



Planning and Building Department

TO: Community Development Committee

SUBJECT: Section 37 Community Benefits – Public Engagement and Consultation

Report Number: PB-21-12

File Number(s): 502-02-47

Report Date: February 14th, 2012

Ward(s) Affected: 1 2 3 4 5 6 All

Date to Committee: March 26, 2012

Date to Council: April 10, 2012

Recommendation:

That Council confirm the continued application of Section 37 of the *Planning Act* for securing community benefits from appropriate development opportunities along with enhanced opportunities for public engagement on Section 37 proposals as identified in the amended Section 37 Protocol, attached as Appendix A to this report.

Purpose:

- Address goal or action in strategic plan
- Establish new or revised policy or service standard
- Respond to legislation
- Respond to staff direction
- Address other area of responsibility

The purpose of this report is to respond to a staff direction with respect to the current Section 37 Protocol and how to better incorporate public engagement.

Reference to Strategic Plan:

- | | |
|--|-------------------------------------|
| <input type="checkbox"/> Vibrant Neighbourhoods | <input type="checkbox"/> Prosperity |
| <input checked="" type="checkbox"/> Excellence in Government | <input type="checkbox"/> N/A |

“Forge strong community relationships, with open dialogue and citizen involvement in municipal issues.”

Background:

Prior to 2006 the City of Burlington did not implement Section 37 of the *Planning Act*. In October of 2007 Staff prepared a Section 37 Protocol (Report No. PL-61/07) which outlined the policies and procedures for securing Section 37 community benefits from appropriate development opportunities. This Protocol was approved by Council on November 12, 2007. Since that time, Planning staff has successfully negotiated nine agreements valued at over \$2 million in direct and indirect community benefits.

In May 2011, Staff prepared a report recommending that a package of community benefits be accepted by Committee in relation to the development of a high density apartment building at 472 Brock Avenue consisting of both direct and indirect benefits. Although the recommendation of the report was approved by Committee and Council, there was some concern raised by members of Committee that the Section 37 Protocol did not allow for sufficient community engagement and consultation. To this end, the following staff direction was passed by Council on June 13, 2011:

“Direct the General Manager of Community Services, as chair of the Section 37 protocol team, to report back to the Community Development Committee following a review of the Council approved Section 37 Protocol regarding how to incorporate better public engagement.”

Discussion:**Strategy/Process**

Section 37 of the *Planning Act* is a planning tool that allows a municipality to grant an increase in height and/or density and to receive additional services, facilities and matters (community benefits) as set out in a by-law from the owner of a contributing development. The fundamental requirements are that the proposal represents "good planning" principles and neighbourhood compatibility, and that the benefits sought are consistent with the Official Plan policies.

Support on proper planning grounds and meeting the entire requirement of City departments and other public agencies, is a requirement of any development proposal regardless of whether Section 37 applies. The receipt of public benefits can never compensate the City for a project which does not meet acceptable planning standards, particularly as they relate to built form, compatibility, and adequacy of hard and soft infrastructure, social and environmental impacts, while addressing all other relevant planning policies of the Official Plan and Council. Council's decision on whether the planning merits of an increase in height and/or density are acceptable can and should remain independent of a decision on whether community benefits should be provided in the development through the use of Section 37.

The community benefits achieved through the use of Section 37 may be used to obtain and fund facilities, services and matters that are not typically funded through development charges or other *Planning Act* contribution tools. Provided all Official Plan policies are satisfied, Section 37 community benefits in the form of direct or indirect benefits may be secured towards infrastructure services and facilities. The term “community benefits” reflects the City’s priority on providing public benefits in close proximity to the local community in which the contributing development is located.

Having canvassed other municipalities, all municipalities assess the value of community benefits on a case by case basis, with the proviso that there is a reasonable relationship between the value of community benefits and the density increase or the “value uplift”. Although a number of municipalities have considered an approach based on a specific formula, all have followed the lead of the City of Toronto which concluded, following consultation with their legal department, that a formula based approach may leave the municipality open to a legal challenge based on the claim that the use of Section 37 constitutes a tax on development. To this end, the City has followed a similar approach when determining the “value uplift”.

In accordance with the *Planning Act*, the Implementation Section (Part V, 2.3) and the Functional Policies Section (Part II, 8.4.2) of the City’s Official Plan include policies to allow for the provision of community benefits in relation to an increase in height. These include, but are not limited to, the provision of public walkways, improved public transit, and protection of natural features, public open space and other facilities. The policies require an agreement be prepared between the landowner and the City securing all the community benefits, including those provided after the development has been approved and built.

Process

The Section 37 Protocol Committee consists of senior staff representing all interested City Departments as identified in Appendix B – Section 37 Protocol Review Committee Members. Since the approval of the staff direction in June 2011 the committee has conducted 6 meetings to discuss several issues relating to the Section 37 Protocol. A key consideration was whether enhanced public engagement was required and if so how this might be best incorporated into the Protocol. Members of the Committee also interviewed the Mayor and all Members of Council.

Changes to the Public Engagement Process

At the same time that staff were reviewing the Section 37 process, planning staff have also been conducting a review of the the City of Burlington development review practices. As part of this review staff are addressing a staff direction relating to the timing of public engagement, the preparation of staff reports and council decision-making. As part of the review, staff also examined the development process in comparator municipalities to identify options for change to the Burlington process.

