

TOWN OF GRIMSBY – SECTION 37 IMPLEMENTATION GUIDELINE

1. PREAMBLE

Section 37 of the *Planning Act* (1990) authorizes the council of a local municipality to permit an increase in the height and/or density of a proposed development in exchange for the provision of facilities, services or community benefits. Although Section 37 applies to all Ontario municipalities, a municipality must include provisions for density bonusing in their Official Plan.

The objective of Section 37 is to provide municipalities with a planning tool to ensure that appropriate community facilities and benefits are provided in communities where development and intensification occurs. Section 37 intends to facilitate win-win opportunities for both the municipality and the developer, increase in height and/or density represents good planning and that the value of the community benefits have a reasonable planning relationship to the proposed increase in height and/or density.

The benefit of Section 37 is that it provides municipalities with a transparent and comprehensive framework in which to assess bonus zoning. Directing increased height and/or density to the Town's intensification areas, which include the Downtown and Winston Secondary Plan area, help to protect the Town's stable neighbourhoods. Directing additional growth near or adjacent to transit hubs, such as the GO Station at Casablanca Boulevard, assists in supporting transit.

Despite these broad benefits afforded by increased density, individual applications must still be evaluated to determine that the increase in density and/or height represents good planning, conforms to the Official Plan and can be supported by infrastructure in the area.

The Town of Grimsby's Section 37 process ensures that the community benefits reflect community needs. Appropriate community benefits are secured through existing community needs studies or through a working group, whereby the Town planning staff, in consultation with the Ward Aldermen, the applicant and local residents decide on the realm of appropriate community benefits. This process ensures that appropriate benefits are secured for the community in which the development is proposed. An agreement is required to bind the developer to the agreed upon terms for which their community benefit or cash contribution is to be provided. The following sections of the Implementation Guideline provide further context and direction on securing community benefits and negotiating an agreement with the applicant.

2. PURPOSE

The purpose of the Section 37 Implementation Guideline is to provide Council with a framework to determine appropriate community benefits where increased height and density are being sought through an amendment to the Official Plan and Zoning By-law. This document also aims to assist applicants and residents in understanding the Section 37 community benefits process. The Implementation Guideline intends to ensure that growth and development aligns with the vision and objectives as set out in The Town of Grimsby's Official Plan. The Section 37 Implementation Guideline will help the Town in evaluating development applications and determining appropriate community benefits, facilities or services associated with the proposed increase in height and/or density.

This Section 37 Implementation Guideline outlines:

- how Section 37 of the *Planning Act* will be applied in the Town of Grimsby;
- the type of developments subject to Section 37 community benefits;
- how the proposed increase in heights and densities are valued in relation to proposed community benefits; and
- the process for negotiating Section 37 Agreements, including the role of Planning Staff, Members of Council, the applicant, and residents.

3. JURISDICTION

Pursuant to Section 37 of the *Planning Act*, Council may authorize an amendment to the Zoning By-law, in the form of increases in height and/or density of development, in return for the provision of such facilities, services or community benefits as set out in a zoning by-law amendment. This Implementation Guideline supplements the Town of Grimsby's Official Plan, Section 9.4 Height and Density Bonus Provisions and will assist Council, the applicant and residents in determining appropriate community benefits.

As per the policies in Section 9.4 of the Official Plan, when authorizing a height and/or density bonus, the Town's main objectives are encouraging the provision of rental housing, the provision of affordable housing, the preservation of buildings or structures of historical or architectural merit and the provision of other community facilities of benefit to the community. The Official Plan requires applicants to enter into a Section 37 Agreement with the municipality, which will set out the community benefit to be provided, the means of obtaining the community benefit and the timing of construction, provision or contribution of the community benefit.

As per policy 9.4.6 of the Official Plan, Council may approve an application for Zoning By-law Amendment for increased height and / or density up to a maximum

height and / or density permitted in the Official Plan or permitted by an approved Official Plan Amendment. Where Council approves such an amendment application, it shall require community benefits in exchange for the increased height and/or density provided that it fulfills the thresholds outlined in Section 9.4.2 of the Official Plan and section 4 below.

