

REPORT TO: Alderman N. DiFlavio, Chair and Members of the
Planning & Development Committee

RE: **SECTION 37 COMMUNITY BENEFITS - OFFICIAL PLAN AND ZONING
BY-LAW AMENDMENT AND IMPLEMENTATION GUIDELINES**

DATE: June 19, 2018

1.0 RECOMMENDATION:

That Report P.A. 18-18 regarding the proposed revisions to the Town's Section 37 community benefit policies and regulations be received;

And that the proposed Official Plan Amendment attached as Appendix 'A' to this report be revised to incorporate the changes recommended by staff;

And that a By-law be passed adopting the proposed Official Plan Amendment as Amendment No. 7 to the Town of Grimsby Official Plan;

And that the proposed Zoning By-law Amendment attached as Appendix 'B' to this report be approved by Council;

And that the proposed implementation guideline document attached as Appendix 'C' to this report be endorsed and approved by Council.

2.0 BACKGROUND:

At its meeting on January 16, 2017, Council asked planning staff to explore the comprehensiveness of the Town's Section 37 policies in Section 9.4 of the Town's Official Plan and Section 4.22 of the Town's Zoning By-law (By-law 14-45, as amended). The term "Section 37" refers to the section of the *Planning Act* which allows the Town to ask for benefits to construct or improve community facilities when a development requires a Zoning By-law Amendment for increased height and/or density.

SGL Planning & Design Inc. was selected by Council as the consultant who would oversee the review of these policies. A best practice review report was presented to Council as part of Planning Report P.A. 17-39. The report reviewed Section 37 policies and procedures in the following Ontario municipalities: Mississauga, Toronto, Ottawa, Vaughan, and Markham. Utilizing this review, the report analyzed how the Town of Grimsby's current Section 37 policies differ from these municipalities. The report concluded with a recommendation section, advising the Town to make amendments to the Official Plan and Zoning By-law, as well as to create a comprehensive implementation guideline document to direct future Section 37 applications.

At its meeting on September 18, 2017, Council approved the following recommendation:

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PD-17-54

Moved by Alderman D. Wilson; Seconded by Alderman J. Johnston;

Resolved that Report P.A. 17-39 titled "Section 37 Best Practice Review Study" dated September 12, 2017 be received and endorsed.

And that planning staff be directed to initiate Official Plan and Zoning By-law Amendments and to create an associated guideline document in order to implement the recommendations contained in the attached Consultant report.

In consultation with planning staff, SGL Planning & Design Inc. prepared draft Official Plan and Zoning By-law Amendments and a draft Section 37 Implementation Guideline document which addressed the findings of the best practice review report. An open house for these proposed amendments was held during a meeting of the Planning & Development Committee on March 20, 2018. The results of this meeting are addressed further below.

The proposed Official Plan and Section 37 Implementation Guidelines have since been revised based on the input received. The revised Official Plan Amendment is attached as Appendix 'A' to this report. The revised Section 37 Implementation Guideline document is attached as Appendix 'C' to this report. The revisions made to each document are outlined further below. The proposed Zoning By-law Amendment was not revised following the open house meeting and is attached as Appendix 'B' to this report.

3.0 LEGISLATION:

Section 37 of the *Planning Act* authorizes the council of a local municipality to permit an increase in the height and/or density of a proposed development above what is permitted in a Zoning By-law in exchange for the provision of facilities, services or community benefits. This process is often referred to as "height and density bonusing". Although Section 37 applies to all Ontario municipalities, a municipality must include provisions for Section 37 in their Official Plan in order to be able to use this authorization.

Section 37 policies only apply to an increase in height and/or density above what is permitted in a Zoning By-law. A municipality is not permitted to ask for the provision of community benefits in exchange for the approval of an application to increase height and/or density above what is permitted in an Official Plan.

The *Planning Act* allows for applications to amend a municipal Official Plan and/or Zoning By-law to permit an increase in height and/or density regardless of whether a municipality has Section 37 height and density bonusing policies in their Official Plan. **Any increase in height and/or density that involves Section 37 height and density bonusing policies would likely still be achievable irrespective of whether or not Section 37 height and density bonusing policies are in place in an 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.

