	Amesbury	56	Davisville
3	Baby Point	57	Deer Park
4	Bloor West Village	58	Dovercourt Village
5	Davenport	59	Financial District
6	Eatonville	60	Forest Hill
7	Fairbanks	61	Garrison Common
8	Harwood/ Symes	62	Glenwood
9	Humber Bay	63	Gorelands
10	Humberlea	64	Governor's Bridge
11	Humber Summit	65	Grange Park
12	Humber Valley Village	66	Harbord Village
13	Islington	67	Hillcrest
14	Kingsway	68	Humewood
15	Lambton Mills	69	Kensington
16	Long Branch	70	King-Spadina
17	Mimico	71	St. Lawrence District East
18	Mount Dennis	72	Leslieville

Map No.	Potential Heritage Conservation District	Map No.	Potential Heritage Conservation District
19	New Toronto	73	Moore Park
20	Queensway	74	Palmerston
21	Regal Heights	75	Parkdale/ Queen West
22	Rexdale	76	Queen Street West/ Trinity Bellwoods
23	Runnymede	77	Rathnelly
24	Swansea	78	Riverdale
25	Sunny Lea/ Sunnylea	79	Seaton Village
26	West Toronto Junction	80	South Hill
27	Thistletown	81	The Beach
28	Thorncrest	82	Topham Park
29	Weston South	83	Queen's Park Precinct/University Ave
30	Armour Heights	84	Woodbine Gardens
31	Bedford Park	85	Yonge - Yorkville
32	Bennington Heights	86	Bendale
33	Bridle Path	87	Birchcliffe
34	Caribou Park	88	Cliffcrest
35	Don Mills	89	Cliffside
36	Downsview	90	Guildwood Village
37	Glen Park	91	Highland Creek
38	Heathbridge Park	92	Malvern
39	Lansing	93	Oakridge
40	Lawrence Park	94	Scarborough Junction
41	Leaside	95	West Hill/ Old Kingston Road
42	Lytton Park	96	West Rouge
43	Sherwood Park	A	Agincourt
44	Teddington Park	B	Annex (Madison Avenue)
45	Willowdale	C	Balmy Beach
46	Windfields	D	Casa Loma
47	Yorkmills	E	Harbord Village - Phase 2
48	Allan Gardens	G	Liberty Village
49	Allenby	H	Queen Street East
50	Annex West	J	St. Lawrence Area Phase 1
51	Beaconsfield Village	K	Toronto Islands
52	Brockton	L	Summerhill
53	Cedarvale	M	West Queen West
54	Chaplin Estates	N	Weston Area Phase 2

Appendix B

Comments (September 8, 2008) from George Belza, Partner, ANALOGICA

Mon 08 Sep 08

Planning and Growth Management Committee
Toronto City Hall - 2nd Floor
100 Queen Street West
TORONTO M5H 2N2

Attention: Merle MacDonald, Administrator

Re: ITEM PG18.1/18.1a - Draft OPA 38: Section 37 Funding of HCD Studies

I act on behalf of the Edithvale-Yonge Community Association and, together with Mr William Roberts, on behalf of FoNTRA and CORRA, in the above-captioned matter (collectively "the ratepayer organizations"). Kindly list me as a deputant and ensure that this communication is included in the materials before the Committee when the item is considered.

The ratepayer organizations object to proposed Draft OPA 38 as currently formulated. General grounds for doing so include the following:

1. The proposed OPA violates the fundamental principle of the recently approved Toronto Official Plan stated in s 5.1.1; viz that s 37 community benefits take the form of capital facilities that bear a reasonable planning relationship to the increase in the height and/or density of the proposed development. While the *conservation* of actual heritage resources that are designated and/or listed may, in certain circumstances, exhibit such a relationship the mere *study* of a *potential* Heritage Conservation District cannot do so. If a HCD study is warranted, then it should be done *prior* to consideration by Council of a related development proposal as part of the review process, much as Community Facility or Avenue Segment review studies are, not afterwards as a result of s 37 funding.

2. The proposed OPA violates the fundamental principle of the Toronto Official Plan stated in s 5.3.1; viz that OPAs inconsistent with the general intent of the Official Plan will be discouraged. The intent of the Official Plan to restrict s 37 community benefits to capital facilities is a fundamental principle that should not be violated for the sake of financial expediency.

3. The proposed OPA trivializes the Official Plan's s 37 provisions, consensually crafted by City staff and representatives of both the ratepayers and the development industry, and relatively recently approved by the Board as a settlement of their s 37 appeals. The agreed-upon OP provisions are intended to foster City-building, not serve as an alternative - and *ultra vires* - source of funding of (payment to) the municipality, community groups or politicians. The proposed OPA represents a material violation of

the aforementioned settlement agreement.

4. The proposed OPA will potentially result in larger buildings and the weakening of Secondary Plan policies to the detriment of communities. In the end, nothing is free; a price is paid for everything, including s 37 community benefits.

