

**Section 37 Funds:
All Scarborough Wards & Scarborough Centre**

Date:	October 13, 2009
To:	Scarborough Community Council
From:	Director, Community Planning, Scarborough District
Wards:	All Scarborough Wards
Reference Number:	09 169584 EPS 00 TM

SUMMARY

As requested at its meeting of September 15, 2009, this report provides Scarborough Community Council with information respecting Section 37 funds. Specifically, this report includes:

- a. a discussion of the policy framework for the implementation of Section 37 funds as set out in the Planning Act and the Toronto Official Plan;
- b. City Finance's protocol respecting the allocation of Section 37 funds through the budget process;
- c. the legislative process to be followed for any re-allocation of the Section 37 funds originally contemplated under the Section 37 provisions ;
- d. a discussion of the motions respecting the re-allocation of the approximately \$373,000 of Section 37 funds for park improvements, tree planting and playground equipment in Ward 38;
- e. a discussion of project opportunities and funding associated with the Scarborough Centre Civic Precinct Implementation Plan, a summary of available Section 37 and Civic Centre land sale funds, and other proposed projects in Ward 38, and
- f. information concerning current Section 37 account balances in each of the Scarborough wards.

RECOMMENDATIONS

The City Planning Division recommends that:

1. Scarborough Community Council receive this report for information.

Financial Impact

There are no financial implications arising from this report.

DECISION HISTORY

At its meeting of September 15, 2009, Scarborough Community Council, upon discussion of a motion by the Councillor for Ward 38 requesting the re-allocation of Scarborough Centre Section 37 funds to other projects in the ward, referred the following four motions to Planning staff, in consultation with Finance, for a report back to Scarborough Community Council at its next meeting on October 13, 2009:

1. “That City Council authorize the necessary actions to enable the re-allocation of the \$373,000.00 allocated for daycare purposes as follows:
 - the \$373,000.00 plus accrued interest be re-allocated for park improvements, tree planting and playground equipment within Ward 38.”
2. “That City Planning, in consultation with City Legal and Finance, undertake the process to re-allocate this Section 37 fund, including, if necessary, amending the provisions contained within the Official Plan and/or zoning by-law and the existing Section 37 agreement that apply to the lands at 61–77 Town Centre Court.”
3. “That staff review and report to Scarborough Community Council on the City Centre Precinct plan for project opportunities.”
4. “That Planning staff, in consultation with Finance, report on all Section 37 funds unspent in all Scarborough wards.”

ISSUE BACKGROUND

Section 37 of the Planning Act authorizes a municipality to pass zoning by-laws involving increases in the height or density otherwise permitted by the zoning by-law, in return for the provision (by the owner) of facilities, services or matters (community benefits). The municipality must have appropriate policies respecting implementation of Section 37 within its Official Plan. Section 5.1.1 of the Toronto Official Plan contains such policies. Toronto City Council adopted Implementation Guidelines for Section 37 of the Planning Act at its meeting of November 19-20, 2007, as well as a Protocol for Negotiating Section 37 Community Benefits at its meeting of December 11-13, 2007. (see Attachment 1 “Appendix A – Approved Section 37 Policies of the Official Plan (Section 5.1.1. Height and/or Density Incentives). These documents can also be found on the City’s website at:

www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-7456.pdf); and
www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-8349.pdf)

The term “community benefits” reflects the City’s priority on providing public benefits within the local community in which the contributing development project is located. Provided the development constitutes good planning and is consistent with the objectives

and policies of the Official Plan an increase in height and/or density may be considered in return for community benefits at no cost to the City.

Community benefits are capital facilities and/or cash contributions towards specific capital facilities, above and beyond those that would otherwise be provided under the provisions of the Planning Act or through other legislative means, for example the Development Charges Act. The community benefits must be set out in the zoning by-law (as per Section 37(1) of the Planning Act). These benefits are generally secured in a Section 37 agreement which is registered on title.

Section 5.1.1 (Height and/or Density Incentives) of the Official Plan requires, amongst other matters, that 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 the planning issues associated with the development.

COMMENTS

Section 37 Funds – Financial Accounting Procedures

At the time of amalgamation, all Section 37 funds and earned interest (as of December 31, 1997) from the former City of Scarborough were transferred to a City of Toronto “Subdivider's Reserve Fund”. Since amalgamation, subsequent contributions from across the City were accounted for in a variety of accounts, many of which were not “interest-bearing” accounts. In June 2008, Finance transferred \$49.9 million in identified Section 37 funds from the various City accounts to the Planning Act Reserve Fund, as authorized by Council at its meeting of March 3, 4 & 5, 2008. This transfer of funds to a common account was initiated to improve tracking of the funds and to provide for the allocation of interest to the Section 37 funds. Included in the \$49.9 million Section 37 funds was approximately \$11.1 million of Section 37 funds from the former City of Scarborough, which had been held in the Subdividers Reserve Fund and a City clearing account.

