

Communication : C 92
Committee of the Whole (2)
May 12, 2021
Agenda Item # 4

From: Kevin Doan <kevin@injurylawcentre.com>

Sent: Tuesday, May 11, 2021 9:45 AM

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Subject: [External] RE: 4101 Rutherford Road Vaughan - Velmar Centre Property Limited - FILE OP.19.003; Z.19.008; DA.19.042;

Tuesday, May 11, 2021
9:45 A.M.

Dear Honourable Mayor, Members of Council, City Clerk, and Integrity Commissioner,

Following my two earlier emails, to which I have not received a reply, I am now sending this email No. 3. The lengths of my emails and existence of some typos are as a result of the lack of notice, time, and due process presently afforded to me and local residents. This email in particular must reach the City Clerk no later than noon today while I only received the Guidelines below at 5:25PM yesterday.

All of the below are respectfully requested, required, or made accordingly, including my complaints to the Commissioner.

A. **Postponement:**

1. I have recently obtained a copy of the "*Guidelines for the Implementation of Section 37 of the Planning Act*", but only in the evening of May 10. It is 14 pages long and appears to set out the requirements relating to how the \$622,000 in bonusing was to be handled.
2. Due to the short amount of time since the recent release of the City Manager report of May 12, 2021, and the very recent release of the above *Guidelines*, I can only make some limited observations to bring to your attention, in time by the deadline of the day before

the meeting in order to be included in the record. I had earlier tried to notify you of my adjournment request on May 7 to give you as much notice as I could, hence in my rush to get my notice to you, occasional typos may survive.

3. In my brief review of the *Guidelines*, there are additional concerns about due process of the timing of the release of the Manager report, and the transparency of the current process to consider approval of the application.
4. An adjournment is even more proper, considering the requirements of the *Guidelines*, as discussed below.
5. Without properly following a fair and transparent implementation of s. 37 of the Planning Act, including a transparent implementation of the *Guidelines*, a strong appearance of a conflict of interest on the part of the decision makers, including the City Manager, and Council Members would reasonably appear to exist. I will explain.
6. According to the *Guidelines* and the Act, the **higher the building**, the more storeys permitted beyond the possible maximum of 4 storeys, the higher the revenues the City obtains from the development. It is in the City and Council's interest to obtain as much density bonus as possible, as such funds can be used in the local communities and, when proper, in other city projects.
7. But the Manager and the City have not apparently been compliant with the *Guidelines*. Among other things, its principle 3.2 appears to state that the community benefits to be implemented through the bonus money must "at a minimum" have "an appropriate **geographic** relationship to the development...". Here, according to the Manager report, the amount allocated to Velmar Downs Park (the local park adjacent to the development) seems very low and vague, which can be possibly even lower than \$50,000 out of \$622,000 density bonus. The remaining will go to some "South Humber trail development and facilities" which bears no disclosed geographic relationship to the development. That is more than 90% taken away from the local development. This must be more transparently explained. A "*rationale*" per the *Guidelines* must be provided by the Manager, but I do not recall seeing any rationale.
8. At "**6.4 Transparency**" the *Guidelines* states that "*To ensure greater transparency, Planning Staff will include the rationale for the allowance of the increased building height and density in the "Comprehensive Technical Report" to Committee of the Whole.*" However, I am not aware of any such rationale other than vague and conclusory terms such as "modest" and "appropriate". Effectively, the Staff and Manager failed to provide any rationale. The Staff and Manager also failed to explain in the May 12 report why over 90% of density bonus will be taken away and will bear no appropriate geographic relationship to the development.
9. More importantly however is the apparent conflict of interests, in the absence of compliant transparency, that Council may want more bonus money by approving 2 extra storeys over the objection of local residents, and by relying on conclusory opinions, without the Manager discussing whether or not the recommended development represents "good planning".
10. The *Guidelines* actually reiterates under "**3. Planning Principles ... 3.1 "The**

development must represent good planning ... Good planning includes sustainable designs and good architecture and ... should constitute the foundation for all development in the City.” But the Manager report did not anywhere suggest that the design constitutes “good planning”. As I wrote in my first email, minimal requirements do not equate to good planning, and the report is fundamentally flawed.

11. Furthermore, a second factor to increase the amount of density bonus is **the number of units**, according to the *Guidelines*. Therefore, the very high **135** units with a vast majority of them being likely under 600 sq. ft. (one bed, or one bed plus very small den units) allows the City to get more money in density bonus.
12. The *Guidelines* also discloses a third factor namely **Gross Floor Area** (“GFA”). The City would apparently receive **zero** bonus if the GFA is less than 5,000 m² in total. The City Manager is recommending 11,301 m² plus 496 m² in commercial space. The more GFA above 5,000 m², the more money is collected under the bonus.
13. Then where will this bonus money, assuming but without deciding that it was secured in good faith, go? The Mayor and Council Members were required to be consulted in advance, and the City Manager report stated that the City “agreed” to the amount of bonus, and the allocation of such bonus has also apparently been agreed to by Members of Council: to take some 90% of it away from the local communities when it appears that the priority was to be for the local communities according to the *Guidelines* and other possible directives. Therefore, transparency and due process are key and crucial in order to dispel any appearance of conflict.
14. Local residents and association have raised with the City that it has neglected the upkeep of the landscaping features within Weston Downs community. This has been raised by others and the association, and consistent with my observation.
15. Weston Downs, I believe, was developed with its own Design Guidelines and it is the only residential subdivision with some 2,000 households with minimum frontage of some 60 feet wide, and bounded by lighted masonry walls. New development in the area should also respect such Design Guidelines. Concerningly however, I am told that the City does not even keep a copy of such Design Guidelines, which is an unacceptable answer. Further particulars of effort would be reasonably required.
16. The City Manager should have cited and respected other City Wide urban design guidelines, and at least had to have referenced Weston Downs Guidelines in order to decide whether such guidelines apply to this development. He referenced neither, but rather he focused his argument and conclusion that the design guidelines for infill project do not apply to this “Low Rise Mixed Use” zoning. In the result, **he did not appear to cite any design guidelines as being applicable to the application.**

B. Production of Information

17. It is imperative for transparency and accountability sake that earlier information requests be fulfilled.

18. As only one example, I had separately requested calculation of the \$622,000 density bonus to Mr. Mark Antoine alone during the past weekend, and in response Mr. Antoine promptly provided me with the above *Guidelines* at 5:25PM yesterday Monday May 10. The *Guidelines* appears consistent with the appearance that the Mayor and Members of Council having been consulted, discussed, and agreed to the amount, and the allocation of the bonus – but all without apparent transparency to local residents and contradicting the transparency requirements of the *Guidelines* itself.

