

APPENDIX A

EXISTING TOWN OF MARKHAM OFFICIAL PLAN PROVISIONS AS APPROVED BY THE REGION OF YORK OCT 22, 1998

Section 7.3

d) Increased Height and Density (Bonus) Provision

- i) In accordance with Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, Council may, in a by-law passed under Section 34, authorize increases in the height and density of development otherwise permitted in the by-law. In return, the owner granted the bonus, shall be required to provide the facilities, services and matters as set in the bonus provisions by-law.
- ii) A bonus provisions by-law may be enacted by Council to achieve the Town's objective of obtaining certain facilities, servicing or other matters which would not otherwise be secured by the normal development process and which may be of particular benefit to a specific area or the Town at large. Notwithstanding the generality of the foregoing, the intent of Council in passing such by-laws would be to encourage attainment of one or more of the following objectives:
 - to preserve the unique character of a certain area or buildings of architectural or historical significance;
 - the provision of housing for senior citizens;
 - the provision of increased amounts of on-site open space or facilities such as day care centres, community centres, recreational facilities;
 - the preservation of woodlots or environmentally significant areas which would not be accepted as parkland dedication and;
 - to achieve additional road or servicing improvements.
- iii) Increased height and density (bonus) provisions under Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, will be implemented by by-laws passed under Section 34. Such a by-law will contain the standards of the basic zoning category applicable to the site if the bonus is not awarded as well as the standards that would apply when the bonus is awarded. The by-law will also specify the facilities, services and matters that are required to be provided before the bonus standards become applicable.

An agreement between the owner and the Town shall be entered into in regard to the relevant facilities, services and matters when an owner is being awarded the bonus and the bonus standards become applicable.

APPENDIX B

OFFICIAL PLAN

of the

TOWN OF MARKHAM PLANNING AREA

AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

INCREASED HEIGHT AND DENSITY PROVISION

May 2010

OFFICIAL PLAN
of the
MARKHAM PLANNING AREA
AMENDMENT NO. XXX

To amend the Official Plan (Revised 1987), as amended.

This Official Plan Amendment was adopted by the Corporation of the Town of Markham, By-law No. _____ - ____ in accordance with the Planning Act, R.S.O., 1990 c.P.13, as amended, on the _____ st OR nd OR rd OR th day of _____, 2010.

Mayor

Town Clerk

THE CORPORATION OF THE TOWN OF MARKHAM

BY-LAW NO. _____

Being a by-law to adopt Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended.

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM, IN ACCORDANCE WITH THE PROVISIONS OF THE PLANNING ACT, R.S.O., 1990 HEREBY ENACTS AS FOLLOWS:

1. THAT Amendment No. XXX to the Town of Markham Official Plan (Revised 1987), as amended, attached hereto, is hereby adopted.
2. THAT this by-law shall come into force and take effect on the date of the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS _____ *st OR nd*
OR rd OR th DAY OF _____, (year)

TOWN CLERK

MAYOR

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PART I - INTRODUCTION

(This is not an operative part of Official Plan Amendment No. XXX)

PART I - INTRODUCTION

1.0 GENERAL

1.1 PART I - INTRODUCTION, is included for information purposes and is not an operative part of this Official Plan Amendment.

1.2 PART II - THE OFFICIAL PLAN AMENDMENT, constitutes Official Plan Amendment No. XXX. Part II is an operative part of this Official Plan Amendment.

2.0 LOCATION

The Amendment applies to all lands within the Town of Markham.

3.0 PURPOSE

The purpose of this Official Plan Amendment is to introduce new Official Plan provisions related to the use of Section 37 of the Planning Act.

4.0 BASIS OF THIS OFFICIAL PLAN AMENDMENT

The Town's Official Plan includes policies that outline provisions for negotiating community benefits in relation to increased height and density in accordance with Section 37 of the Planning Act. These provisions allow Council to enact a zoning by-law and apply Section 37 provisions to a development proposal requesting height and density increases. In return, the owner granted the increases, shall be required to provide the facilities, services or matters as set out in the provisions of the by-law.

This amendment introduces new Official Plan provisions respecting the use of Section 37 of the Planning Act. If applied, these new provisions will assist the Town in obtaining certain facilities, services or matters which would not otherwise be secured under other provisions of the Planning Act or the Development Charges Act, and which may be of particular benefit to a specific area (or areas) within the Town or the Town as a whole.

The new provisions outline an expanded list of potential community benefits that could be achieved through negotiations with a property owner, and implemented by way of a site specific zoning by-law amendment and an agreement between the owner and the Town provided:

- there is a reasonable planning relationship between the proposed benefit and the increase in height and density;
- the development represents good planning, is consistent with the other objectives of the Official Plan and meets all applicable built form and neighbourhood compatibility objectives; and
- there is adequate infrastructure available to support the increase.

The new provisions also clarify that the community benefits which are the subject of Section 37 By-laws will be determined based on local community needs, intensification issues in the area, and the objectives of the Official Plan with priority given to provision of benefits in proximity to the development proposal.