The Planning Act Reserve Fund contains internal order accounts for the funds received for each community benefit negotiated in each Section 37 agreement. Interest is earned on the balances in these internal order accounts throughout the year (starting on January 1, 2008), and paid to the order account at year-end.

To access the Section 37 funds for the purposes as set out in the Section 37 agreements, Council must approve a draw from the internal order account in the Planning Act Reserve Fund through the City operating or capital budget processes or through a separate report through Budget Committee and Executive Committee to Council.

Section 37 - Re-allocation of Funds

Pursuant to Section 37 of the Planning Act, community benefits are secured for specific purposes. There are occasions where priorities change and Community Councils may be asked to re-allocate Section 37 funds from the originally intended community benefit prescribed within the zoning by-law and/or Section 37 agreement. In such cases, Council

authority is required to initiate the process which may include amending the Official Plan and/or zoning by-law and/or the original Section 37 agreement pertaining to the lands.

The Toronto Official Plan contains detailed policies to govern the use and implementation of Section 37. Section 5.1.1 provides a policy framework for determining what may be considered a community benefit and how it is intended to be realized. Proposed re-allocation of funds from the original community benefits, which are not in keeping with the Section 37 policy framework contained in the Official Plan, are discouraged.

In some cases, a proposed change to the Section 37 funds may involve an amendment to the Section 37 agreement but still be in compliance with the zoning by-law and in conformity with the Official Plan. In such cases, the agreement may need to be amended. It should be noted that Council cannot unilaterally amend an agreement. All parties to the original agreement, or their successors in title, must approve the change and sign an amending agreement. Where a condominium has been registered, the process required to obtain the condominium's consent to any proposed changes will be governed by the condominium declaration for that condominium corporation. It could involve obtaining the approval of all unit owners, the approval of a minimum percentage of unit owners, or possibly only the approval of the condominium board of directors.

Specific Section 37 community benefits and/or cash contributions towards a specific community benefit are set out in the zoning by-law provisions as per Section 37 of the Planning Act, amendments to those provisions may be required before the Section 37 agreement can be amended. Further, as noted above, if the proposed change is not in keeping with the City's policy framework respecting the implementation and use of Section 37, as set out in the Official Plan, an Official Plan Amendment may also be required.

Proposed Re-allocation of Section 37 Funds – Ward 38

At the September 15th, 2009 Scarborough Community Council meeting, the Councillor for Ward 38 introduced a motion seeking reallocation of approximately \$373,000 (plus earned interest) of Section 37 money earmarked for a daycare in the south portion of the Scarborough Centre on city-owned lands. The motion requested that these funds be directed to park improvements, tree planting and playground equipment in Ward 38.

The developer, Tridel, made a contribution of \$625,000 which was held in an interest bearing account. \$631,861 was spent on the construction of the Squirrel's Nest Day Care Centre with the remainder earmarked for future day care projects in the Scarborough Centre, including capital maintenance or enhancement of the Squirrel's Nest. The account balance, as of September, 2009, is \$372,780. Interest for 2009 will not be posted to the account until the end of 2009. City Finance estimates that the interest will be \$13,644, bringing the total to \$384,424.

As noted in the above section, Council authority is required to initiate the process to re-allocate Section 37 funds and this process could include amending the Official Plan

and/or zoning by-law and/or the original Section 37 agreement pertaining to the lands. Based on preliminary review of the proposed re-allocation of the funds for park improvements, tree planting and playground equipment, it is the opinion of Planning staff that amendments to the Official Plan and Zoning By-law would be required. The daycare contribution is set out in the agreement that pertains to the condominium corporations at 61, 63-77 Town Centre Court and 115-125 Omni Drive. The agreement would need to be reviewed by City Legal to determine whether this agreement must be amended to enable the re-allocation of funds. The consent of the condominium corporations would be necessary and could involve obtaining the approval of all unit owners, the approval of a minimum percentage of unit owners, or possibly only the approval of the condominiums' boards of directors. Should Scarborough Community Council adopt the motion to re-allocate the approximately \$373,000 of Section 37 funds for park improvements, tree planting and playground equipment in Ward 38, it would provide staff with the needed direction to initiate the process to amend the Official Plan, Zoning By-law and Section 37 agreement (if necessary).