19. It is therefore important for production of all information requested to be made to me and residents.

20. I further formally request production of the Design Guidelines for Weston Downs subdivision. Per the Weston Downs Ratepayers Association's earlier correspondence, nearly 2,000 homes in the area are all 60 foot wide, and were developed with an award-winning architect of global renown.

21. I respectfully request the City Manager to specifically confirm all design guidelines that are applicable to the land, property, and application in question and surrounding area, including whether any City Wide design guidelines, and Weston Downs design guidelines etc... apply.

22. I require to be advised as to why the City has not apparently examined the safety aspects of the application by way of a **safety** engineering report? And if delegated or delayed to another authority or jurisdiction, why so? **Why delayed such an important aspect of safety for example to York Region when safety on Rutherford Road can be directly or indirectly impacting safety on Velmar Avenue which is a local road?**

23. I require the City to examine whether the proposed road widening on Rutherford can be done safely, including proper safety triangle, and safety on related Velmar Avenue. Presently, the site plan indicates that road widening is proposed to be basically exactly adjacent to the North foundation wall/parking wall of the proposed building. This among other things may impact the safety triangle (and allowance of future sidewalks?).

24. I require an explanation of the following two Recommendations (1 and 2 at page 2 of Manager report):

1. THAT York Region be advised that Vaughan Council recommends Official Plan Amendment File OP.19.003 (Velmar Centre Property Limited) BE APPROVED, to amend the site-specific "Low-Rise Mixed-Use" designation in Vaughan Official Plan 2010 to increase the maximum building height from 4-storeys to 6-storeys and the maximum Floor Space Index from 1.5 times the area of the lot to 2.72 times the area of the lot, for the Subject Lands shown on Attachment 2;

2. THAT Official Plan Amendment File OP.19.003 be forwarded to York Region for Approval and

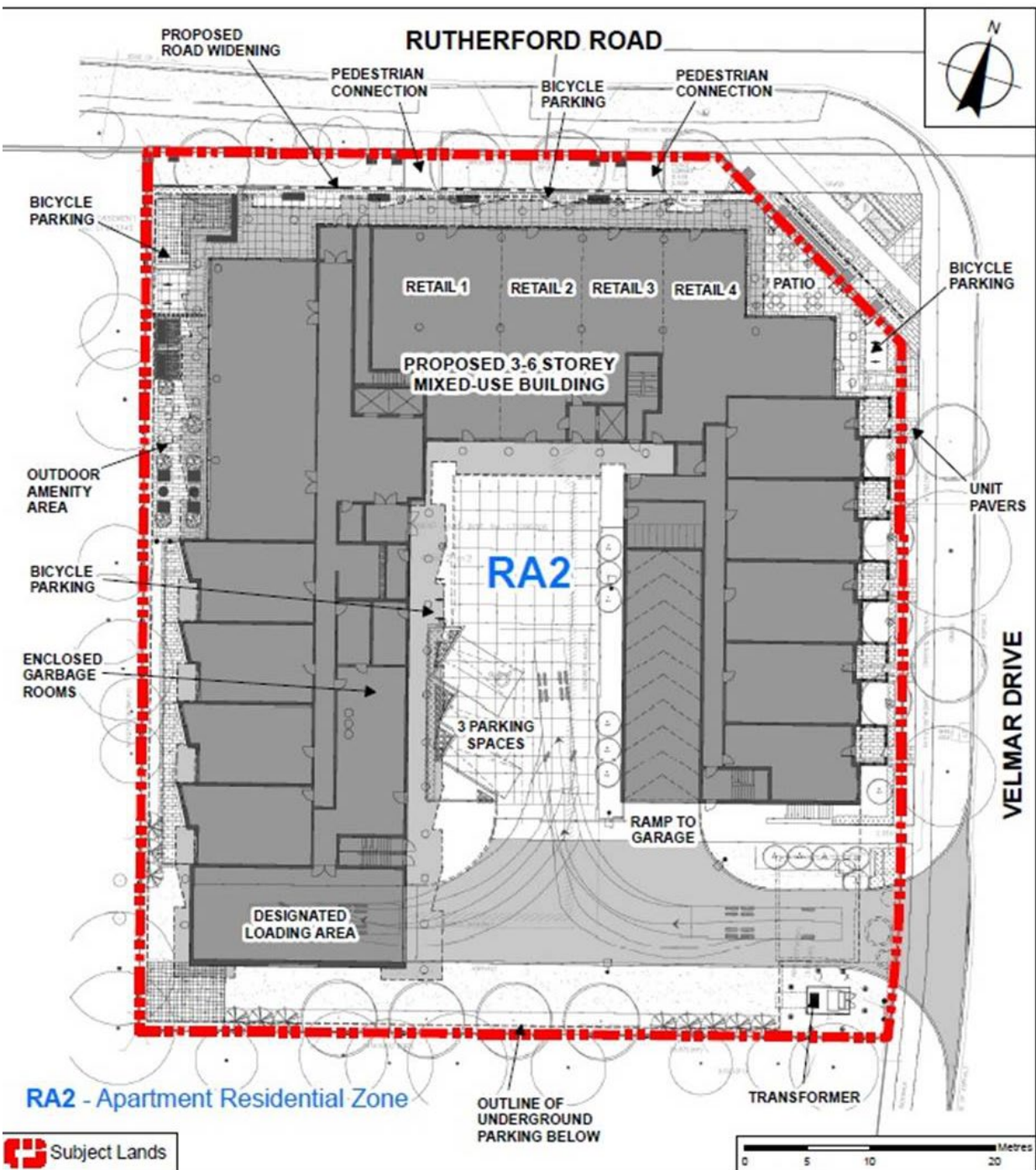
inclusion into Volume 2 of Vaughan Official Plan 2010, being the incorporation of a new Section in Chapter 13 “Site Specific Policies” and identified as an “Area Subject to a Site Specific Plan” on Schedule 14-C of Vaughan Official Plan 2010

