



Briefing on Section 37 Issues for Upper Avenue/Lawrence

Updated Jan 3, 2019

This document has been prepared as a 'briefing' for the newly elected Councillor Mike Colle (Dec 1, 2018) of Section 37 issues for the Upper Avenue/Lawrence area which involves BPRO (Bedford Park Residents' Organization), LPRO (Lytton Park Residents' Organization), SAHRA (South Armour Heights Residents' Association) and UACA (Upper Avenue Community Association, formerly Old Orchard Grove Ratepayers' Association).

Our Requests of Councillor Colle

Based on past history presented in the Background Information in this document, we would appreciate a councillor/Residents' Associations working relationship on the subject of Section 37 funds. To facilitate this, we request Councillor Colle to:

1. Obtain City reporting and/or meet with City officials to obtain financial information on each of the Section 37 sites and the allocations, receipts, disbursements and balances available
2. Conduct a meeting with representatives of the four involved residents' associations to
 - a) review the findings
 - b) discuss objectives/policies/priorities for S37 allocations and/or re-allocations within the Upper Avenue/Lawrence area
 - c) start compiling a consolidated 'wish list' for the Upper Avenue/Lawrence area.
3. Establish a communication process between the Councillor and the four residents' associations to:
 - a) review annual reporting for the Upper Avenue/Lawrence area
 - b) review new contributions/allocations
 - c) submit new 'wish list' items

Background

Section 37 of the Planning Act authorizes municipalities to grant increases in height and density of development, in exchange for the provision of "facilities, services or matters". The City of Toronto has used Section 37 provisions for community benefit contributions more extensively than any other municipality in Ontario. Since amalgamation, the City has secured over \$309 million in Section 37 cash benefits and received over \$212 million in payments and accrued interest, as well as significant additional un-quantified in-kind benefits that may exceed the value of the cash contributions.

Gladki Planning Associates was engaged by the City to provide recommendations to improve the clarity and transparency of the Section 37 process for obtaining community benefit contributions at the City. Their final report integrates feedback generated at workshops with recommendations from an

October, 2013 study "Improvements to the Section 37 Implementation Process" also prepared by Gladki Planning Associates.

The Gladki Report also notes: "It is important to remember in the context of this review that although Section 37 contributions are significant, they represent what is primarily a planning tool to address community benefits mostly in proximity to the development. The funds that are provided through Section 37 agreements represent a small fraction of total revenue that is generated through developments that require approval for rezoning. For example, each development approval increases the City's assessment base and generates significant additional tax revenues for the City year after year. In addition, all developments generate development charge revenues which are funneled into general revenues and available to address needs across the City. Each development also contributes to **parks levies**, a portion of which are allocated to address City wide needs."

[Section 37 Review - Final Report \(7\) \(1\)](#)

The '**Conclusions**' are as follows:

"This review concludes that Section 37 represents a useful and valuable tool for achieving community benefits related to development approvals for the City of Toronto, but that some adjustments would improve the process of negotiating and implementing agreements. Specific findings include:

- More than 300 million dollars of funds for community benefit contributions have been generated as part of Section 37 agreements since 1998 as well as significant additional in-kind contributions that likely exceed the cash contributions in total value.
- The objective of Section 37 is to improve the communities within which development and intensification takes place, and to address, at least in part, needs generated by adding population in any particular area.
- Considerations regarding the contribution of community benefits constitute an important aspect of "good planning" and should be integrated with assessment of the physical form of development.
- A "reasonable planning relationship" must be established between the additional height and density and the community benefit, usually interpreted as reflecting geographic proximity.
- The City's policies and Guidelines regarding the use of Section 37 for community benefit contributions are by and large solid, but are not always adhered to in implementation."