Section 37 community benefits will only be considered in areas that are recognized to be *cultural heritage landscapes*, as per the Provincial Policy Statement, if, as identified in Section 9.4.7 of the Official Plan, the obtained community benefit involves the preservation and/or restoration of buildings, structures and landscapes of historical or architectural merit.

4. THRESHOLDS FOR CONSIDERING A DENSITY BONUS

When implementing a density bonus under Section 37 of the *Planning Act*, the following thresholds must be met:

4.1 The proposed development must represent good planning.

Prior to being considered for a Section 37 bonus, the proposed development must exhibit good planning principles and must conform with the Town of Grimsby's Official Plan including with applicable Town policies, such as Policy 3.4.7, Design Policies for Residential Neighbourhoods and Policy 3.5.6 Design Policies for the Downtown District. The development must also be compatible with the scale and character of the surrounding area and have minimal impact on neighbouring uses. The development must accommodate the necessary on-site functions such as parking, landscaping and recreational facilities as well as have adequate engineering services and transportation systems to accommodate the increase in density. As per the vision in Section 2.1 of the Official Plan, "Growth will complement the significant natural features of the Town, protect and strengthen the scenic beauty that is provided by the backdrop of the escarpment, the Lake Ontario waterfront, and the rural countryside. Growth will be based on prudent infrastructure planning and strong policies that will define where growth will occur, preserve the natural environment, maintain the quiet and peaceful countryside and foster the building of an active, attractive and walkable urban community". Town planning staff will provide Council with a recommendation on whether the application represents good planning and conforms to the Official Plan. Council then decides on whether to approve the zoning by-law amendment application and seek a Section 37 bonus.

4.2 Reasonable Planning Relationship

A reasonable planning relationship must exist between the community benefit and the increase in height and/or density in the proposed development. There should also be a geographic relationship between the proposed development and the community benefits, facilities or services. Highest priority will be given to on-site

provision of community benefits, followed by the allocation of community benefits within the neighbourhood in which the proposed development is located.

5. PROTOCOL FOR DETERMINING COMMUNITY BENEFITS

5.1 Height and Density Threshold

Developments are considered eligible for Section 37 community benefits if they are located in the Medium Density, High Density, Mixed Use or Downtown designations.

The Official Plan sets out the maximum height and density restrictions for each of the designations as summarized in the following tables. Applications for a Zoning By-law amendment may be permitted up to the maximum in Table 1, provided appropriate community benefits are received in accordance with this guideline.

Table 1: Maximum Heights & Densities - Existing Designations

Designation/Zone	Max Density	Max Height
Medium Density Residential Area	60 units per hectare	3 storeys, possible 4 in Secondary Plans
High Density Residential Area	120 units per hectare	8 storeys unless Secondary Plan permits alternative
Residential/Mixed Use Area	60 units per hectare	4 storeys
Mixed Use – Medium Density	N/A	6 storeys
Mixed Use – High Density	3 times lot area	12 storeys
Downtown - Main Street	N/A	4 storeys
Downtown-Transition	N/A	3 storeys south of Main St. W./Livingston Ave, 4 storeys but Council may authorize up to 6 storeys north of Main St. W./Livingston Ave.
Downtown - Intensification	N/A	4 storeys but Council may authorize up to 6 storeys
GO Station Secondary Plan	Low Density : 25 units per hectare Medium and Mixed-Use Medium Density: 60 units per hectare	As per Schedule H of OPA 6, buildings heights are set out for specific areas and range from 3 to 18 storeys depending on the area.

	Mixed Use High Density: 3 times lot area	
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As noted in the following table, the Official Plan does not specifically regulate densities for Downtown-Main Street, Downtown Transition or Downtown Intensification designations and their corresponding zone, as density will be considered a product of the relationship between height and lot coverage.