Would Council please explain:

- a. Whether such recommendations, if accepted, will hamper or cause any potential extra difficulties or expenses to York Region, the City, or any other parties, in carrying out future master transit plan in a safe and orderly manner?
- b. Why should these recommendations be accepted now without the City being satisfied that all safety aspects of the application including vehicular and pedestrian traffics are met, on both Rutherford Road and Velmar Avenue and in the surrounding areas?

25. With regard having only 3 surface parking spots (with one being reserved for mobility-challenged driver, thus only 2 surface spots for others) - See Site Plan and Proposed Zoning copied below - who will likely drive into an underground parking lot, 3 level deep, then trekking up using stairs or elevator, just to access a local convenience store? The design and angle of the three parking spots are extreme tight, and will further require very awkward backing out at a 45% angle, either all the way to the South fence, or forward to make a three-point turn, or a five-point turn in order to drive out!!! Safety design involving these 3 surface spots appears to be in serious question.

26. A copy of the proposed Site Plan and zoning bylaw is produced below – and please note the **very little spaces** around the 3 parking spots in the centre of the diagram. As a warning of how poor design may occur in relation to parking, this true story is instructive: In the city of St. Catharines, a waterfront condo building was built adjacent to Lakeside Beach Park in Port Dalhousie, on the shore of Lake Ontario. In the end result, the underground parking spots were **actually built significantly smaller than what is required by law**. That City allegedly did not know how that occurred and who could have approved it etc... or the process of how it was approved. Therefore, after the fact and belatedly, the City forwarded to an Office of the Ombudsman (recently and within the last couple of years – and please let me know if you need a link to the articles on Google) to investigate to prevent future repeat occurrence. I and the local residents wish to prevent the actual building of a condo building that will be found to be a design contravention and safety hazards, contravening legal requirements.



27. In Council's deliberation on this application, in the event that Council relies on the relatively recent decision by the LPAT in [Rodaro v. City of Vaughan, December 20, 2018](#) (click on hyperlink for your ease of reference) as a cautionary tale in part to approve the application, I

respectfully request that a legal opinion first be formally sought from the City Solicitor or legal department. That decision rejected a lower density agreement with the builder (Countrywide Homes), communities and the City, at Woodend place in Ward 3 same ward as ours, in the form of mostly detached but small lots (less than 30 feet wide). Mr. Rodaro who apparently owned an estate size lot appealed and unfortunately, the LPAT ordered that the original builder's proposal - being all town homes but still all low-rise – was brought back and approved by LPAT. The main reason for the order was that a density of some 37 units per net hectare was required to promote success on public transit planning. The agreed-plan with mainly detached lots was set aside. In our application at 4101 Rutherford, it seems that the proposed application would build some **300 to 400 units per net hectare**, far in excess of what is required for successful public transit. The number of units (**135**) may be reduced by some 90% to **15** units and we would have satisfied the concerns of the LPAT Tribunal in *Rodaro*. Furthermore, a lower number of units than 15 may well be satisfactory to any LPAT challenge by the developer if there are other constraints such as safety, existing low-rise community, and other guidelines etc... **Therefore, at a minimum on this point, a legal opinion ought to be formally sought for the record if Council intends to rely on Rodaro to approve the application.**

28. With regard to the recommendation by City Manger at p. 2 of his report of May 12, 2021, paragraph 6: "THAT the Owner be permitted to apply for a Minor Variance Application(s) to the Vaughan Committee of Adjustment, if required, ... to permit minor adjustments to the implementing Zoning By-law." Unfortunately, there have been so many instances where such a recommendation basically provides an effective backdoor to later allow for increases in residential units and densities, lowering parking space requirements, and other possible effects to indirectly allow things such as building roof-top amenities, adding gross floor areas, or further reducing any setback requirements – all by trying to argue that such future changes are "minor". Let us prevent future arguments of what is minor or not, given that this application already pushed all boundaries, and assuming without accepting that it can be approved, if Council will in any event approve it, then this recommendation ought to be more specific and precise to the developer such that there is clear understanding in advance, that certain parameters or characteristics be spelled out as **will not be permitted**. This backdoor practice has been used elsewhere to defeat the upfront process, transparency and accountability and ought not to occur again in Weston Downs. A complaint to the Integrity Commissioner is made herein to stop this practice for the future.

29. **Honourable Integrity Commissioner:**

Given the urgency with little time being afforded to me by current City process, I therefore am directing my emails to the City Integrity Commissioner at the same time, and make my respectful complaints to the Commissioner without prior opportunity to discuss with those I am now complaining.