Potential benefits that can be achieved under Section 37 include the following:

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- 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* (i.e. through parkland dedication); and
- Enhanced environmental development performance standards or LEED certification that exceeds that required by the Official Plan.

A municipality cannot require a contribution of these benefits without Section 37 policies in place in its Official Plan.

4.0 EXISTING POLICIES AND REGULATIONS:

Section 9.4 of the Town of Grimsby Official Plan pertains to Section 37 height and density bonusing. Section 4.22 of the Town's Zoning By-Law (By-Law 14-45, as amended) also contains regulations guiding Section 37 height and density bonusing.

In the High Density Residential Area designation in the Official Plan, and the Mixed Use – High Density designation in the Winston Neighbourhood Secondary Plan, developments are currently permitted to exceed the stated height maximum in exchange for the provision of community benefits in accordance with Section 37 of the *Planning Act*. These policies are as follows:

3.4.4 HIGH DENSITY RESIDENTIAL AREA

3.4.4.2 High Density Residential Area building forms shall not exceed 8 storeys unless an alternative height is permitted in a Secondary Plan.

3.4.4.3 The Town may consider buildings up to 12 storeys in exchange for the provision of community benefits in accordance with Section 37 of the *Planning Act*.

11.0 WINSTON NEIGHBOURHOOD PLAN

11.3.3 Mixed Use – High Density

11.3.3.2 Development Policies

a) The maximum height of any building shall be 12 storeys. The Town may consider higher buildings in exchange for the provision of community benefits in accordance with Section 37 of the *Planning Act* and provided the applicant

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submits transportation, view corridor, and shadowing studies, which demonstrate that the increased height will have no adverse impact and that views to the lake are protected.

In the proposed Official Plan Amendment (attached as Appendix A to this report), Section 3.4.4.3 of the Official Plan was identified as being removed from the Official Plan. Section 11.3.3.2 a) was not identified as being removed. This was an oversight when the amendment was prepared in advance of the statutory public meeting; both sections should have been identified as being removed from the Official Plan. Staff consequently recommend that the Official Plan Amendment be modified to reflect this change prior to its adoption by Council. This recommendation will be discussed further below.

5.0 PROPOSED AMENDMENTS

Official Plan

The proposed Official Plan Amendment is included as Appendix 'A' to this report.

The proposed Official Plan Amendment provides broader goals and objectives regarding desired community benefits in exchange for increased height and/or density. The amendment also includes more comprehensive policies that address monetary value determination and a requirement that applicants enter into a Section 37 agreement with the municipality.

The policies are thereby intended to provide for a more transparent and rigorous process for evaluating development applications where an increase in height and/or density is deemed appropriate from a planning perspective, thus ensuring that appropriate community benefits, facilities or services are provided in exchange for the increase in height and/or density.

As stated above, the need for each proposed amendment was identified via a best practice review of Section 37 policies in other Ontario municipalities. This report was included as part of Planning Report P.A. 17-39.

Since the open house meeting in March 2018, the following revisions have been made to the proposed Official Plan Amendment:

- The current Section 9.4.5 of the Official Plan is proposed to be removed from the Official Plan and replaced with a new policy (Section 9.4.6), which states as follows:

9.4.6 Where heights and / or densities set out in the Town of Grimsby Zoning By-law are proposed to be increased up to the heights and/ or densities permitted in this Plan or as permitted by an approved Official Plan Amendment, Council shall require community benefits in exchange for the increased height and/ or density provided the tests of Section 9.4.2 are met.

In the previous version of the proposed amendment, the current Section 9.4.5 had been reworded to allow an increase in the height and/or density of a development in the Medium Density, High Density, Mixed Use and Downtown area designations without requiring an Official Plan Amendment, provided the increase in height and/or density

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was within a 20% uplift of what is identified in the Official Plan. This policy has been removed from the proposed amendment.

The proposed Section 9.4.6 will require any increase in height and/or density above what is stated in the Official Plan to be allowed **only** through an Official Plan Amendment.