The main '**Recommendations**' for improving the City's implementation process regarding Section 37 of the *Planning Act* include:

- "Exploring options for establishing a set of standard charges for additional height and density, based on different geographies in the City that reflect differences in appraised land values.
- Clarification of the concept of a "reasonable planning relationship" as it applies to different types of community benefits.
- Undertaking an assessment to establish a set of potential community benefit contributions on a neighbourhood by neighbourhood basis across the City, based on consultations with communities and already existing departmental service plans.
- Continue to add a standard recommendation to reports recommending Section 37 community benefit contributions to allow funds to be transferred, if they remain unused for a period of time after they have been received, based on a report to Council.
- Improving public information on Section 37 by providing a brochure on-line to explain the City's process for securing Section 37 community benefit contributions as well as an annual report that summarizes the previous year's achievements regarding Section 37 community benefit contributions.
- Dedicating additional staff resources to follow-up with project implementation."

Specific Recommendations are:

Reasonable Planning Relationship

That the City include the following in its Section 37 Implementation Guidelines:

“An appropriate geographic relationship exists if one or more of the following criteria are applicable:

- a) The contributing development is located within the catchment area of the facilities being constructed or improved as a community benefit;
- b) The contributing development is located within the community or neighbourhood that benefits from the provision of the community benefits;
- c) The occupants of the contributing development will have the opportunity to use the facilities being constructed or improved;
- d) The contributing development will benefit from the provision of the community benefits, possibly through increased value, or enhanced marketing or business opportunities; and
- e) In the specific case of affordable housing as a community benefit, the appropriate geographic relationship is considered to be citywide, i.e. the location of affordable housing as a community benefit can be anywhere in the City, or as otherwise specified.”

Rationale for Section 37

That the City hire an outside appraiser to provide land values for each square metre of increased density for different geographic areas across the City and that these values be updated annually.

That the City explore alternative approaches for calculating Section 37 community benefit contributions for developments in different areas, including a per square metre charge be applied to the increase in buildable area generated through a rezoning, based on appraised land values and a percentage target for capturing the increase in land value to be determined based on further study.

Base Density

That when the City Planning Division introduces or updates Secondary Plan policies and/or site specific and area Official Plan policies for areas of the City as appropriate, they consider incorporating base densities and a specific schedule of community benefits related to increasing density through a quantitative formula.

Assessment of Community Needs

That ward councillors work in collaboration with the community, and City Divisions, to prepare an assessment of potential Section 37 community benefit contributions for various neighbourhoods within each ward, to be updated once during each term of Council.

Flexibility Regarding Expenditures on Specific Benefits

That staff continue to include a standard recommendation in reports regarding Section 37 community benefit contributions to allow funds intended for specific community benefits to be redirected if they remain unspent for a three year period after receipt without requiring an amendment to the site specific bylaw, provided that the benefits towards which the funds are redirected represent a reasonable planning relationship to the original application and a report on the matter is submitted to Council by the Chief Planner and Executive Director City Planning.

Transparency

City Planning be requested to prepare public education information explaining the City's process for securing Section 37 community benefit contributions to the public as well as an annual report summarizing the previous year's achievements regarding Section 37 community benefit contributions.

Follow Up on Community Benefits

That Council provide additional dedicated staff resources to address, on an ongoing basis, the timely implementation of improvements and expenditures identified in Section 37 agreements as community benefit contributions.

Avenue Road Avenue Study Recommendations

The following original Recommendations remain Outstanding/would require funding sources, possibly from Section 37 funds:

- #10 Roe Avenue Bus Loop conversion to parkette
- #12 Landscape and improve spaces between curbs and rights-of-way (15 locations)
- #16 Public art at 'gateway' locations
- #17 Public art on utility boxes
- #19 New parking lots and underground structures

The Recommendations Review Report also contained some new ideas/suggestions... 'easy' recommendations that could be done in 2018, that may also require financing:

- Plant street trees at 2175, 2177 and 2181 Avenue Road (the apartment buildings near the 401) in the boulevard area.
- Plant trees at 1997 Avenue Road (Comtech Fire Credit Union) along the south side of Haddington
- Continue on-going improvements to the Cranbrooke Avenue entrance to Brookdale Park and general park improvements including curbs and bollards, lighting and signage
- Continue on-going improvements and installation of a pedestrian trail in Brookdale Park between Grey Road and Fairlawn Avenue.