I must apologize to you that I have not the opportunity to be more organized and focused with

respect to your mandate. Please accept my 3 emails to you as part of the record of my complaints to you. The background of my complaints are set out in my emails, include at this time:

(a) THAT the City Manager and Deputy City Manager (where the latter is responsible for the administration of s. 37 per the *Guidelines*) failed to diligently or otherwise fulfill their duties including duties to Council, and failing to consider relevant and applicable policies, guidelines, safety considerations; and failing to provide relevant information to Council and local residents;

(b) THAT the honourable Members of Council failed to afford due process; failed to consider safety aspects of the application; and failed to apply their independent judgment or rationale on the application – contrary to the law which enables their authority - by wholly or largely rubber-stamping recommendations by the City Manager;

(c) THAT the honourable Members of Council are in conflicts of interests respecting the density bonus under s. 37 of the Planning Act, or otherwise as may be substantiated through future documents being requested; and failed to adhere to required transparency;

(d) THAT the Office respecting Freedom of Information Requests, in relation to the application and or to the requests by Weston Downs Ratepayers Association, failed to provide proper disclosure of information relating to the application (on this allegation, it has been reported that that office provided only heavily-redacted information that renders the information unintelligible – and I apologize in advance if this is not under your mandate, and if it is not, please inform me of the proper administrative authority);

(e) THAT the practice by the City of allowing developers to alter and increase the number of units, heights, floor space, and to lower parking requirements, further reduce setbacks under zoning by-law etc..., all after an application having been approved, be investigated, stopped and/or deemed to be an arbitrary or otherwise improper use of authority by Council and all Committees thereunder including the Vaughan Committee of Adjustments;

(f) THAT respectfully the honourable Members of Council acted arbitrarily and therefore, or otherwise, in bad faith in relation to the affected local residents and communities on this application; and that in doing so, they knowingly or otherwise put the City of Vaughan and hence all of Vaughan taxpayers in greater undue risks of liability to pay damages. The greater undue risks of liabilities include the risks of being found liable to pay for damages to the affected residents and homeowners in Weston Downs and Vellore Area for their undue decreased quiet enjoyment of life, loss or reduction of amenities, increased safety risks, and decreased property values, whether by way of a Class Action or other possible proceedings.

All of which is respectfully submitted,

Kevin Doan.

Encls. (s. 37 Guidelines by City of Vaughan, received on May 10, 2021 at 5:25PM)

Guidelines for the Implementation of Section 37 of the Planning Act

1. Introduction

Section 37 of the Planning Act (also referred to as “density bonusing”) allows municipalities to secure “services, facilities or matters” (i.e. community benefits) as a condition of the approval of rezonings for increases in building height and/or density above existing planning permissions. The Section also provides for Section 37 benefits to be secured through Agreements that are registered on title. The policy framework regarding the application of Section 37 in the City of Vaughan are contained in Sections 10.1.2.9 – 10.1.2.12 of the Vaughan Official Plan (VOP) 2010.

The purpose of this Guideline is to provide more detailed direction on how the Section 37 policies will be applied in the City of Vaughan to:

- meet the overall objectives of the Official Plan;
- identify which developments will be eligible for consideration of Section 37 applications; and
- describe the process for negotiating Section 37 Agreements.

These guidelines are intended to assist in the implementation of policies contained in Sections 10.1.2.9 – 10.1.2.12 of the VOP 2010 and must be read in conjunction with the policies of the Official Plan.

2. Application Process

Requests for increases in the height and/or density of development may be considered by Council in the context of rezoning applications, and will be subject to compliance with the planning principles listed below. The height and density limits of the VOP 2010 or the applicable recent Secondary Plan will form the base building height and/or density above which Section 37 policies may apply. If the prevailing Secondary Plan is outdated, then the maximum density can be inferred based on a recent Secondary Plan for “like-kind” properties. Once Council deems the proposed increase in building height and/or density to be acceptable it may require, as a condition of approval, the provision of certain community benefits.

Council may exempt certain non-profit or public facilities where such facilities provide a demonstrable public benefit, such as social housing, or affordable rental housing, from contribution of additional community benefits under the Section 37 Policy and Guidelines. Affordable rental housing is defined as housing rented at or below the average CMHC rents in the York Region CMA. In addition, the property will be subject to a restrictive covenant registered on title requiring the property to be developed and operated as a private market rental apartment complex for a minimum of 20 years.

Council may request a Section 37 contribution for developments proposing an increase in building height and/or density that are appealed to the Ontario Municipal Board.

The administration of the Section 37 policy shall be the responsibility of the Deputy City Manager, Planning and Growth Management in consultation with the Legal Services, Finance, Community Services, Engineering, Real Estate and Public Works Departments.

2.1 Section 37 will focus on the Intensification Areas of Vaughan

The application of Section 37 is primarily intended for the Intensification Areas of the City as identified on "Schedule 1-Urban Structure" of the VOP 2010; however, a site specific by-law including Section 37 benefits, if deemed appropriate, may be enacted by Vaughan Council elsewhere in the City.

3. Planning Principles

3.1 The development must represent good planning

Prior to determining whether a development should be subject to a Section 37 Agreement, planning staff will need to assess if the development, and in particular the increase in height and/or density, represents "good planning". Good planning includes addressing all other policies contained in the Official Plan, including urban design policies and objectives; the relationship of a development to its context, the adjacent street, the creation of a good public realm, improvements to the public realm adjacent to the site (including off site improvements included under Section 41), adequate infrastructure (including an assessment of servicing capacity for roads, water, sewers, etc., that takes into account relevant Regional and City plans), and compliance to the policies of the Plan regarding the natural environment. Good Planning includes sustainable design and good architecture and should not be subject to negotiations regarding building height and/or density increases, but should constitute the foundation for all development in the City. Design quality must not be compromised.

3.2 There should be a reasonable planning relationship between the community benefit and the proposed increase in development.

The determination of appropriate community benefits for a specific application will conform to the relevant Official Plan policies for the development site, and the community benefits 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.

Where Council approved studies or assessments have outlined community needs, including an assessment of benefit priorities, these particular benefits should form the basis of Section 37 negotiations.

Where provided for in City Policy, funding may be considered as part of a Section 37 agreement to address particular City-wide needs, which cannot be adequately addressed in the vicinity of the development, such as funds for improvement of a district park, or for broadly accessed amenities.

4. Size Threshold

Section 37 density/height bonus will generally be applied to building projects which are larger than 4,000 sq.m in GFA, and where the proposed density will exceed 1,000 sq.m in GFA over what would otherwise be permitted.