As noted above, Section 37 of the *Planning Act* only applies to increases in height and/or density approved through a Zoning By-law Amendment. Staff have therefore determined that it is unnecessary to associate the provision of Section 37 benefits with Official Plan Amendments. The proposed change will address this.

- The current Section 3.4.4.3 of the Official Plan is proposed to be removed from the Official Plan. As noted previously, this section of the Official Plan permits the Town to consider buildings up to 12 storeys in the High Density Residential Area designation without requiring an Official Plan Amendment in exchange for the provision of Section 37 benefits.

Similarly to the revision made to Section 9.4.5 of the Official Plan (discussed above), staff determined it was unnecessary to associate the provision of Section 37 benefits with Official Plan Amendments, since Section 37 of the *Planning Act* only applies to increases in height and/or density approved through a Zoning By-law Amendment. The proposed change will address this.

As noted previously, Section 11.3.3.2 a) of the Official Plan allows for a similar increase in height in the Mixed Use- High Density Area designation of the Winston Neighbourhood Secondary Plan area in exchange for the provision of Section 37 benefits. For the same reasons as Section 3.4.4.3 above, staff recommend that Section 11.3.3.2 be removed from the Official Plan as part of the Official Plan Amendment that is adopted by Council.

- A new policy (Section 9.4.7) is proposed to be added to Section 9.4 of the Official Plan, stating as follows:

9.4.7 Section 37 community benefits will only be permitted within areas considered to be *Cultural Heritage Landscapes* if the benefit provided results in the preservation and/or restoration of buildings, structures or landscapes of historical or architectural merit.

Section 37 benefits can be used as a tool to enhance cultural heritage landscapes. This policy will ensure the Town is able to use Section 37 in this way.

Zoning By-law

The proposed Zoning By-law Amendment is included as Appendix 'B' to this report. The amendment would remove Section 4.22 of the Town's Zoning By-Law (By-Law 14-45, as amended), which regulates height and density bonusing.

Since the Town requires all developments subject to height and/or density bonusing to enter into site specific agreements that outline maximum permitted height and/or density and the

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corresponding community benefit, the inclusion of Section 4.22 in Zoning By-law 14 - 45 is redundant in the opinion of planning staff.

Section 37 Implementation Guidelines

In consultation with planning staff, SGL Planning & Design Inc. prepared a Section 37 Implementation Guideline document that would direct future Section 37 applications. The proposed Section 37 Implementation Guideline document is included as Appendix 'C' to this report.

The Section 37 Implementation Guideline document is designed to aid in increasing the transparency of the Section 37 process. It would not be as enforceable as the Official Plan policies addressed previously, but would provide further guidance for instances where Section 37 benefits can be attained by the Town.

Topics addressed in the proposed implementation guidelines include as follows:

- A non-exhaustive list of potential community benefits the Town might seek;
- Formation of a working group (comprised of 5-10 local residents, the ward alderman, planning staff and the applicant and their planning consultant) to determine what community benefits are need in each instance;
- How the required monetary value for a community benefit should be determined;
- Structuring of Section 37 agreements; and
- Administration of Section 37 funds by the Town.

The direction provided in the proposed implementation guideline document was based on best practices, and complies with Section 37 of the *Planning Act*.

Since the open house meeting, the Section 37 Implementation Guideline document has been revised to remove reference to instances where an Official Plan Amendment would not be required in exchange for Section 37 benefits. This revision was made to reflect the revisions made to the proposed Official Plan Amendment (discussed above).

Furthermore, the Section 37 Implementation Guideline document has been revised to state that 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. This revision was made to reflect the revisions made to the proposed Official Plan Amendment (discussed above).

Finally, the Section 37 Implementation Guideline document has been revised to make the roles of Council, planning staff, and the working group in the Section 37 process clearer.

6.0 AGENCY COMMENTS:

The draft Official Plan and Zoning By-law Amendments were circulated to the required agencies to give them an opportunity to provide comment. Comments were received from the Region of Niagara, Enbridge Gas, and the Heritage Grimsby Advisory Committee.