As a result of this second review, staff prepared a report (PB-57/11) in which it concluded that a relatively simple change in the development review sequence would address concerns about the timing of community engagement and staff recommendations. Staff proposed that the statutory public meeting be separated from the Community Development Committee (CDC) and Council cycle meeting by several weeks, to provide time between the meetings for additional communication with citizens and for a greater opportunity for consideration of citizen input. At the statutory public meeting staff would provide an “information report” without recommendations that would provide the basic information to the public and elected officials about the development. This could include information pertinent to a proposed Section 37 community benefits plan. Adoption of this process would increase the opportunity for community input and for council consideration of the community’s comments. This was approved by Council as follows:

PB-57-11

Approve the proposed changes to the development review process contained within this report with the exception of the Special Community Development Committee meeting during the week of Council; and Provide a minimum of one cycle separation between the public meeting and consideration at the Community Development Committee meeting with opportunity for more complex projects to have a two cycle separation; and

Authorize that staff be directed to report back to CDC in the fourth quarter of 2012 on the experience with the revised procedures.

The changes to the development review process provide the opportunity for public engagement when Section 37 community benefits are considered in a development application. This process also allows for staff to respond to any input prior to a Committee recommendation to Council on the proposed development application and community benefits.

Public Engagement and Consultation

Based on the interviews with members of council and the results of the two reviews, the Section 37 Committee came to the following conclusions:

- That the use of Section 37 is appropriate and should be a continued practice by the City of Burlington, subject to the inclusion of opportunities for public engagement
- That the Protocol is satisfactory and is working well.
- That that the Ward Councillor should be advised as early as possible in the process when a Section 37 agreement is proposed as part of a development proposal.

- In light of the recent revisions to the development approvals process the public will be notified sooner of the proposal. A proposed community benefit can be part of the report prepared by the Planning and Building Department that will inform the public earlier in the planning approvals process.

In terms of the benefits that are sought, it is proposed that the Ward Councillor will be consulted by staff prior to any negotiations with the applicant. This is considered to be a high priority. Staff will provide the Ward Councillor with the following information as soon as it is available:

- Advice as to whether Section 37 benefits are appropriate and desirable;
- Appropriate types of benefits based on the recommendations of the Section 37 Protocol Committee;
- The amount of the total estimated community benefit; and,
- Interests of the applicant.

Consultation and engagement with the community by the Ward Councillor in advance of receipt of development applications to help determine priorities for community benefits is encouraged. With information about the proposed Section 37 agreement, the public will be better equipped to discuss the proposal at the statutory public meeting. The opportunity to comment on the proposed development and the appropriate type and/or level of Section 37 community benefits remains as part of the CDC meeting at which a staff recommendation report is provided.

Financial Matters:

The Section 37 community benefits provision of the *Planning Act* provides the opportunity for the public to benefit more tangibly from development and redevelopment that requires an increase to the value of land arising from a decision to increase height and or density through planning approvals. Eligible community benefits may include funding for community projects or benefits that are technically non-financial or “in kind”, such as affordable housing or environmental upgrades. Community benefits once they are agreed to are secured through a Section 37 Community Benefits Agreement which is registered against title and is enforceable on subsequent owners of the land or project.

During this review, Staff has updated AMANDA so that the system now tracks the community benefits that are received by the City.

Total Financial Impact

Since 2007 the City of Burlington has negotiated nine section 37 benefits agreements valued at an estimated \$2 million.

Communication Matters:

The report proposes a modification to the community engagement aspect of the section 37 protocol that would see earlier information to the public regarding the inclusion of a proposed section 37 agreement. It also proposes that the Ward Councillor be informed early on in the section 37 process to seek suggestions for proposed section 37 benefits from the public.

During this review, staff has updated the City webpage to include the Section 37 Protocol as approved by Council as well as the implementing Official Plan policies.

Conclusion:

Section 37 of the *Planning Act* is one of the few planning tools at the City's disposal to add to the facilities and services that enrich the quality of life for the residents of Burlington. It enables the City to accept public benefits for the community when permitting increases in density and/or height that are appropriate in the context of good planning. Past use of Section 37 has resulted in securing valuable public benefits and it is staff's recommendation that this practice be continued when dealing with future development proposals. Staff also concludes that the recent revisions to the development review process and reporting protocol will allow more time between the statutory public meeting and the CDC/Council meeting cycle for consideration of the public's comments with respect to Section 37 community benefits.

Respectfully submitted,

Scott Stewart, Chair
Section 37 Protocol Review Committee

Bianca MV Bielski
Manager of Development Services
335-7600 ext 7638

Appendices:

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| A. Amended Section 37 Protocol |
| B. Members of the Section 37 Protocol Review Committee |

Notifications: (after Council decision)

Name	Mailing or E-mail Address

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Approvals:

*required

*Department

City Treasurer

General Manager

City Manager

	To be completed by the Clerks Department
Committee Disposition & Comments	
	01-Approved 02-Not Approved 03-Amended 04-Referred 06-Received & Filed 07-Withdrawn
Council Disposition & Comments	
	01-Approved 02-Not Approved 03-Amended 04-Referred 06-Received & Filed 07-Withdrawn

APPENDIX B: Section 37 Protocol Review Committee Members

Scott Stewart (Chair), Community Services
Bianca Bielski, Planning and Building
Cameron Gosse, Finance
Donna Sheppard, Transit
Angela Papparizo, Parks and Recreation
Doug Pladsen, Parks and Recreation
Blake Hurley, Legal
Karen Sabzali, Parks and Recreation
Charlotte O'Hara-Griffin, Parks and Recreation
Rob Peachey, Parks and Recreation
Jason, Schmidt-Shoukri, Planning and Building
Ron Steiginga, Legal
Umar Malik, Engineering
Vito Tolone, Transportation