5. The proposed OPA is substantively not well formulated. It is so broadly drafted as to effectively constitute a general policy masquerading as an area specific policy, one that can, in its current form, over-ride Secondary Plan policies. In addition, as presently formulated, OPA 38 would allow multiple 'studies' of a potential HCD, theoretically *ad infinitum*, instead of ensuring that, once a study of a potential HCD area has been funded, whether through the use of s 37 or otherwise, the potential for subsequent s 37 non-capital facilities funding in that area ceases (regardless of the outcome of the study) and the HCD is automatically deleted from the schedules (without the necessity for adoption of another OPA).

Specific wording concerns include the following:

a. Item 1, first para. Inclusion of the phrase "other than as specified in the relevant Section 37 agreements" in the beginning of the second sentence opens the door, in the context of the words that follow, to only a portion (perhaps a relatively small portion) of the s 37 monies obtained from approval of development actually being used for HCD studies with the remainder effectively being allocated to non-capital uses (potentially including political slush funds) through the use of creatively worded (and interpreted) provisions inserted into s 37 agreements. To lessen the likelihood of such an untoward result, it would be better that the wording of the sentence be tightened up along the following lines: "**Such contributions will (a) be subject to all provisions of Section 5.1.1 of the Official Plan except the requirement that community benefits be capital facilities and/or cash contributions toward specific capital facilities, and (b) will be used for no purpose other than the Heritage Conservation District Studies specified in the relevant Section 37 agreements or such capital facilities as are specified in the relevant Section 37 agreements.**"

b. Item 1, second para. Clarify the first sentence as indicated to read: "The accompanying maps show two types of Potential Heritage Conservation Districts: those where studies and study area boundaries had not been authorized by City Council as of July, 2008, **denoted on the maps by numbers**; and those where Council had authorized Heritage Conservation District studies and ^ approved specific specific study area boundaries as of July, 2008, **identified on the maps by letters**. **Only the former are included in Schedules A and B.**"

c. Item 1, second para. The current second sentence as presently worded is grammatically incorrect; there is no antecedent to "that District". The missing antecedent may be provided by inserting the phrase "for a particular District" after "respective text description, so that the sentence reads: "The boundaries shown for the former type are symbolic and general in nature, and to the extent that the respective text description **for a**

particular District in accompanying Schedule B provides greater specificity regarding the boundaries of that District, the text description will take precedence over the symbolic boundaries."

d. Item 1, third para. The first sentence should be re-worded and the second sentence deleted in order that Secondary Plans may retain meaningful limits and the ability to restrict the use of s 37 to capital facilities in their areas. The paragraph would then read: "Where development is proposed within a Secondary Plan area and is also within or in close proximity to a Potential Heritage Conservation District, and the applicable Section 37 policies provide sufficient flexibility with respect to the type of benefits that may be secured, then the funding of Heritage Conservation District Studies is deemed to be an eligible Section 37 community benefit provided that **any maximum height and density limits specified in the Secondary Plan are not exceeded as a result and provided that** all other applicable Official Plan provisions are satisfied."

e. Item 1, fourth para. The Central Finch Area Secondary Plan should be added to the list of exempted secondary plans contained in the fourth paragraph, in order to preserve its demonstrated functionality and be in accordance with the manifest intent of that Secondary Plan. The paragraph would then read: "For clarity, funding of Heritage Conservation District studies is not an eligible Section 37 community benefit with respect to developments proposed within the North York Centre, Sheppard East Subway Corridor **or Central Finch Area Secondary Plans.**"

f. Item 1, fifth para. To prevent s 37 funded HCD 'studies' from continuing indefinitely in a given area, long after any actual has been satisfied, the following paragraphs should be added immediately after the fourth paragraph and before the final paragraph:

"Over time, City Council will approve specific study area boundaries for those Potential Heritage Conservation Districts included in Schedules A and B and identified on the maps by numbers. Upon such approval, the Potential Heritage Conservation Districts will be deleted from Schedules A and B and identified on the maps by letters, rather than numbers, without an amendment to this Plan.

"Regardless of how identified, whether by a letter or a number, once a Potential Heritage Conservation District study has been adequately funded, it will be completed and its result considered by Council in timely fashion. If the study has encompassed the entire Potential Heritage Conservation District, then the Potential Heritage Conservation District will be deleted from Schedules A and B and/or the accompanying map, without an amendment to this Plan. If the study has encompassed only part of the Potential Heritage Conservation District, then the text in Schedule B and/or the accompanying map will be appropriately amended to delete only the area studied, without an amendment to this Plan. However, in all instances, the addition of a Potential Heritage Conservation District will require an Official Plan Amendment."

The ratepayer associations additionally object to the second recommendation contained in

the staff report dated 20 Aug 08 as currently worded. The recommendation should be appropriately qualified by adding at the end the following words " ... **in accordance with the policies of the Official Plan as modified by OPA 38**".