Section 37 contributions were or will be applicable to the following developments within the Wilson to Lawrence/Yonge to Bathurst boundaries which involve primarily the BPRO, LPRO, SAHRA and UACA residents' associations:

1717 Avenue Road (Source Account XR3026-3700260)

Prior to the commencement of a full hearing before the Municipal Board, the applicant and the City reached a settlement on the outstanding issues of height and density. The settlement was authorized by City Council at its meeting of February 5, 6, 7 and 8, 2007. The effect of the settlement reduced the height of the building to a 6 storey envelope and authorized the City Solicitor to secure a **\$400,000 cash contribution** secured with an Agreement registered on title pursuant to Section 37 of the *Planning Act*.

The Agreement directed:

A portion of this contribution (**\$250,000**) towards site remediation and improvements to convert an abandoned TTC bus loop into a park at 1400 Avenue Road (Heart Park) - expended.

The remainder of the contribution (**\$150,000**) was directed towards renovations to the Armour Heights

Community Centre including, but not limited to mechanical, windows, mill work, finishes, fire alarms, security systems and fixtures. The renovations to the Armour Heights Community Centre were funded by another organization, so the funds were reallocated.

\$14,000 to Upper Avenue signs (29 signs) which were installed.

\$136,000 to local parks and streetscape enhancements. SAHRA asked the Councillor Carmichael Greb to report on how these monies were actually spent.

\$64,000 Dog Off Leash Area Improvements 2010 – this is the area on Jedburgh; believe funds were spent in 2010.

\$100,000 interest gained has been allocated by Council to 2015 Parks, Forestry and Recreation Capital Budget for Woburn Avenue Playground (east of Yonge Blvd) and Cortleigh Parkette (south of Lawrence) – not yet distributed?

Update Oct 5, 2016: Councillor Carmichael Greb put a Motion forward at City Council which was approved to allocate **\$5447.21** of the S37 monies from 1717 Avenue Road for the purpose of installing 'The Upper Avenue' streets signs on Avenue Road between Lawrence Avenue West and Wilson Avenue.'

Only \$19,447 of the \$400,000 was assigned to the Upper Avenue area. \$433,447 has been allocated and spent to date; leaving a balance of \$66,553 in the account if it is correct that \$100,000 interest gained has been distributed for the Woburn and Cortleigh park improvements.

1684-1704 Avenue Road

Prior to issuance of an above grade building permit the owner shall provide a certified cheque in the amount of **\$200,000.00** to be used for capital improvements with **\$50,000** allocated to Allenby Junior Public School and \$50,000 allocated to John Wanless Junior Public School, and **\$100,000** allocated to parks in Ward 16 to be determined by the community with such amount to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of the Section 37 Agreement to the date the payment is made.

Signs at John Wanless indicate that they had collected the funds to provide for their new playground from contributions from local businesses/realtors and fundraising efforts by the parents. The North Post article in March said that the Allenby parents had raised \$100,000 to put towards their playground alongside funding from the TDSB to take care of the turf and the terrible mud problem.

SAHRA asked the Councillor Carmichael Greb whether the \$50,000 and \$50,000 were in fact given to the two schools; if not, how will these funds be re-allocated now. SAHRA also asked the Councillor about the \$100,000 in terms of where it stands for definition of allocation to parks in Ward 16.

The Councillor stated that the allocations were:

- **\$50K** Blessed Sacrament School (east of Yonge Blvd)
- **\$50K** Allenby School (south of Lawrence);
- **\$50K** John Wanless School
- **\$50K** for Ledbury Park (new play structure and other fitness amenities).