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The **Region of Niagara** stated that they had no objections to the changes proposed, and, since height is typically a local planning matter, regional staff would offer no objections to the proposed Official Plan or Zoning By-law Amendment applications from a Regional or Provincial perspective.

Under the Memorandum of Understanding between the Region of Niagara and the Town, the Town will act as the approval authority for the proposed Official Plan Amendment.

Enbridge Gas stated that they did not have any objections to the proposed amendments.

The **Heritage Grimsby Advisory Committee** recommended that the proposed Section 9.4.3 c) (clause 3 of the Official Plan Amendment) be revised to state as follows:

- c) To encourage and ensure the conservation of heritage landscapes and built heritage resources

This language better reflects language that is used in the Provincial Policy Statement, 2014, and consequently, planning staff recommend that this clause be reworded as such in the Official Plan Amendment adopted by Council.

7.0 PUBLIC COMMENTS:

An open house for the proposed amendments was held during a meeting of the Planning & Development Committee on March 20, 2018. The following is a summary of the key issues that have emerged from comments received from the public:

The provision of community benefits and their relationship to development application approvals

A common misconception was expressed that the provision of community benefits is the singular determinant of whether a development is approved with a height and/or density greater than what is allowed for under the Official Plan and/or Zoning By-law.

As stated previously, this is incorrect. The *Planning Act* allows for applications to amend a municipal Official Plan and/or Zoning By-law to permit an increase in height and/or density regardless of whether a municipality has Section 37 height and density bonusing policies in their Official Plan. Any increase in height and/or density that involves Section 37 height and density bonusing policies would likely still be achievable irrespective of whether or not Section 37 height and density bonusing policies are in place in an Official Plan.

From a staff perspective, every Official Plan and/or Zoning By-law Amendment application is reviewed primarily on the basis of whether, in the professional opinion of staff, the proposed amendment(s) exhibits good planning principles and is consistent with the intent of the Official Plan. On the basis of this review, staff make a recommendation to Council to either approve, deny, or approve with modifications, the proposed amendment(s). In cases where an amendment is eligible for Section 37 benefits, staff will include in their recommendation to Council that Section 37 benefits be arranged prior to the by-law approving the amendment being passed by Council.

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Council receives staff's recommendation and makes a decision on whether to approve, deny or approve with modifications the proposed Official Plan and/or Zoning By-law Amendment application. Council is required under the *Planning Act* to make a decision on any complete Official Plan or Zoning By-law Amendment application received by the Town. This must be done within a specified timeframe outlined in the *Planning Act* (210 days for an Official Plan Amendment or a combined Official Plan and Zoning By-law Amendment, and 150 days for a Zoning By-law Amendment), or else the applicant can appeal their application to the Local Planning Appeal Tribunals on the basis that Council has not made a decision within the legislated time frame.

The proposed Official Plan Amendment would implement a new policy into the Official Plan (Section 9.4.2) that states as follows:

- 9.4.2 The municipality will only authorize an increase in height and/or density in exchange for community benefits where:
- a) The proposed development exhibits good planning principles that are consistent with the intent of the Town's Official Plan; and
 - b) Adequate infrastructure is available to support the increase in building height and/or density; and
 - c) The value of the community benefits has a reasonable planning relationship to the proposed increase in building height and/or density.

The purpose of this policy is to clearly identify what considerations are made when reviewing an application for increased height and/or density in exchange for the provision of community benefits. Section 4.1 of the Section 37 Implementation Guideline document also clearly outlines these considerations in order to improve clarity in this regard.

Defining 'good planning'

A number of comments questioned how 'good planning' is defined.

An amendment represents 'good planning' if it is determined to be consistent with the intent of the Official Plan, as stated in Section 1.4.3 and 1.4.4 of the Official Plan:

1.4.3 It is not intended that this Plan be amended unless substantial evidence can be presented which will justify such an amendment is based on good planning.

1.4.4 In determining whether or not an amendment to the Plan is appropriate, regard shall be had to the Vision, and Municipal Structure goals, objectives and policies, under Section 2, as well as the policies, study requirements and evaluation criteria within the respective land use category under Section 3, and the implementation policies found in Section 9.