Within the Downtown – Intensification designation and the Downtown – Transition designation, the Official Plan sets out a maximum height to protect views of the Niagara Escarpment; however Council may still consider zoning by-law amendments for increased height if a visual impact assessment is submitted and demonstrates that views of the Escarpment will not be detrimentally impacted.

5.2 Potential Community Benefit Contributions

Section 37 community benefits are capital facilities and/or cash contributions toward specific capital facilities. Community benefit contributions do not entitle any reductions in Development Charges and will be over and above what will otherwise be achieved through other sections of the *Planning Act* and the Town of Grimsby Official Plan. The following is a non-exhaustive list of appropriate community benefit facilities and services:

- Provision of new affordable housing in the form of land, residential units or cash contributions;
- Provision of or improvements to open space, parkland or community facilities (i.e. daycare, libraries, community centres, recreational facilities);
- Non-profit arts, cultural, community or institutional facilities;
- Public art;
- Provisions of streetscape improvements;
- Enhanced urban design and place making features;
- Provision for multi-modal transportation facilities;
- Enhanced public access to Natural Heritage Features, or trails and open spaces in the Niagara Escarpment;
- Conservation and preservation of cultural heritage resources;
- Land for municipal purposes, beyond that otherwise required under the *Planning Act*;
- Enhanced environmental development performance standards or LEED certification that exceeds that required by the Official Plan; and
- Other local improvements identified through Community Improvement Plans, Secondary Plans or Local Area Studies.

Cash contributions may also be accepted as a community benefit as part of the Section 37 bonus zoning provided the implementing zoning by-law establishes specifically where the money will be spent.

5.3 Community Benefits Should Reflect Community Needs

Community benefits will be determined on a case-by case basis and will reflect the needs of the community. The assessment process will be led by Town planning staff, in consultation with the Ward Aldermen, the applicant and a working group of local residents.

A working group will be formed to recommend an appropriate community benefit. An announcement seeking volunteers for the working group can be included in the notice for the open house and announced at the open house. Volunteers can confirm their interest by corresponding with planning staff. The selection of residents participating in the working group will ultimately be decided by Town Staff and the Ward Alderman. The working group should include the following key stakeholders:

- Town planning staff,
- The applicant and its planning consultant,
- Ward Aldermen, and
- 5 to 10 Local residents.

The working group will commence its evaluation of the application's community benefits after the first open house. The Planning Staff will first determine whether existing community needs have been identified in the local area through studies or plans, such as Secondary Plans, community facility studies, Parks and Recreation Master Plans or Community Improvement Plans. These studies will be presented to the working group. The studies may identify a range of community facilities, services or matters that should be provided or supported on a priority basis. If the previous studies have not identified priority community facilities, the working group will identify a realm of potential community benefits, including suggestions by the applicant.

The working group will compile their findings and recommendations from their assessment, and Town staff will present it to residents at the statutory public meeting where the public will have an opportunity to comment on the proposed development and the appropriate type of Section 37 community benefits.

Local area studies, public input, and the working group suggestions will inform the planning staff's recommendation for the community benefit contribution. This recommendation will be included in the Town's planning report for the application and put forward to Planning Committee for approval. If the Planning Committee recommends approval of the application and the community benefit, Town planning staff will then work with the applicant to prepare the Section 37 Agreement.

5.4 Monetary Value Determination

As set out in Section 4.2, the proposed community benefit must have a reasonable relationship to the proposed increased height and density.

Where affordable housing is provided, an additional dwelling unit or additional gross floor area equal to one dwelling unit may be permitted for every affordable housing unit provided.

Where rental housing is provided, an additional dwelling unit or additional gross floor area equal to one dwelling unit may be permitted for every two rental housing units provided.