While this guideline is not intended to apply to smaller development projects, there may be circumstances in lower density areas where a proposed development may not meet the minimum threshold size noted above, but could still be a suitable candidate to provide a Community Benefit contribution. Such development sites could include larger vacant or under developed parcels, greyfield sites, smaller properties assembled for larger infill redevelopment, and smaller sites in local centres.

5. Valuation of Community Benefits

The City will secure community benefits for which the cost to the owner/developer represents a reasonable proportion of the increase in residual land value resulting from an increase in height and/or density over the limits identified in the VOP 2010/Secondary Plan. A standard City-wide formula for determining the value of benefits will not be applied and thus the value of the Section 37 benefits will vary from project to project or from one area of the City to another. The approach to determining the base density to be used in the valuation, and the standard guidelines for the determination of increase in land value, are contained in Appendix 1. On average, the City will seek to achieve a value for community benefits that represent a range between 20-35% of the increase in land value resulting from the increase in height and/or density.

The community benefits will be over and above what could otherwise be achieved through other Sections of the Planning Act, such as Sections 41, 42 and/or 50. Section 37 Agreements do not in any way entitle reductions in Development Charges.

The City's Real Estate Division will oversee the land valuation process in accordance with the valuation methodology provided in Appendix 1.

6. Protocol for Determining Community Benefits

6.1 Planning Staff will manage the negotiations Process

Planning staff responsible for making recommendations on development applications to Vaughan Council in accordance with the Planning Act and other Provincial policy, will lead negotiations with owners/developers regarding the nature of Section 37 community benefits. Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits. In addition, planning staff will also consult with the Toronto and Region Conservation Authority to determine regulatory feasibility where enhanced public access to natural heritage features, ravines and valleylands is being considered.

6.2 Local Area Studies

Where Council has approved studies or plans for a particular geographic area of the City, including Secondary Plans, which outline the range of community facilities, services or matters that should be provided or supported on a priority basis, these findings will inform negotiations regarding the provision of Section 37 benefits for these areas. Funds established to sustain the long-term maintenance of capital facilities may also be considered.

6.3 Consultation with Councillors and Communities

The Mayor, Regional Councillors, and Ward Councillor will be consulted by the Planning Department between the time of the Public Hearing and the preparation of the Comprehensive Staff Report to Committee of the Whole; to review the list of recommended potential community benefits, prior to the initiation of negotiations with the owner/developer regarding the nature of community benefits. A memorandum with a recommended response date, similar to the approach applied to development application circulations, will be used.

As part of the consultation, the Planning Department will provide the Mayor and Councillors with information regarding community benefits that were identified, any interest expressed by the owner/developer regarding community benefits, and the nature of the increase in land value for the proposed development. Community benefits may

also be discussed and identified during the community meetings/Public Hearing held for the development application in question.

6.4 Transparency

To ensure greater transparency, Planning staff will include the rationale for the allowance of the increased building height and density in the “Comprehensive Technical Report” to Committee of the Whole. Staff will also include an explanation of the nature of the community benefits to be secured and the value of each component (whether cash contribution or in-kind), as part of their technical report recommending development approval of a Section 37 application. The recommended site-specific zoning by-law will include sections addressing the requirement for the developer to enter into a Section 37 Agreement and listing the community benefits to be secured.

7. Securing the Community Benefit(s)

Prior to the enactment of the zoning by-law amendment, the owner/developer will execute the Section 37 Agreement securing the community benefits. The agreement will be registered on title and will identify the community benefits, and how any cash benefit will be used. Cash contributions will be paid prior to the issuance of the foundation permit for the respective development, or earlier if agreed to by the City and the applicant.

The contributions/benefits paid to the City will be indexed to current land value using the date of execution of the agreement as the base value, and indexing the value difference between the date of the execution of the agreement and the issuance date of the building permit, as set out in the Section 37 Agreement.

Proceeds will be placed in a dedicated “Section 37 Reserve Fund” managed by the Finance Commission. For tracking purposes, proceeds for specific negotiated benefits will be applied to a new or specified capital project. A record of proceeds and disbursements will be maintained in conjunction with the Section 37 Reserve Fund and capital projects’ balances.

Should excess funds remain after the reasonable completion and closing of a community benefit project, the City shall maintain the excess funds in the Section 37 Reserve to be used at the City’s discretion towards City-wide community benefits, as per Section 3.2 of these Guidelines.

APPENDIX 1

OVERVIEW OF THE PROPOSED “INCREASE IN LAND VALUE” FORMULA FOR DETERMINING THE MAXIMUM UPSET LIMIT FOR SECTION 37 CONTRIBUTIONS

The City is proposing that an “increase in land value” approach be utilized as a means of setting the maximum upset limit for Section 37 contributions, whereby the maximum contribution for “community benefits” represents a reasonable portion of the increase in the land value resulting from an increase in height and/or density over the limits (i.e. “Base Density”) identified in the Zoning By-law (as adjusted for height or density limits specified in more recent plans, such as the Official Plan or prevailing secondary plan).

The City recognizes that the “increase in land value” formula cannot be the sole method used to determine the required community benefits. Instead, the process for determining the benefits must first and foremost involve a site and area specific assessment of required community benefits bearing a reasonable planning relationship or nexus to the proposed development. As such, the City views the “increase in land value” approach as a means of providing the development community with a degree of certainty regarding the potential quantum of Section 37 contributions through a fair and equitable formula.

Provided below are the proposed standardized guides or steps to implementing the Increase in Land Value formula.