Appropriateness of communities selected for best practice review

As noted above, the best practice review on which the proposed amendments and Section 37 Implementation Guideline document were based examined Section 37 practices in the following Ontario municipalities: Mississauga, Toronto, Ottawa, Vaughan, and Markham. At the open house, several individuals questioned why Section 37 policies in communities more akin to the size and population of Grimsby were not reviewed.

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The reason this was not done is that such examples do not exist. Grimsby is unique in being a smaller community facing significant intensification pressures. Other similarly sized communities will not require Section 37 policies until they too start to experience similar intensification pressures. Staff therefore are of the opinion that the municipalities selected for the best practice review were appropriate for the purposes of the study.

8.0 PLANNING REVIEW:

The proposed Official Plan and Zoning By-law Amendment conforms to the policies of the Provincial Policy Statement (PPS) (2014), the Growth Plan for the Greater Golden Horseshoe (2017), the Region of Niagara Official Plan and the Town of Grimsby Official Plan.

Provincial Policy Statement (PPS) (2014)

The PPS provides policy direction on matters of provincial interest related to land use planning and development. The *Planning Act* requires planning decisions to be consistent with the PPS.

Policy 1.1.3.1 of the PPS states that “land use patterns within the settlement areas shall be based on densities and a mix of land uses which efficiently use land resources, are appropriate for the infrastructure and efficiently use the infrastructure and public service facilities which are planned or available, minimize negative impacts to air quality and climate change, support active transportation, and a range of uses and opportunities for intensification and redevelopment”. The proposed Official Plan and Zoning By-law Amendment will support the construction of a variety of housing types within a more compact built form, thus encouraging a more efficient use of available and planned infrastructure and public service facilities.

The proposed Official Plan Amendment and Zoning By-law Amendment are also consistent with the PPS policies related to residential intensification and redevelopment, housing form, compact residential development form, public realm, compatibility of land uses, and the conservation of significant built heritage resources and cultural heritage landscapes.

Growth Plan for the Greater Golden Horseshoe (Growth Plan) (2017)

The Growth Plan provides high level direction to municipalities to build healthy, balanced, and complete communities. In particular, the Growth Plan provides direction on where and how to grow. The Growth Plan directs municipalities to develop complete communities through a mix of land uses, a range of transportation options, a range of housing options, high quality compact built form, and densities that are transit-supportive. The proposed Official Plan and Zoning By-law Amendment conforms to the policies of the Growth Plan.

Region of Niagara Official Plan

Section 4 of the Region of Niagara Official Plan includes growth management policies. The underlying objectives of the Regional growth strategy is that a significant portion of future growth and development be directed to the Built-up Area through intensification. The proposed Official Plan and Zoning By-law Amendment will support the achievement of this underlying objective, and therefore are consistent with the general intent and purpose of the Region of Niagara Official Plan.

SECTION 37 COMMUNITY BENEFITS
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Section 2.2 of the Town of Grimsby Official Plan states the strategic principles of the Official Plan. These include to: “ensure a wide range of housing types and location opportunities to accommodate future residents and to meet a diversity of incomes and demographics”; “provide for controlled and efficient growth that takes advantage of existing infrastructure, and prevents sprawl”; “promote efficient development and land use patterns which minimize land consumption through compact development in areas best able to accommodate it”; and to “sustain the financial well being of the Town by minimizing servicing costs from new development and creating financial arrangements where new development pays for itself”. The proposed Official Plan and Zoning By-law Amendment are consistent with the general intent and purpose of the Town of Grimsby Official Plan.

10.0 PROPOSED MODIFICATIONS

As noted previously, staff recommend that the proposed Official Plan Amendment be modified to change the proposed Section 9.4.3 c) (Clause 3 of the proposed Official Plan Amendment) to read as follows:

- c) To encourage and ensure the conservation of heritage landscapes and built heritage resources

This revised wording, which was identified by the Heritage Grimsby Advisory Committee, is more consistent with language used in the Provincial Policy Statement, 2014.

Furthermore, staff recommend that the proposed Official Plan Amendment be modified to add a new clause stating that Section 11.3.3.2 a) be deleted in its entirety.