For all other community benefits, the value of the community benefit must be compared to the value of the increased height and or density. In these cases, the secured community benefit will be valued by determining the residual land value resulting from the increase in height and/or density. If an applicant proposes an amendment to the Zoning By-law that seeks an increase in height and/or density, they must conduct a land appraisal, based on a terms of reference to be prepared by Town staff. The applicant will bear the cost of the appraisal and select an appraiser from the Town's list of qualified, independent real estate appraisers. This appraisal must be included with the application submission. The appraisal must be based on the value of the land the day before the application is submitted, and consider the up-lift value based on the anticipated date of adoption, once the appeal period lapses. Should there be a disagreement between the Town and the applicant on the value of the increase, the Town or the applicant may wish to initiate a second appraisal, at the applicant's expense, from a Town approved list of appraisers and based on the same terms of reference as the first appraisal.

The appraisal will be used to determine the monetary (land lift) value and will serve as a basis for determining the value of the community benefit. The appraisal will include:

- Land value based on "as of right" maximum height and density (base height/density); and
- Land value based on "as proposed" maximum height and density (proposed height/density).

The differential between the "as of right" and the "as proposed" is the increase in land value. The Town will generally seek to secure, through community benefits, approximately 30% of the increase in land value resulting from the increase in height and/or density, subject to negotiations between the Town and the applicant. The final value of the community benefit will be determined on a case-by-case basis and will be based upon a reasonable planning relationship between the justified benefits and the anticipated development.

5.5 Negotiation

Town staff and the applicant will work cooperatively and respectfully throughout the negotiation process. Town staff and the applicant will work to resolve disputes in a timely manner.

5.6 Exemptions to Section 37 Community Benefits

Non-for-profits that provide affordable housing are exempt from Section 37 requirements. As per the Official Plan, Policy 2.5.6, Development Charges and Community Benefits may be waived or exempted for new affordable housing in return for a commitment by the applicant to meet specified affordability targets, design requirements, and where applicable, requirements under a senior government housing program. Exemption will be subject to review of the application by planning staff.

6. SECURING AND IMPLEMENTING COMMUNITY BENEFITS

The community benefit will be secured through a site-specific Zoning By-law amendment and Section 37 Agreement. The Section 37 Agreement will set out the following details:

- summary of the community benefits, facilities or cash contribution that has been secured;
- the value of the Community Benefits; and
- the specific timing of the provisions, improvements or facilities.

6.1 Timing of Agreement Execution

The agreed-upon Section 37 community benefit will be included in the Zoning By-law amendment, which will be introduced to Council for approval. The timing of provisions or payments of benefits will be set out in the Section 37 Agreement. The actual payment or provision of community benefits will not occur until after execution of the development agreement as set out in the Section 37 Agreement.

Some community benefits, such as affordable housing units or space for daycare facilities within the development, will be provided once the development is constructed. Other off-site facility improvements or cultural heritage conservation could take place prior to completion of the development.

Cash contributions towards community benefits must be secured and paid prior to issuing a building permit. For large developments, cash payments may be phased, subject to planning staff recommendation and Council approval. Where a cash contribution is phased, the value of the contribution will be indexed with the

Statistics Canada Construction Price Index from the date of the agreement to the date of payment.

7. ADMINISTRATION

Funds for Section 37 community benefits will be collected by the Planning Department and held in a Section 37 Reserve Fund. The funds will be managed by Accounts Payable & Receivable, who will also be responsible for maintaining a record of all cash payments received under this policy. An annual report shall be distributed to Council outlining the Community Benefit contributions secured in that previous year and the actual community benefits funded.

If cash contributions for Section 37 community benefits have not been spent within a three-year period, the allocated funds can be redirected towards another community benefit, without the requirement of an amendment to the site-specific Zoning By-law. The redirected community benefits must still represent a reasonable planning relationship to the original application. The planning staff must submit a report explaining the decision behind the redirection of community benefits to the Council. The redirection of community benefits is subject to Council approval.

Any subsequent amendment to an approved Zoning By-law Amendment, which proposes to further increase height and/or density of the development will require the applicant to conduct a new appraisal and negotiate a new Section 37 Agreement with the Town.

A review of the Section 37 Implementation Guidelines should be conducted generally every five years. The Town's Planning Staff shall prepare a report identifying whether any changes are required and submit it to Council for review.