Following the September 15th meeting of Scarborough Community Council, Planning staff have located documentation confirming that Scarborough Council had intended that the unused portion of the Section 37 contribution that funded the initial construction of the Squirrel's Nest Day Care Centre at Brimley and Ellesmere in Ward 37 be retained to fund future daycare expenditures in the Scarborough Centre, which may include improvements or renovations to the Squirrel's Nest daycare. The Councillor for Ward 37 has had discussions with Squirrel's Nest staff and advises that there are facility needs which could make use of the available Section 37 funds. Should Scarborough Community Council not adopt the motion to re-allocate the approximate \$373,000 for park improvements, tree planting and playground equipment in Ward 38 and retain the funds for its original daycare use, it is the opinion of Planning staff that amendments to the Official Plan and Zoning By-law would not be necessary. Utilization of the funds in this way would be in keeping with the purpose and intent of this fund and requires only a budget approval of a specific capital project.

Also, subsequent to the September 15th meeting, the East Scarborough Boys and Girls Club contacted Planning staff and suggested that the original intended purpose of the funds was for daycare purposes and if it is to be reallocated away from the Scarborough Centre, it would be appropriate to consider contributing it to capital improvements to their daycare facility in Ward 36. The Councillor for Ward 36 has submitted a letter in support of this suggestion. It is Planning staff's opinion that utilization of this fund in this way would require an amendment to the Section 37 agreement, to the zoning by-law and to the Official Plan and may also require agreement with the Condominium Corporations party to the agreement.

Civic Precinct Implementation Plan

City Planning staff recently prepared a report entitled "Scarborough Centre Civic Precinct Implementation Plan, adopted at the April 6, 2009 meeting of City Council. The report (available on the City of Toronto's website at

<http://www.toronto.ca/legdocs/mmis/2009/sc/reports/2009-03-26-sc24-cr.pdf>), sets out a list of priority projects and initiatives which will accelerate the maturation of the Civic Precinct as the focal point in the Scarborough Centre. Each initiative and/or project has a financial impact associated with it and potential ranges have been estimated. The total cost for these initiatives and/or projects is estimated to be between \$11.8 and \$29.2 Million, as outlined in Table 1.

Table 1
Scarborough Centre Civic Precinct Implementation Plan – Projects and/or Initiatives

Projects and/or Initiatives	Cost (Range in \$M)
Galleria (weather protected central pedestrian spine/hub between STC mall entrance and Albert Campbell Square)	\$2.0 – 6.0
Albert Campbell Square Expansion (improvements to the soon to be acquired base park from the Goldman/Monarch EQ1 and EQ2 development)	\$2.0 – 2.0
Sculpture Garden & Civic Centre View Corridor (reinventing the Hand of God block to accommodate the new Scarborough Centre Branch Library)	\$1.0 – 1.5
Scarborough Centre Branch Library Enhancements (including an enclosed pedestrian connection between the new Library, the Civic Centre and Albert Campbell Square)	\$1.0 - \$1.5
Albert Campbell Square Furniture (replace old/broken furniture; includes Albert Campbell Square Expansion lands)	\$0.5 – 1.0
Public Art (creation of a comprehensive Public Art Plan)	\$1.0 – 2.0
Arrival Plaza @ Borough Approach East (create a front door to the south side of the Civic Centre complex)	\$0.5 – 1.0
Borough approaches East & West Reconstruction (reconfiguring Borough Approach East and West to allow for full-moves intersections at Ellesmere Road to reduce traffic on Borough Drive)	\$1.0 – 2.2
Greening Borough Drive	\$0.5 – 1.5
New Civic Centre Forecourt (create a front door to the south side of the Civic Centre complex,)	\$0.5 – 1.0
Signage/Wayfinding (create a comprehensive signage/wayfinding plan to ensure the Centre is well connected to its surrounding neighbourhoods, the City and the Region)	\$0.5 – 1.2
Showers/Gym Facilities (to facilitate the use of bicycles as a mode of transportation)	\$0.7 – 6.9
Woodlot Management (the largest green space within the Scarborough Centre and a plan needs to be created to protect, restore and enhance the health of the woodlots)	\$0.3 – 0.8
Pedestrian Connection Enhancements (the need for effective and efficient movement of people in and around the Centre)	\$0.3 – 0.6
Total	\$11.8-29.2

Planning staff (with input from Facilities & Real Estate, Cultural Services and Parks, Forestry & Recreation) in consultation with the Ward Councillor have identified four priority projects for 2010: i) Galleria Feasibility Study; ii) Albert Campbell Square Expansion; iii) Sculpture Garden and Civic Centre View Corridor; and iv) Scarborough Centre Branch Library Enhancements. These projects have an estimated cost of \$3.9 million, of which \$2.1 million can be funded through the allocation of Section 37 funds through the City's budget process and \$1.8 Million would be funded from the proceeds of the sale of the Civic Centre gravel parking lot. Allocation of these funds to the Albert Campbell Square expansion is consistent with Council's decision in May, 2004 to allocate proceeds of the transaction to improvements to the Civic Centre Complex. Council approval for these projects would be through the City's regular capital budget process.