This modification is recommended on the basis that the provision of Section 37 benefits should be associated solely with Zoning By-law Amendments, and not the Official Plan.

11.0 CONCLUSION:

Staff conclude that the proposed Official Plan and Zoning By-law Amendment and Section 37 Implementation Guidelines conform to the policies of the Provincial Policy Statement (PPS) (2014), the Growth Plan for the Greater Golden Horseshoe (2017), the Region of Niagara Official Plan and the Town of Grimsby Official Plan.


Section 37 of the *Planning Act* is an important tool municipalities can use to ensure that appropriate facilities and benefits are provided in communities where development and intensification occurs. The Town is currently experiencing significant intensification and development. The proposed changes will make certain that the Town is able to use this tool to its fullest extent to achieve such important goals as the provision of more affordable housing, heritage preservation, streetscape and park improvements, as well as enhanced community facilities when an increase in height and/or density is deemed appropriate from a planning perspective.

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Staff consequently recommend that the proposed Official Plan and Zoning By-law Amendments and Section 37 Implementation Guidelines be approved by Council.

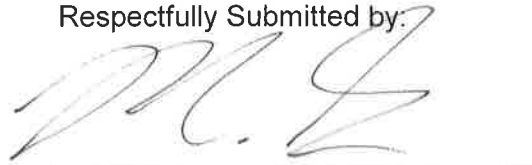
As noted previously, under the Memorandum of Understanding between the Region of Niagara and the Town, the Town will act as the approval authority for the proposed Official Plan Amendment.

Respectfully Prepared by:



Amy Shanks
Planner I

Respectfully Submitted by:



Michael Seaman, MCIP, RPP
Director of Planning

/as

Appendices:

- Appendix 'A' – Proposed Official Plan Amendment
- Appendix 'B' – Proposed Zoning By-law Amendment
- Appendix 'C' – Proposed Implementation Guideline Document

AMENDMENT NO. --
TO THE OFFICIAL PLAN
OF THE TOWN OF GRIMSBY

DRAFT

PREPARED BY
THE TOWN OF GRIMSBY PLANNING DEPARTMENT

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“The enacting portion attesting the official status of the document.”

DRAFT

PART I: THE CERTIFICATION

AMENDMENT NO. --
TO THE OFFICIAL PLAN
OF THE TOWN OF GRIMSBY

Amendment No.-- to the Official Plan of the Town of Grimsby constituting the following text, was prepared by the Town of Grimsby Planning department and was adopted by the Council of the Town of Grimsby by By-law No. XX-XX in accordance with Section 17 of The Planning Act, R.S.O. 1990, on the X day of X, 2018.

Mayor

Town Clerk

PART II: THE PREAMBLE

“An introduction to the Amendment and a summary of its background and basis.”

The Preamble does not constitute part of the Amendment.

PART II: THE PREAMBLE

1. TITLE

This Amendment shall be known as:

Amendment No. 2023-01
to the Official Plan
of the Town of Grimsby

2. PURPOSE OF THIS AMENDMENT

The purpose of this Amendment is to amend Section 9.4 of the Town of Grimsby Official Plan. This amendment will provide the Town with new policy direction in regards to Height and Density Bonus Provisions of Section 37 of the *Planning Act*.

3. LOCATION OF THIS AMENDMENT

Amendment No. -- applies to all development applications that request an increase in height and or density in exchange for community benefits.

4. BASIS OF THIS AMENDMENT

Pursuant to Section 37 of the *Planning Act*, 1990, the Town of Grimsby expanded their Section 37 requirements. This Amendment provides broader goals and objectives regarding desired community benefits in exchange for increased height and/or density. The amendment also includes more comprehensive policies that address monetary value determination and a requirement that applicants enter into a Section 37 agreement with the municipality. The policies thereby provide a more transparent and rigorous process for evaluating development applications and ensuring that appropriate community benefits, facilities or services are provided in exchange for an increase in height and/or density.

PART III: THE AMENDMENT

“The operative part of this document which amends the original Official Plan.”