STEP #1 – Determine “Base Density”

STEP #2 – Determine the Buildable Gross Floor Area (GFA) from “Base Density”

STEP #3 – Determine the Land Value that corresponds to Base Density

STEP #4 – Determine the Land Value that corresponds to the Proposed Density
(i.e. density to be approved based on good planning principles)

STEP #5 – Calculate the Increase in Land Value and Maximum Section 37 Contribution (being 20% to 35% of the increase in land value resulting from the increase in density)

STEP #1 – Determine “Base Density”

The “Base Density” for Section 37 purposes represents the maximum density permitted according to one of the following:

1. The Vaughan Official Plan 2010 (VOP 2010);
2. If the maximum density is not specified in the VOP 2010, then the maximum density referred to in the prevailing Secondary Plan shall apply - assuming that the plan is relatively recent (i.e. up to date density limits);
or

3. If the prevailing Secondary Plan is out-dated, then the maximum density should be inferred based on the maximum density stipulated in the land use schedules of the VOP 2010 or recent Secondary Plan for “like-kind” properties (excluding densities associated with site-specific approvals that were subject to Section 37 payments).

Ultimately, the City will avoid using the maximum density referred to in plans, policies or by-laws that are considered out of date and inconsistent with the general intent of VOP 2010 and Provincial policy.

STEP #2 – Determine the Buildable Gross Floor Area (GFA) from “Base Density”

$$\begin{array}{ccccc} \text{Lot Area} & & x & & \text{Base} \\ \text{(SF)} & & & & \text{Density} \\ & & & & \text{(FSI)} \end{array} = \begin{array}{c} \text{Buildable GFA from} \\ \text{Base Density} \end{array}$$

STEP #3 – Determine the Land Value that corresponds to Base Density

Using the predetermined land values assembled in a “Land Value Matrix”, City staff will select an appropriate value per square foot of buildable gross floor area (GFA) according to the location and size (buildable floor area) of the development parcel, which will be multiplied by the Base Density.

The values provided in the Land Value Matrix will be comprised of estimates provided by a qualified real estate appraiser selected by the City. In each case, the land value rate selected will correspond to the proposed/approved density.

The total value of the development site according to Base Density will be calculated as follows:

$$\begin{array}{ccccc} \text{Buildable GFA from} & & x & & \text{Est. Value PSF of GFA} \\ \text{Base Density} & & & & \text{(from Land Value Matrix)} \end{array} = \begin{array}{c} \text{Total Land Value} \\ \text{under Base Density} \end{array}$$

STEP #4 – Determine the Land Value that corresponds to the Proposed Density (i.e. density to be approved based on good planning principles)

Based on the land values included in the Land Value Matrix, City staff will select a value per square foot of buildable gross floor area that corresponds to the quantum of buildable GFA proposed (in order to account for size influences).

$$\begin{array}{ccccc} \text{Buildable GFA from} & & x & & \text{Est. Value PSF of GFA} \\ \text{Proposed Density} & & & & \text{(from Land Value Matrix)} \end{array} = \begin{array}{c} \text{Total Land Value under} \\ \text{Proposed Density} \end{array}$$

STEP #5 – Calculate the Land Lift and ensuing Maximum Section 37 Contribution

$$\begin{array}{ccccccccc} \text{Total Land} & - & \text{Total Land} & = & \text{Increase} & \times & \text{Maximum} & = & \text{Maximum Upset} \\ \text{Value under} & & \text{Value under} & & \text{in Land} & & \text{Portion} & & \text{Limit for Section} \\ \text{Proposed} & & \text{Base Density} & & \text{Value} & & \text{(20\% to} & & \text{37 Contributions} \\ \text{Density} & & & & & & \text{35\%)} & & \end{array}$$

It is important to note that the preceding standardized guidelines are predicated on the following two (2) critical components:

1. Predetermined Land Value Unit Rates
(i.e. price per square foot of buildable gross floor area); and
2. A maximum Section 37 contribution equal to 20 to 35 percent of the “increase in land value”.

Phased Developments

The appraisal for phased developments will proceed in stages. The initial land valuation will be based on the Phase One Site Plan Agreement. As construction proceeds, the City will appraise each phase of the development at the time of below grade floor permit issuance. These values will be indexed on a monthly basis as per the Toronto Real Estate Board. Using this approach, each phase of the development can be appraised and the appropriate Section 37 benefits collected in stages, according to the timing of each of the separate phases.

Calculating S. 37 Land Value Increases and Benefit Provisions based Solely on Increases to Height

The following scenario where increased height is sought without increased density is unique since developers generally seek to maximize the site potential of both height and density. In the example below however, the developer is not requesting additional density above that which is permitted.

An informal survey of current new condominium sales shows that the increased value per unit/per floor is approximately \$3,000 to \$5,000.

For example:

An applicant requests 5 additional floors, each floor having 10 units, the additional potential revenue pro forma formula would be as follows:

$$\begin{array}{ll} \$3,000 \text{ to } \$5,000 \times 10 \times 1 \text{ FI} & = \$30,000 \text{ to } \$50,000 \text{ for first floor} \\ \$3,000 \text{ to } \$5,000 \times 10 \times 2 \text{ FI} & = \$60,000 \text{ to } \$100,000 \text{ for second floor} \\ \$3,000 \text{ to } \$5,000 \times 10 \times 3 \text{ FI} & = \$90,000 \text{ to } \$150,000 \text{ for third floor} \end{array}$$

\$3,000 to \$5,000 x 10 x 4 FI = \$120,000 to \$200,000 for fourth floor
 \$3,000 to \$5,000 x 10 x 5 FI = \$150,000 to \$250,000 for fifth floor

Total \$450,000 to \$750,000

Under the proposed Section 37 Implementation Guidelines, the City would be entitled to 20% to 35% of \$450,000 to \$750,000.

- The City would be entitled to capture additional benefits under Section 37, if a subsequent new application to construct on the under-utilized balance of the property requires additional density and/or additional height.

OVERVIEW OF THE ADMINISTRATION OF THE LAND VALUATION PROCESS AND PAYMENT PROTOCOLS FOR SECTION 37 CONTRIBUTIONS

Land Valuation

As an initial step in determining the appropriate land value to include in the “increase in land value” formula, the City will rely on land value unit rates (i.e. price per sq. ft. of buildable gross floor area) included in a “Land Valuation Matrix” that will be updated by a qualified real estate appraiser at the City’s discretion, but that the time lapse between updates should not exceed 3 years.