PART II - THE OFFICIAL PLAN AMENDMENT

(This is an operative part of Official Plan Amendment No. XXX)

PART II - THE OFFICIAL PLAN AMENDMENT

1.0 THE OFFICIAL PLAN AMENDMENT

- 1.1 Section 1.1.2 of Part II of the Official Plan (Revised 1987), as amended, is hereby amended by the addition of the number XXX to the list of amendments, to be placed in numerical order including any required grammatical and punctuation changes.
- 1.2 Section 7.3 d) of the Official Plan (Revised 1987), as amended, is hereby deleted and replaced with the following:

“7.3 d) Increased Height and Density Provision

- i. In accordance with Section 37 of the *Planning Act*, Council may, in a by-law passed under Section 34, authorize increases in the height and density of development otherwise permitted in the by-law in return for the provision of community benefits in the form of facilities, services or matters provided:
 - a. the community benefits bear a reasonable planning relationship to the increase in height and/or density of the proposed development;
 - b. the development must represent good planning, be consistent with the other objectives of this Plan and meet all applicable built form and neighbourhood compatibility objectives; and
 - c. there is adequate infrastructure to support the increase in height and/or density for the proposed development.
- ii. A Section 37 by-law may be enacted by Council to achieve the Town's objective of obtaining certain facilities, services or other matters which would not otherwise be secured under the other provisions of the *Planning Act* or the *Development Charges Act*, and which may be of particular benefit to a specific area or the Town at large. Notwithstanding the generality of the foregoing, the intent of Council in passing such by-laws would be to attain facilities, services and matters such as, but not limited to:
 - the conservation and/or improvement of cultural heritage areas or buildings;
 - the preservation of woodlots, environmentally significant areas and enhancement areas, which would not be accepted as parkland dedication;
 - a substantial contribution to the urban forest on public lands;
 - provision of public access to ravines and valleys;
 - the provision of increased amounts of on-site open space or facilities such as day care centres, community centres, recreational facilities;
 - the provision of affordable and special needs housing including housing for senior citizens;
 - conservation and replacement of rental housing;

- enhance connections to transit facilities;
 - enhanced improvements to transit facilities;
 - to achieve additional road or servicing improvements;
 - provision of public parking facilities;
 - protection of significant views;
 - public art;
 - non profit cultural facilities; and
 - other local improvements identified in Council initiated studies.
- iii. Community benefits which are the subject of Section 37 provisions will be determined based on local community needs, intensification issues in the area, and the objectives of this Plan or any Secondary Plan, with priority given to provision of community benefits in proximity to the proposed development.
- iv. Increased height and density provisions under Section 37 of the Planning Act will be implemented by site specific by-laws passed under Section 34. Such by-laws will contain the standards of the basic zoning category applicable to the parcel of land if the bonus is not awarded as well as the standards that would apply to the parcel of land in the event the bonus is awarded. The by-law will also specify the facilities, services and matters that are required to be provided or provided for before the Section 37 by-law provisions become applicable to a parcel of land.
- v. An agreement between the owner and the Town shall be entered into in regard to the relevant facilities, services and matters, and when an owner is being awarded the increases in height and density and when the increased standards become applicable.”

2.0 IMPLEMENTATION AND INTERPRETATION

The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment, except as specifically provided for in this Amendment.

This Amendment to the Official Plan (Revised 1987), as amended, is exempt from the approval by the Region of York. Following adoption, notice of Council's decision will be given in accordance with the Planning Act, and the decision of Council is final, if a notice of appeal is not received before or on the last day for filing an appeal.

Prior to Council's decision becoming final, this Amendment may be modified to incorporate technical amendments to the text and schedule(s). Technical amendments are those minor changes that do not affect the policy or intent of the Amendment. For such technical amendments, the notice provisions of Section 7.13(c) of Part II of the Official Plan (Revised 1987), as amended, shall not apply.

APPENDIX C

Guidelines for the Implementation of Section 37 Benefits

These guidelines are intended to assist in the implementation of the policies contained in Section 7.3 d) of the Town of Markham Official Plan (Revised 1987). These guidelines must be read in conjunction with the policies of the Official Plan. If any conflicts arise between the Official Plan provisions and these guidelines, the Official Plan policies shall prevail.

1 Good Planning

Good planning includes addressing all other policies contained in the Official Plan, including urban design policies and objectives, and all authorized requirements of the Town and public agencies. The relationship of a development to its context, the adjacent street, the creation of a good public realm (including off site improvements included under Section 41), providing any necessary improvements to municipal infrastructure, and a harmonious relationship to the natural environment, including sustainable design and good architecture should not be subject of negotiations regarding height and/or density increases, but should constitute the foundation for all development in the Town. Design quality must not be compromised.