The funding is only received when the applicant applies for a building permit from the City of Toronto. In this case, the original applicant is not going ahead with the project. Another development company will now be taking over the project.

The Building Permit has been issued so the monies would have been received. An accounting is required to determine if the funds have been distributed.

228 Wilson Avenue

Prior to issuance of an above grade building permit the owner shall provide a financial contribution in the amount of **\$325,000.00** to be used for:

- **\$160,000** for Capital improvements to Old Orchard Park (has been funded by 4050 Yonge St)
- **\$165,000** for Streetscape improvements in the vicinity of the site

with such amount to be indexed upwardly in accordance with the Statistics Canada Construction Price Index for Toronto, calculated from the date of the Section 37 Agreement to the date the payment is made.

An agreement was reached in 2014 facilitated by Councillor Karen Stintz that the Old Orchard Grove Residents' Association (now the Upper Avenue Community Association) would have an opportunity to discuss/revise the allocation of the Section 37 monies.

Note: The capital improvements to Old Orchard Park in 2017/18 were funded by a re-allocation from the 4050 Yonge Street development.

As construction as not yet proceeded with this site as of Dec, 2018, we assume that the S37 monies have not been received. Need to determine what responsibility the future owner of this site will have for payment of the S37 monies on receipt of a Building Permit.

4050 Yonge Street

The Final Staff Report in June, 2011 based on the proposal that TTC build on the property (which was cancelled) called for a cash contribution of **\$1,500,000** prior to the release of above grade permits which is to be used for the following:

- Upgrades to the existing transit passenger pick-up and drop-off parking area along Old York Mills Road
- Path and trail improvements/connections within the West Don River Valley area adjacent to the site, York Mills Park and York Mills Valley Park
- Parks improvements to Woburn Park (OOGRA now UACA area/192K Capital)
- Parks improvements to Brookdale Park (OOGRA-now UACA /?just done?40K Capital) – removed on Oct 5, 2016 and replaced with Old Orchard Grove Park – think the allocation was **\$350,000** (OOGRA/now UACA area)
- Douglas Greenbelt (BPRO and UACA)
- Establishment of a Village Square on Dunblaine Avenue (SAHRA) – removed on Oct 5, 2016

At an Information Session arranged by the new Developer (The Gupta Group) in March, 2015, it was apparently stated that the Section 37 allocation would be the same at \$1,500,000 and that the allocations would remain as originally defined in 2011.

SAHRA suggested that the allocation of the funds be open for discussion between the Councillor and Planning in conjunction with the neighbouring Residents' Associations (York Mills Heights Residents' Association, York Mills Valley Association, York Mills Ratepayers' Association, St. Andrews Residents' Association, South Armour Heights Residents' Association and the Old Orchard Grove Ratepayers' Association now UACA).

Update Oct 5, 2016:

The City Council minutes of Oct 5, 2016 that Councillor Carmichael Greb put an 'urgent' Motion forward to adopt an Oct 4, 2016 report from Planning for 4050 Yonge Street, including a re-definition of the allocation of Section 37 monies. The documents specified the overall amount of the Section 37 funds to be paid **(\$1,500,000)** but it did not provide a breakdown of the allocation across the 6 items (the Councillor's Office was asked to provide information on the allocations but did not respond):

1. Upgrades to the existing transit passenger pick-up and drop-off parking area along Old York Mills Road
2. Path and trail improvements/connections within the West Don River Valley area adjacent to the site, York Mills Park and York Mills Valley Park
3. Improvements to Woburn Park
4. Improvements to the Douglas Greenbelt
5. Improvements to Old Orchard Park (believe the allocation was **\$350,000**)

The allocations need to be reviewed to determine the value of the allocations to each of the 5 initiatives as well as to determine which monies have been released to date.