The land value unit rates included in the matrix will reflect the baseline averages for high density residential development land throughout the City (i.e. approximately 90% to 95% residential with a 5% to 10% retail component at-grade). In order to account for size and locational influences, the Land Value Matrix will include a range of unit rates according to development size (i.e. quantum of buildable gross floor area) for a variety of homogeneous market areas. An example of the matrix envisioned is provided below (values based on “per sq.ft.” unit rates for consistency with market data resources):

EXAMPLE OF THE PROSPECTIVE “LAND VALUE MATRIX”

(land value unit rates = price per sq.ft. of buildable gross floor area)

Buildable GFA (square feet)	Yonge Street Corridor, Steeles West Sec. Plan & Promenade Mall		VMC Secondary Plan & Weston Road-Hwy 7 Area		Vaughan Mills Centre		All Other	
	Low	High	Low	High	Low	High	Low	High
199,999 SF and Below								
200,000 to 299,999 SF								
300,000 to 449,999 SF								
450,000 to 599,999 SF								
600,000 to 799,999 SF								
800,000 to 999,999 SF								
1,000,000 to 1,299,999 SF								
1,300,000 to 1,599,999 SF								
1,600,000 to 1,899,999 SF								
1,900,000+ SF								

Once staff have selected an appropriate land value unit rate according to the size and location attributes of the subject site/development, the rate will be indexed to the date of the draft Section 37 agreement according to the rate of monthly market inflation determined by the Toronto Real Estate Board Market Watch Report, which will be derived according to the monthly change in the average sale price for residential dwellings (all types) sold throughout the Board's jurisdiction (typically published on the last page of the Market Watch Report).

Should staff or the developer have concerns about the appropriateness of the unit rate included in the Land Value Matrix, either may request a site-specific narrative appraisal to be completed by a qualified real estate appraiser (AACI designation). The City shall be responsible for commissioning the narrative appraisal report, including the selection of the appraiser in accordance with their prequalified list of AACI-certified real estate appraisers. The City will provide the appraiser with the general terms of reference for the appraisal, including the Base Density and Proposed Density (i.e. the density recommended for approval by planning staff) related to the subject development for the purpose of determining the increase in land value resulting from the increase in density. The fee for the narrative appraisal report shall be paid by the party requesting the report.

The effective date of appraisal shall be consistent with the (anticipated) date/month of the draft Section 37 agreement. If there is a lapse in time between the completion of the appraisal and final agreement, the value opined by the appraiser will be indexed to the date of the final agreement according to the monthly index determined by the Toronto Real Estate Board Market Watch Report.

If the City and developer do not come to an agreement concerning the increase in land value, the City will commission a second appraisal report in accordance with the process outlined above. Should the second appraisal report result in a 15 percent delta (or below) from the value opined in the first site specific appraisal (indexed to the date of the second appraisal), the mid-point of the values opined shall apply. If the delta exceeds 15 percent, and the City/developer are unable to agree to a value, either party may request a peer review of the two appraisals (to be commissioned by the City in accordance with the process outlined above), which will form the final determination related to the increase in land value. The fees related to the narrative appraisal report and/or peer review shall be paid by the party requesting the report.

Final Payment Determination and Timing:

Upon agreeing to a final payment for Section 37 contributions, the payment itself will be due the day before the issuance of the first below grade building permit. The payment outlined in the agreement will be indexed to this date according to the CPI index for the City of Toronto as published by Statistics Canada.

TERMS OF REFERENCE FOR SITE-SPECIFIC LAND VALUATIONS **REQUIRED FOR SECTION 37 PURPOSES**

Provided below are the generic Terms of Reference to be provided to appraisers conducting site-specific land valuations for Section 37 “increase in land value” calculations. The Terms of Reference set out the reporting requirements and standards for each appraisal report, as well as the background information and inputs that will be provided to the appraiser.

1. Purpose of the Appraisal Report

The purpose of this report is to estimate the increase in land value resulting from an increase in Development Density and/or Height permitted through a Zoning By-law Amendment (required for Section 37 purposes). The appraiser will provide:

1. Land value based on “as of right” maximum height and density (i.e. Base Height/Density).
2. Land value based on “as proposed” height and density (i.e. Proposed Height/Density).

The differential between the “as of right” and “as proposed” is the increase in land value and is what the appraiser will provide to The City of Vaughan.

The “as of right” maximum height/density and the “as proposed” height/density will be provided to the appraiser by the City’s Real Estate Department.

Function of the Appraisal Report

The function of the appraisal is to assist the City of Vaughan in the negotiating process relating to the following policy:

“Section 37 of the Planning Act (also referred to as “density bonusing”) allows municipalities to secure “facilities, matters or services” (i.e. community benefits) as a condition of the approval of rezonings for increases in building height and/or density above existing planning permissions.”

2. Executive Summary of Important Facts and Conclusions

3. Definition of the Appraisal Problem

4. Type of Report

The appraisal shall be a Full Self Contained Narrative Appraisal Report prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP).

5. Definition of Market Value

This section of the report should be included after an acceptable definition of market value, under CUSPAP.

6. Effective Date Appraisal

The effective date of the appraisal is the date of inspection or the date provided to the appraiser by the City's Real Estate Department.

