

Item:



Committee of the Whole Report

DATE: Tuesday, April 02, 2019

WARD: 4

**TITLE: PROPOSED OFFICIAL PLAN AMENDMENT SECTION 37
POLICIES VAUGHAN METROPOLITAN CENTRE SECONDARY
PLAN, FILE NO. 26.16**

FROM:

Jason Schmidt-Shoukri, Deputy City Manager, Planning and Growth Management

ACTION: DECISION

Purpose

To seek approval from the Committee of the Whole for a proposed Official Plan Amendment (Attachment 1) that modifies Policy 11.12 of the Vaughan Metropolitan Centre Secondary Plan ('VMC SP') Volume 2 of Vaughan Official Plan 2010 ('VOP 2010'). The proposed amendment would waive the need for a site-specific Official Plan Amendment ('OPA') application only when an increase to building height and/or density is approved by a Council adopted Zoning By-law Amendment ('Rezoning') application and Section 37 contribution.

Report Highlights

- The proposed amendment to Policy 11.12 of the VMC SP would waive the need for an OPA application only for an increase to building height and/or density, in conjunction with a Council approved Rezoning application and Section 37 contribution
- The proposed amendment maintains the strength of Council's decisions

Recommendations

1. That Official Plan Amendment #34, appended as Attachment 1, BE APPROVED, to amend the provisions of Vaughan Official Plan 2010, specifically Policy 8.1.23 within Volume 2, Policy 11.12 Vaughan Metropolitan Centre Secondary Plan, to include a new provision to permit an increase in building height and/or density for

a proposed development through a Zoning By-law Amendment approval without needing an Official Plan Amendment application if there is a Council approved Section 37 contribution.

Background

A Committee of the Whole Public Hearing was held September 17, 2018, to receive all comments on the proposed Official Plan Amendment for which there were none.

The following recommendations were approved by Council on September 27, 2018:

1. That the Public Hearing Report on the proposed amendment to Policy 8.1.23 of the Vaughan Metropolitan Centre Secondary Plan (Policy 11.12 of Vaughan Official Plan 2010 Volume 2) BE RECEIVED; and
2. That any matters identified through the Public Hearing process be reviewed and addressed by the Policy Planning and Environmental Sustainability Department in a comprehensive report to the Committee of the Whole in Q1 of 2019.

An email dated September 17, 2018, (Attachment 2) was received by CN Rail who advised they had no concerns with the amendment as long as there was no change to their receipt of proposed zoning changes by the development industry. CN Rail works with the development industry and the City to reduce potential conflicts between CN operations at the MacMillan Rail Yard and developments within the VMC area. This proposed Amendment will not impact the current circulation commenting process with CN Rail.

Following the Public Hearing, a letter (Attachment 2) was received from Liberty Developments ('Liberty') agreeing with the proposed amendment. Liberty requested consideration for a refund regarding their OPA application (File OP.18.005) in conjunction with Rezoning Amendment application (File Z.18.009). Liberty has requested, if proposed OPA #34 is adopted, that a recommendation be included to permit the return of their OPA application fee in the amount of \$29,700. This request is reviewed in detail under the heading "No Refund for OPA Applications."

Previous Reports/Authority

The September 17, 2018, Committee of the Whole (Public Hearing) report can be found here:

<https://pub-vaughan.escribemeetings.com/filestream.ashx?DocumentId=5984>

The September 27, 2018, Council decision can be found here:

<https://pub-vaughan.escrimemeetings.com/filestream.ashx?DocumentId=7115>

Analysis and Options

The Vaughan Metropolitan Centre ('VMC') is Vaughan's new downtown and includes a subway station, bus terminal and a York Viva bus rapid-way station. The effective and efficient approvals of development applications in the VMC is paramount to the continued success of the creation of Vaughan's downtown.

The *Planning Act* and City's Official Plan are the legislative and policy framework allowing a municipality to seek a Section 37 contribution

The *Planning Act* (Section 37, subsection (1)) allows municipalities to secure public benefits: "may in a by-law passed under Section 34, authorize increases in the height and density of development otherwise permitted by the by-law." Subsection (2) states "a by-law shall not contain the provisions mentioned in subsection (1) unless there is an Official Plan in effect." There is no formal application for a Section 37 Contribution request. Council decides whether to request or accept a Section 37 Contribution at the time of Council's consideration and approval of a site-specific Rezoning application for an increase to building height and density.

VOP 2010 Policy 10.1.2.9 a) states "In accordance with Section 37 of *the Planning Act*, Council may authorize an increase in the building height and/or density of development otherwise permitted in areas of the City, as contained in Volume 1 or Volume 2 of the Plan, or as contained in a site-specific zoning by-law, in return for the provision of community benefits..."

VOP 2010 Policy 10.1.2.12 states "increased building height and density provisions under Section 37 of the *Planning Act* will be implemented by site-specific Zoning By-laws."

Notwithstanding the general Section 37 policies contained in VOP 2010, there are policy directions provided in both Volumes 1 and 2 of VOP 2010 defining minimum and maximum heights and densities.