250 Lawrence Avenue West

A new proposal as of 2015; appealed to LPAT; Hearing held in May, 2018; Decision received in Sept, 2018. It is stated in the Decision that the Appellants and the City have agreed that the proposed development triggers the Section 37 policies in the Official Plan and that a Section 37 contribution is to be settled between the Appellants and the City. The outcome of such discussions usually is specifically incorporated into the zoning amendment by-law.

The City has not yet communicated any information on the value and proposed uses of the Section 37 contribution but our request was that the funds be dedicated to the refurbishment of the Douglas Ravine adjacent to the site. Follow-up is required by Councillor Colle.

1580 Avenue Road

SAHRA was originally told by the Planner on the 1580 Avenue Road file that Section 37 monies were not applicable for this site as it was less than 10K square metres. The proposal for this building was presented at the Oct 17, 2017 meeting of the North York Community Council. The Staff Report from Planning recommended approval of the proposal despite the fact that the proposed height was 29.5m (versus 24.5 which is permitted by By-law 569-2013) and the densification was 4.77 times the area of the lot (versus the allowed of 3.0). But the Staff Report maintained that the plans had to be revised to be contained within a 45 degree angular plane projected over the entire lot from the surface of the centre-point of the Avenue Road Right-of-Way. However, Councillor Carmichael Greb tabled a Motion to accept the proposal as submitted but now a Section 37 payment was required of **\$694,000**. The monies are "to be used towards park and streetscape improvements in the area..."

Building is now progressing so the S37 monies should have been received. Follow-up is required by Councillor Colle to review the intended allocations for these funds. It has been suggested that some of these monies could be used towards the transformation of the Roe Bus Loop into a Parkette.

164 Cheritan

On April 25, 2018 City Council passed an 'urgent' Motion tabled by Councillor Carmichael Greb to release Section 37 funds from the development at 164 Cheritan Avenue for "Capital Improvements to the Toronto Community Housing Corporation property at 193 Wilson" (Marjory Carton Apartments) in the amount of **\$23,092.48**. We think that the original allocations specified that funds were to be used "specifically for affordable housing". The intended use of the monies is confusing as #1 states "to undertake the capital rehabilitation and upgrading" and in the Summary it states that the TDHC staff "require the funds to be able to move forward with the building upgrades during this construction year." Yet in an earlier paragraph in the Summary it states that "It was agreed that these funds could be used towards exercise equipment, new furniture in the common room and a community garden" (which are not capital).

The use of funds at the Marjory Carton Apartments was on the original Wish List submitted by SAHRA to Councillor Carmichael Greb on July 14, 2015.

The 164 Cheritan Trust Account should be reviewed for any Balance available for allocation.

The following table summarizes the Revenues and the Allocations, within and outside of the Wilson to Lawrence/Yonge to Bathurst boundaries (updated Dec, 2018):

Site	Total \$	Parks – Upper Avenue	Parks – Outside Area	Schools Upper Avenue	Schools – Outside Area	Street -scape	Other Desc	Other \$	Possible Balance
1717 Avenue Road	\$400K \$100K Interest		\$414			\$19.5K			\$66.5
1684-1704 Avenue Road	\$200K	\$50K		\$50K	\$100K				
228 Wilson	\$325K	\$160K				\$165K			Not Rec'd?
4050 Yonge St	\$1,500K	\$350K?	Not Defined				Drop-off	Not Defined	
							Trails	Not Defined	
Allocation of \$1.5K not defined in terms of dollar values							Douglas Ravine	Not Defined	
							Dunblaine	0	
250 Lawrence	Not Yet Defined						Douglas Ravine?	Not Yet Defined	
164 Cheritan	\$23K						Marjory Carton	\$23K	?
1580 Avenue Road	\$694K	?				?			
Totals	\$3,242K	\$560	\$414K	\$50K	\$100K	\$185K		\$23K	?

A proper accounting of allocated, received, disbursed and balances available needs to be prepared for review by the Councillor and the local Residents' Associations.