2 Reasonable Planning Relationship

A reasonable planning relationship between the community benefit and the proposed development refers, in the first instance, to geographic proximity. The highest priority would be for on site provision of community benefits. The next level of priority would be in the immediate vicinity of the site. Where there exists a City wide fund or program to address particular needs which cannot be economically provided on site, but which can be related to the development, such as the provision of affordable housing or public art, contributions to these funds or programs will be considered as eligible in return for increases in height and/or density.

3 Geographic Applicability

While site specific bylaws including Section 37 benefits may be passed in all parts of the Town, the focus for most Section 37 developments will be intensification areas identified in the Official Plan including: Markham Centre, the Langstaff Gateway, and other locations along the Yonge Street, Avenue 7 and Steeles Avenue Corridors.

4 Height and Density Threshold

The height and/or density thresholds shall be set out in the Official Plan and/or Secondary Plan and the underlying zoning will need to reflect the development limit established for each Development Block.

In some instances, it may be possible to permit individual buildings on development parcels within a Development Block to achieve more or less than the maximum development limit established in the underlying zoning by-law, provided the development represents “good planning”, all built form and compatibility objectives are maintained, and there is a zoning by-law amendment where:

- the increase in height and/or density does not exceed the overall maximum density for the Development Block;
- the increase in height and/or density may be achieved through density and height transfers within the Development Block; and
- the increase in height and/or density may be considered eligible for Section 37 community benefits.

In other instances, Council may consider an Official Plan Amendment and Zoning By-law to permit the increase in height and/or density in excess of the maximum density for the Development Block, to achieve additional development incentives or Section 37 community benefits, provided the development represents good planning, is consistent with the other objectives of the Official Plan and meets all applicable built form and compatibility objectives, and there is adequate infrastructure available to support the increase.

The rationale in both instances is that the process of changing the development limits, above what they were in the Secondary Plan, represents an increase in height and/or density as described in Section 37 of the Planning Act and therefore meets the criteria in the Planning Act for applying Section 37 benefits

5 Size Threshold

Density incentives will be applied mainly to projects which are larger than 5,000 sq m and where the proposed density will exceed 1,500 sq m over what would otherwise be permitted. All developments that are under 4 storeys in height and all non-profit developments will be exempt.

5 Local Area Studies

Where Council has approved studies or plans for particular geographic areas of the Town, including Secondary Plans, outlining the range of community facilities, services or matters that should be provided or supported on a priority basis, these will inform negotiations regarding the provision of Section 37 benefits for these areas.

6 Valuation of Community Benefits

The Section 37 benefits will be negotiated with the owner on a case by case basis and will be based on a reasonable relationship between the increased residential and employment activity resulting from the Town granting the increase in height and/or density, and an appropriate benefit to identified community needs. In this

regard, the community benefits in relation to the height and/or density increases granted will vary from project to project or from one area of the Town to another.

A determination of community needs in response to the increased activities resulting from an increase in height and/or density of a development will be used as a guideline for negotiating appropriate Section 37 benefits. A financial impact statement will be prepared to be attached to the report recommending approval of the development, summarizing the community benefits that are to be secured, the value of the community benefits (based on estimates from staff in other Departments responsible for capital facilities) and the timing of the provision of the benefits.

7 No Exemptions from Development Charges or Section 42 of the Planning Act

There will be no exemptions for developments subject to Section 37 Agreements from Development Charges or parks contributions under Section 42 of the Planning Act.

8 Protocol for Negotiating Section 37 Benefits

In development areas, it is advantageous to determine local priorities and needs for community benefits in advance of development applications, to the extent practicable. (See Section 6 above).

An analysis and identification of existing and potential needs and services in a development area would assist in determining the appropriate type(s) and priority of community benefits to be considered eligible for Section 37 contributions. This analysis would also identify the appropriate provision and costing of the community benefits.

To prepare for a possible application of Section 37 and address the issue of transparency, it is critical to have the local Councillor and other Councillors who may be interested, in consultation with Town staff, the local community and the relevant service providers, identify local and Town-wide priorities for potential community benefits.

Density increases will be approved by an amendment to the Zoning By-law and after due process including public consultation. A Section 37 agreement will be entered into between the developer and the City prior to the enactment of the Zoning By-law.

Planning staff who are responsible for making recommendations on development applications to Council in accordance with the Planning Act and other Provincial policy, will be the lead negotiators with developments that are the subject of Section 37 bonus discussions. Planning staff will also coordinate input from other departments on the appropriate provision and costing of community benefits.

Local Councillors will be consulted regarding Section 37 negotiations and will provide input into the nature of community benefits that might be appropriate in particular circumstances. Local communities also will be consulted, as appropriate.

9 Agreements

In addition to securing community benefits that are directly related to density and/or height increases, Section 37 agreements may include other matters that may be important to the Town to meet its Official Plan objectives, but which may fall outside of the purview of other agreements, such as the protection of rental housing or heritage features. These matters may be secured in a Section 37 agreement as a legal matter.