Policy 10.2.1.7 in Volume 1 of VOP 2010 states: "That where policies of this Plan contain numerical standards, minor variations from those standards may be permitted without amendment to this Plan, with the exception of any variations to floor space index, height or environmental standards set out in Chapter 3..."

Policy 9.4.4 VMC Secondary Plan states: “Minor variations from numerical requirements in the plan, with the exception of maximum and minimum heights and densities, may be permitted without an Official Plan Amendment...”

The need for an Official Plan Amendment can be waived

Policies 10.2.1.7 VOP 2010 and Policy 9.4.4 VMC SP require an OPA for increases in height and density beyond the permitted maximums. The need for an OPA is separate from the Section 37 process. Through official plan policies, there is the potential for Council to tie the two processes together and permit increases in height and density without the need for an OPA in conjunction with a Rezoning and Section 37 Contribution.

Proposed OPA Protects Council’s Decision-Making Authority as Granted by Bill 139

To decrease the possibility of Council’s recommendations being appealed to the Local Planning Appeal Tribunal (‘LPAT’), OPA #34 is worded to waive the need for an OPA application when a decision is made on the Rezoning Application.

The Province of Ontario enacted Bill 139 on December 12, 2017, and the legislative amendments to the *Planning Act* came into effect on April 3, 2018. These amendments significantly change the way local planning decisions are reviewed in Ontario and places greater authority on municipal Council decisions.

The following are new processing timelines for applications:

1. For an OPA or a joint OPA/Rezoning application, Council has 210 days to adopt an OPA before the applicant can file an appeal for Council’s failure to make a decision.
2. For Rezoning applications only, Council has 150 days to make a decision on an application before the applicant can file an appeal for Council’s failure to make a decision.

Previously, there was little criteria required to appeal Council’s decision to the LPAT (formerly Ontario Municipal Board).

As per Bill 139, an appeal of a Council decision that was made within the prescribed time line to the LPAT is limited to the following two criteria for OPA and Rezoning proposals:

1. The existing part or parts of the official plan and zoning by-law would be affected by the requested amendment are:
 - inconsistent with the Provincial Policy Statement ('PPS')
 - conflicts with a Provincial plan (e.g. Growth Plan)
 - fails to conform with the applicable Official Plans (e.g. York Region and City Official Plans); and
2. The application is consistent with the PPS, Growth Plan and the applicable official plans

This is the key point to this review. If the LPAT considers the City's VMC Secondary Plan to be consistent with the Provincial Policy Statement and is in conformance with the Growth Plan and York Region's Official Plan; an OPA proposal to increase permitted building height and/or density refused by Council, has limited potential for success at an LPAT appeal because the criteria for an appeal may not have been met.

Under the proposed process, if Council refuses a Rezoning application for an increase to building height and density, the need for an OPA application would not be waived. If the Rezoning application is appealed to the LPAT, the Tribunal could deny hearing the appeal on the basis the proposal fails to conform with the Official Plan.

This may seem onerous to the proponent; however, it does ensure if the proponent wishes to take advantage of Council's decision to waive the need for an OPA, the Rezoning application and Section 37 Contribution are appropriately considered.

The proponent has the option to submit OPA and Rezoning applications along with consideration for a Section 37 Contribution and proceed through the typical process.

The process steps for a Zoning By-law Amendment application to increase building heights and density under the proposed OPA #34 is outlined in Attachment 3.

The proposed OPA #34 could be worded to waive the need for an OPA at the Rezoning application submission and the offer of a Section 37 Contribution; however, under this scenario if Council refuses the application, the proponent could rationalize to LPAT their appeal is justified because the need for an OPA was waived thus the application complies with the City's Official Plan. In this scenario, Council's refusal of the Rezoning application may not be in compliance with the City's Official Plan and could be grounds for an LPAT appeal. This process provides greater certainty to the applicant because the need for an OPA is waived upfront in the process; however, it may reduce the strength of Council's decision.

No Refund for OPA Applications

It would not be appropriate to grant a refund for the Liberty OPA application. The application was administered under previous policies and City staff have fully processed and reviewed this application. When an OPA application is submitted in conjunction with a Rezoning and Section 37 Contribution, a refund is not recommended for the OPA portion of the application if the applications are approved.

Financial Impact

The overall financial impact of OPA #34 will be addressed with other strategic corporate initiatives and a review on the number proponents using this alternative process.

Broader Regional Impacts/Considerations

N/A

Conclusion

Proposed Official Plan Amendment #34 to the Vaughan Metropolitan Centre Secondary Plan will provide an effective and efficient approval process for development applications in the VMC while still decreasing the possibility of Council's recommendations being successfully appealed to LPAT.

For more information, please contact: David Marcucci, Senior Planner – LPAT, Policy and Environmental Sustainability, ext. 8410

Attachments

1. Proposed Official Plan Amendment #34
2. Comments received on OPA #34
3. Recommended Process Steps for a Rezoning Application under the Proposed OPA #34

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