7. Scope of the Self Contained Narrative Appraisal Report

The Self Contained Appraisal report must conform to the CUSPAP (AIC) requirements and include a registry search to confirm the current ownership of the fee simple interest in the subject property as well as other interests and/or restrictive covenants that may affect its land value. Unless instructed otherwise, the fee appraiser/consultant must:

- a. Provide a brief history of the property including its last conveyance. If the last conveyance occurred during the past year, and if there is a value difference between the purchase price and the appraised value, the appraiser/consultant should provide comments on this differential;
- b. Provide any relative information concerning the amendments to the Official Plan and Zoning By-law designations required to permit the development proposed for the subject property;
- c. Include in the valuation sections other methods of valuation in addition to the Direct Comparison Approach; "*See Valuation*"
- d. Confirm or verify the comparable sales at the land registry office and provide a narrative analysis of the sales used in the appraisal. The depth of analysis and discussion on the comparable sales and value conclusions should be similar to those provided in a full narrative appraisal report. Information provided on the comparable sales should include data on the zoning designations and permitted maximum site coverage/densities;
- e. Photographs of the subject property including street-views, and interior photos for improved properties;
- f. Photographs and sketches of each comparable sale, and if value in contribution, sketches of benefiting abutting properties;
- g. Sales location map;

- h. Any other plans relevant to the valuation such as flood plain maps, topographical maps etc., as required;
- i. Assume that the subject property is clean relative to an environmental condition unless an environmental report to the contrary is available;
- j. Provide a notation that the *“Terms of Reference”* were provided via e-mail from the City of Vaughan;
- k. Provide data research, verification and validation of comparables. Discussions with market participants and consultants in industry.
- l. Provide and explain support for all *“Quantitative”* adjustments and reasoning for all *“Qualitative”* analysis/adjustments in the DCA.
- m. Any *“Extraordinary Assumptions”* and/or *“Hypothetical Conditions”* that are out of the ordinary or utilized due to the intended use and nature of the unique City related appraisal problem are to be discussed with the appraiser at the City of Vaughan before insertion.

8. Property Valuation

- The objective of this section will be to estimate the increase in land value or resulting from an increase in Development Density and/or Height permitted through a Zoning By-law Amendment (required for Section 37 purposes).
- The appraiser will provide:
 - a. Land value based on “as of right” maximum height and density (Base Height/Density);
 - b. Land value based on “as proposed” maximum height and density (Proposed Height/Density);
 - c. The differential between the “As of Right” and “As Proposed” is the increase in land value and is what the appraiser will provide to The City of Vaughan.
 - d. Include a value estimate according to the “Direct Comparison Approach” (where applicable);
 - e. Include a value estimate according to the “Land Development Approach” (where applicable);
 - f. Include a value estimate according to the “Land Value Multiplier” (where applicable);
 - g. Explain why a particular value methodology was not utilized or given much weight, when it is normally an important part of the analysis. An example of this would be the non-use of a Floor Space Index (FSI) in a location where density has an influence on value;
 - h. The valuation section of the report should contain a separate sheet for each comparable utilized showing all applicable data for the comparable.
 - i. In the analysis of comparable sales, comment (where applicable) if the comparable sale sold with a value based on the “Principle of Anticipation”. While some properties in Vaughan trade at a value commensurate with the

uses/density permitted under the existing Land Use Controls, some may trade at a price that corresponds to the anticipated opportunity for higher density. This is due to the “Principal of Anticipation”. In each case, the appraiser must analyze the site/sale to determine the appropriate expectations at the time of sale. Upon reconciling the appropriate unit rate to be applied to the subject site (i.e. the price per buildable gross floor area), this unit rate shall be applied to the buildable gross floor area generated from Base Density and the buildable gross floor area generated from the Proposed Density (with adjustments to account for size influences where appropriate). The resulting difference in value represents the increase in land value.

9. Site Description/Analysis

- Include a clear well labeled site plan with dimensions, north arrow and appropriate reference points such as the street the property fronts onto and other features.

10. Description of the Proposed Development

- Meet with the developer and representatives from the City’s Real Estate Department to discuss the specific attributes of the proposed development; and
- Draft a description of the proposed development and include the site plan and corresponding development statistics.

11. Services Available to the Site

12. Land Use Regulations

- a. Include the official plan designation and the zoning description for both the current land use controls and the proposed land use controls;
- b. The City will also have secondary plans which usually take the form of amendments to the Official Plan. Please note the refinements of the policy to the official plan and discuss in the land use analysis section of the appraisal report;

13. Highest and Best Use Analysis (not applicable)

Note: The “Highest and Best Use” is not applicable when the purpose of the report is to estimate the increase in land value resulting from an increase in Development Density and/or Height permitted through a Zoning By-law Amendment (required for Section 37 purposes). The appraiser will provide:

1. Land value based on “as of right” maximum height and density (i.e. Base Height/Density).

2. Land value based on “as proposed” height and density (i.e. Proposed Height/Density).

The differential between the “As of Right” and “As Proposed” is the “Increase In Land Value”.

14. Reconciliation

- a. A “*Reconciliation*” is required when the value indications are derived using two or more approaches to value;
- b. The “*Reconciliation*” is to include an opinion of value as identified in the definition of the appraisal problem. It will also include an explanation of how you derived the final indication of value, an explanation on what approach(s) received the most weight and why, which approaches are not applicable to the valuation and why and which comparable sales received the most weight in the analysis and why;
- c. Provide an explanation as to why, if your final indication of value falls outside your value range;
- d. The “*Reconciliation*” should be consistent, comparing unadjusted sale prices with unadjusted sale prices and adjusted sale prices with adjusted sale prices;
- e. Include the comparable sales that you did not utilize in your report and an explanation as to why you did not utilize these sales. This assures the reader that these comparable sales were found and considered;

15. Sign-off of Appraisal Report

- This report is to be signed by _____, AACI, an Accredited Appraiser, Canadian Institute. _____ is to inspect the subject property and the comparable land sales, as the appraiser and not simply as a reviewer of the work.

16. Copies of the Narrative Appraisal Report

- **3-hard copies** of the Narrative Appraisal Report are to be provided; and, in addition,
- an “**ADOBE PDF**” version saved onto a CD version and also sent via e-mail to: _____ (905-###-#### ext. ####)

17. Client

- The “Client” is the City of Vaughan with any instructions to the appraiser to only come from the Real Estate Department.