PART III: THE AMENDMENT

THE AMENDMENT

The following changes are proposed for the policies in Section 9.4 Height and Density Bonus Provisions of the Official Plan. Deletions are shown in strikethrough lettering, while additions are shown in bold font.

1. Section 9.4.1 amended through bold for new text as follows:

Pursuant to Section 37 of the *Planning Act*, 1990, as amended from time to time, Council may in a Zoning By-law authorize increases in height and/or density of *development*, otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or other matters as set out in the zoning by-law.

2. A new Section 9.4.2 should be added as follows:

9.4.2 The municipality will only authorize an increase in height and/or density in exchange for community benefits where:

- a) **The proposed development exhibits good planning principles that are consistent with the intent of the Town's Official Plan;**
- b) **Adequate infrastructure is available to support the increase in building height and/or density; and**
- c) **The value of the community benefits has a reasonable planning relationship to the proposed increase in building height and/or density.**

3. The former Section 9.4.2 should be renumbered Section 9.4.3 and amended through the strikeouts for deleted text and bold for new text as follows:

9.4.3 The municipality's objectives in authorizing such increases in height **and/or** density are:

- a) ~~To ensure the provision of underground or in-building parking for apartment type or mixed use *development*;~~
- b) ~~To encourage the provision of mixed use *developments*;~~
- a) To encourage the provision of rental housing;
- b) To encourage the provision of affordable housing;
- c) To encourage the preservation **and/or restoration** of buildings or, structures **or landscapes** of historical or architectural merit; **and**
- d) **To encourage the provision of community facilities, including cash contributions for community facilities that are of benefit to the community.**

4. Section 9.4.3 to be renumbered Section 9.4.4 with no change to the content:

9.4.4 The Zoning By-law will establish detailed *development* standards that would apply when a bonus is awarded and the relationship between these standards and the conditions, which must be met if the bonus standards are to apply.

5. Section 9.4.4 to be renumbered Section 9.4.5 and amended through the strikeouts for deleted text and bold for new text as follows:

9.4.5 The municipality ~~may also requires~~ the owner to enter into one or more agreements 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.** ~~dealing with the facilities, services or other matters to be provided.~~

6. Section 9.4.5 to be deleted through the strikeouts for deleted text as follows:

~~9.4.5 The maximum residential density and height permitted through the bonus provision may exceed that which is permitted in the general Official Plan policies provided it meets the general intent of the Official Plan and other area specific policies with regard to the parameters of the density bonusing. However, no residential *development* may be granted bonus density in excess of provided in the parent zoning bylaw.~~

7. A new Section 9.4.6 should be added as follows:

9.4.6 Where heights and / or densities set out in the Town of Grimsby Zoning By-law are proposed to be increased up to the heights and/ or densities permitted in this Plan or as permitted by an approved Official Plan Amendment, Council shall require community benefits in exchange for the increased height and/ or density provided the tests of Section 9.4.2 are met.

8. A new Section 9.4.7 should be added as follows:

9.4.7 Section 37 community benefits will only be permitted within areas considered to be *Cultural Heritage Landscapes* if the benefit provided results in the preservation and/or restoration of buildings, structures or landscapes of historical or architectural merit.

9. Section 3.4.4.3 to be deleted in its entirety:

~~The Town may consider buildings up to 12 storeys in exchange for the provision of community benefits in accordance with Section 37 of the Planning Act.~~

DRAFT

The Corporation of the Town of Grimsby

By-law No. XXX

A By-law to Amend By-Law 14-45, As Amended

Whereas the Council of The Corporation of the Town of Grimsby deems it expedient to amend Section 4.22 of Zoning By-law 14-45, as amended:

Therefore the Council of the Corporation of the Town of Grimsby enacts as follows:

1. Delete, in its entirety, Section 4.22 of the Zoning By-law.

Read a first time this ____ day of _____, 2018.

Read a second and third time and finally passed this ____ day of _____, 2018.

R. N. Bentley, Mayor

H. Soady-Easton, Clerk

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.

These designations set out the maximum height and density requirements 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 and Zoning**

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

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 should 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 3.2, 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. 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.

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.

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 should 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.

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