It is our opinion that there has been an over-emphasis on Parks (which are funded by development in other ways) and Schools.

While a Councillor is at liberty to allocate the funds anywhere within their Ward, it is our opinion that the monies should be used, where possible, in the area adjacent to the development site that is providing the Section 37 funds.

Section 37 monies have been assessed for 4 projects for a value of \$3,242,000. We believe that this money should have been/should be allocated and/or re-allocated to Wish Lists prepared in conjunction with the local Residents' Associations for projects within Wilson to Lawrence/Yonge to Bathurst, rather than to Parks and Schools outside the area.

Wish Lists

During Councillor Carmichael Greb's tenure as Councillor Ward 16, SAHRA reviewed the topic of Section 37 monies in order to define the original allocations and then the actual disbursements. The initial version of this document was published in March, 2015 and the topic was put on the Agenda for SAHRA's Annual General Meeting which took place on April 8, 2015. At that meeting, the Councillor committed to "Working with residents and stakeholders to create Section 37 'wish lists' to ensure resident's voices are heard when negotiating for and allocating such funds". This was confirmed in her letter to Members of the South Armour Heights Residents' Association on April 10, 2015.

SAHRA submitted a 'Wish List' to Councillor Carmichael Greb on July 14, 2015 of initial items with the intention to 'grow' the list as new needs arise. A number of these items were Recommendations within the Avenue Road Avenue Study (2009) which have not yet been implemented.

- TTC Loop greening at Avenue Road and Old Orchard Grove to provide a parkette
- Street furniture on Avenue Road
- Bicycle/walking paths that could include other wards for an uptown/downtown routine (tie in with Cycle Toronto)
- Lawrence Park Collegiate improvements to Sports Field that would not be funded by TDSB
- Seniors Home improvement (Marjory Carton Apts) at 193 Wilson Avenue for low income seniors that would not be funded by Toronto Housing [given \$23,092 in April, 2018]
- Armour Heights Community Centre improvements to Library and Playground that would not be funded by other sources
- Street Art such as Murals on selected street corner buildings on Avenue Road; statue of a noted/historical figure for North Toronto, street sculpture (OCAD students could possibly participate)
- Trees – replenish and improve planting on Avenue Road; provide Tree Guards as necessary
- 401 On/Off Ramps – require landscaping to provide transition into our neighbourhood (in co-operation with the provincial government)

Past Actions

SAHRA reviewed this subject with the other Ward 16 (now Ward 8) Residents' Associations to ensure that they are aware of this source of revenue so that they could engage in defining the use of the allocations within their areas.

SAHRA reviewed with the Councillor's Office again the allocation of funds that had not yet been disbursed, asking, where appropriate, for re-review and re-allocation of funds to other desirable items. Specifically, we asked that the allocations for 1678-1704 Avenue Road and 4050 Yonge Street be reviewed.

SAHRA asked the Councillor to provide an estimate of costs and possible sources of funding for the 14 outstanding Recommendations so that we can understand and prioritize the projects to be undertaken.

SAHRA (and the other involved Residents' Associations) have asked to be involved with the designation of projects for Section 37 monies for the 250 Lawrence Avenue West project.

SAHRA had requested of Councillor Carmichael Greb a reporting annually on the allocations and actual disbursements of Section 37 monies for the development projects within the Wilson to Lawrence/Yonge to Bathurst boundaries, as we understand Councillors receive such a report.

SAHRA submitted a request to PGMC and City Council on October 11, 2016 asking that reporting be added for 'total Section 37 funds assessed by Ward across the City in the previous year' so that we have a complete accounting of assessed, collected, disbursed and balances. The Planning Act now requires that the treasurer of the municipality shall each year give the council a financial statement relating to the Section 37 Planning Act Reserve Fund Account – so the reporting is available for the Councillor and its Residents.

Prepared By: South Armour Heights Residents' Association