Section 37 Account Balance – Scarborough Centre

Scarborough Centre has a total Section 37 account balance of \$4.59 Million (Table 2). Although Scarborough Centre includes Ward 37 and Ward 38, the entire \$4.59 Million is associated with Section 37 funds secured from nine residential and commercial developments within the Ward 38 portion of Scarborough Centre. When combined with the \$1.8 Million from the proceeds of the sale of the Civic Centre gravel parking lot, this results in a total of \$6.39 Million.

Other Ward 38 Projects

City Planning staff have worked with the Ward 38 Councillor to review, in detail, the purposes/projects intended to be funded by the Section 37 funds contributed by nine Scarborough Centre developments. In addition to the above noted four priority projects in the Scarborough Centre, the Ward Councillor has identified priority capital projects elsewhere in Ward 38. The Ward Councillor has been working with City Planning and Finance staff to identify Section 37 agreements that include clauses providing the City with flexibility to spend the community benefit contributions outside the Scarborough Centre. The Ward Councillor also has been working with operating divisions to initiate projects in the 2010 capital budget to allocate \$500,000 of this money to improvements to the Scarborough Animal Control Centre at 821 Progress Avenue and \$579,000 on playground equipment projects in Ward 38 outside the Scarborough Centre.

The Councillor has also identified additional capital project priorities in Ward 38 for which no Section 37 funds could be identified with the required flexibility in the current agreements. This situation lead to the motion to re-allocate Section 37 funds discussed earlier in this report.

Section 37 Account Balances – All Wards

In July 2008, City Planning (Policy and Research) provided each City Councillor with two reports: i) a descriptive report detailing all Section 37 funds and projects, including

non-cash benefits, in each of their respective wards; and ii) a cash summary report detailing secured, received and spent Section 37 funds for each respective ward.

At its meeting on September 15, 2009, Scarborough Community Council requested Planning staff (in consultation with City Finance) to provide information on all Section 37 funds unspent in all Scarborough wards. Table 2 (below) contains a listing of current Section 37 account balances (which include letters of credit) for each Scarborough Ward. Table 2 has been prepared using the information originally contained within the “Cash Summary Reports” provided to the Councillors in July, 2008, updated to September 2009.

Table 2
Current Section 37 Account Balances: All Scarborough Wards

WARD	NUMBER OF PROJECTS	CURRENT S37 ACCOUNT BALANCES
35 Scarborough South-west	7	\$2,553,978
36 Scarborough South-west	2	\$317,889
37 Scarborough Centre	4	\$2,325,344
38 Scarborough Centre	9	\$4,590,266
39 Scarborough Agincourt	1	\$1,200,000
40 Scarborough Agincourt	2	\$392,077
41 Scarborough Rouge River	3	\$710,262
42 Scarborough Rouge River	3	\$323,640
43 Scarborough East	1	\$399,950
44 Scarborough East	3	\$195,760

It should be noted that current Section 37 account balances refers to those funds secured by the City through Section 37 agreements for specific community benefits that are currently held in the Planning Act Reserve Fund, plus interest paid as of December 31, 2008.

The current Section 37 account balances for all Scarborough wards are held in the Planning Act Reserve Fund. Much of this money, however, is either already budgeted for specific capital projects by the relevant operating divisions in the 2009 Budget, or proposed to be used as a funding source for projects being recommended for inclusion in the draft 2010 Capital Budget. Conversely, some of this money may continue to be held in the reserve fund until such time as additional funds are received to complete funding for a specified community benefit (e.g. Community Centre). It should be noted, that the status of these funds is constantly subject to change, either through expenditure by ongoing projects, or through allocation to new projects. This latter circumstance is particularly relevant now that the 2010 Capital Budget process has commenced. For a more detailed discussion of the status of the balance within specific Section 37 accounts for each ward, the Councillor should contact City Planning and Finance staff.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Appendix A – Approved Section 37 Policies of the Official Plan (Section 5.1.1 Height and/or Density Incentives)

Attachment 1: Consolidated Section 37 Implementation Guidelines and Protocol

Appendix A Approved Section 37 Policies of the Official Plan (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 policies; and
 - c) the use of Section 37 must be contingent upon adequate infrastructure to support the development.

(Non-Policy) Sidebar located opposite Policy 1:

This Official Plan recognizes that planning issues related to a proposed development go beyond consideration of matters necessary to support that particular development. They include consideration of appropriate amenities and services in the local community within which the development is to be located. In other words, the planning issues may go beyond appropriate built form, use, compatibility, direct impact, site planning, adequate servicing and the proper functioning of the development to include the adequacy of, for example, the green space system, community services and facilities, the bikeway network, arts and cultural facilities, the public transit system and other aspects of the public realm. These amenities and services are important in maintaining the quality of life in the City while accommodating intensification and thus may have a reasonable planning relationship to the new 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 therefore, 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.