

IMPLEMENTATION
GUIDELINES FOR SECTION 37
OF THE *PLANNING ACT*
IN THE URBAN CENTRES
(HEIGHT & DENSITY BONUSING)

November 13, 2017



Contents

1.0	Introduction	3
2.0	Procedure.....	3
3.0	Implementation Principles of Section 37	4
4.0	Geographic Location of the Public Benefit	6
5.0	Eligible Development Applications	6
6.0	Determination of Appropriate Types of Public Benefit(s)	6
7.0	Securing the Public Benefit(s)	7
8.0	Valuation Methodologies of Public Benefits.....	8
8.1	Quantitative Public Benefit(s) / Increase in Land Value Formula	8
8.1.1	Determine the “Base Density”	9
8.1.2	Determine the Buildable Gross Floor Area (GFA) of Base Density	9
8.1.3	Determine the Land Value that corresponds to Base Density.....	9
8.1.4	Determine the Land Value that corresponds to the Proposed Density.....	9
8.1.5	Calculate the Increase in Land Value and Section 37 Contribution	10
8.2	Qualitative Public Benefit(s) / Council Discretion	10
8.3	Phased Developments	10
9.0	Altering, Modifying or Replacing Guidelines	10

1.0 Introduction

The purpose of these Guidelines is to provide a clear implementation structure for the bonusing policies of the Urban Centres Secondary Plan (Section 14.2.9) by:

1. Describing the process for negotiating Section 37 Agreements;
2. Identifying which developments will be eligible for consideration of Section 37 bonusing; and
3. Setting out methodologies to calculate valuations for Section 37 contributions.

Section 37 of the *Planning Act* permits a municipality to pass a by-law under Section 34, authorizing increases in the height and density of a development in exchange for the provision of “facilities, services or matters” as set out in the by-law.

Subsection 37(2) of the *Planning Act* makes it clear that there must be an Official Plan in effect containing bonusing provisions relating to the authorization of increases in height and density. Section 14.2.9 (Bonusing) of the Urban Centres Secondary Plan provides these policies.

Section 37 does not outline a detailed list of the nature of the “facilities, services or matters” to be provided under Section 37, in exchange for increases in height and/or density, however Section 14.2.9 (Bonusing) of the Urban Centres Secondary Plan sets out these policies (the “Public Benefits”).

Any development application seeking increases in height and/or density within the Urban Centres Secondary Plan area are subject to these guidelines. These Guidelines must be read in conjunction with the policies of the Town Official Plan and the Urban Centres Secondary Plan. If any conflicts arise between Official Plan provisions / Urban Centres Secondary Plan and these Guidelines, the Official Plan / Secondary Plan provisions shall prevail.

2.0 Procedure

The Procedure regarding Section 37 Public Benefit negotiations for the Town is as follows:

1. The development application is submitted to Planning and Building Services, requesting additional height and /or density. The submission is to include a

Bonusing Justification Report which must address all the elements outlined in Sections 4, 5, 6, 7, and 8 of these Guidelines.

2. The Council shall be notified of the development application, and requested Section 37 bonusing, through the circulation of the Notice of Complete Application. Such notification shall include application details, the increase in height and/or density being sought and a description of the proposed Public Benefit(s).
3. Following the circulation of the Notice of Complete Application, staff prepare the Preliminary Report which will outline the details of the proposed Section 37 Public Benefit for Committee of the Whole's consideration (including rationale for the increased building height and/or density and an explanation of the nature of the proposed Public Benefit(s)), and include a recommendation that the application proceed to a statutory Public Meeting (if appropriate).
4. The statutory Public Meeting is held, including a discussion regarding the proposed increased building height and/or density and the nature of the proposed Public Benefit(s).
5. Following the statutory Public Meeting, staff and Members of Council may work with the applicant/owner to confirm the appropriateness of the proposed Public Benefit(s) and ensure that any calculations are completed in conformity with these guidelines. These details will form the basis of the Section 37 Agreement and implementing Zoning By-law.
6. Once the bonusing details are agreed upon, staff will prepare the final Report which will recommend (if appropriate):
 - i. The preparation of the Section 37 Agreement by staff; and
 - ii. Approval of the Zoning By-law Amendment (subject to securing the Public Benefit(s)).

3.0 Implementation Principles of Section 37

The following principles must be followed when negotiating Public Benefits under Section 37 of the Planning Act:

1. Staff shall be involved in discussing or negotiating Section 37 Public Benefit(s) with applicant/owner.

2. The proposed development must be consistent with the policies of the Urban Centres Secondary Plan and represent good planning as determined by staff.
3. An increase in height and/or density shall not exceed the Discretionary Maximum Height with Bonusing or the Discretionary Maximum FSI with Bonusing identified on Schedule 4 of the Urban Centres Secondary Plan.
4. Section 37 Public Benefit(s) shall be generally consistent with those provided in Section 14.2.9 ii. of the Urban Centres Secondary Plan, or cash-in-lieu of such benefits.
5. Calculations determining the required level of Section 37 benefits (Public Benefit or cash-in-lieu value) shall be consistent with the formulas provided in Section 8 (Valuation Methodologies) of these Guidelines.
6. Specific Public Benefit(s) and the specific increase(s) in height and/or density shall be set out in the implementing zoning by-law.
7. There shall be a reasonable planning relationship between the secured Public Benefit(s) and the increase in height and/or density in the contributing development, as determined by staff.
8. Good architecture and good design are expected of all developments, as a matter of course, and are not eligible Section 37 benefits.
9. Council has the discretion on a case by case basis, whether or not to exempt certain development applications from providing Section 37 Public Benefit(s) in exchange for additional heights and/or densities.
10. Council has the discretion on a case by case basis, whether or not to amend any Section 37 agreements that staff have made with applicant/owner.
11. The Town will seek 25% of the value resulting from the increased height and/or density for Public Benefit(s), as set out in these Guidelines.
12. The value of all contributions will be indexed with the Statistics Canada Construction Price Index from the date of the agreement to the date of payment.
13. Other matters required to support a development may also be secured in a Section 37 Agreement, as a legal convenience.

14. If applicable, when reviewing an application for a minor variance involving an increase in height and/or density, staff shall advise the Committee of Adjustment of the Town's interest in negotiating Section 37 Public Benefit(s).

4.0 Geographic Location of the Public Benefit

It is the Town's preference that the Public Benefit(s) provided in exchange for additional height and/or density for a development project be provided in the general vicinity of the development project.

Public Benefit(s), or the cash equivalent, may also be accepted to address particular Town-wide needs which cannot be adequately addressed in the vicinity of the development.

Staff and Council shall determine appropriateness of the geographic acceptability of any proposed Public Benefit(s).

5.0 Eligible Development Applications

Development applications eligible for bonusing must meet the following criteria:

1. The development property must entirely be located within the Urban Centres Secondary Plan area;
2. The portion of the property proposed for development must be designated Medium Density, Medium-High Density or High Density on Schedule 4 of the Urban Centres Secondary Plan.

6.0 Determination of Appropriate Types of Public Benefit(s)

The Urban Centres Secondary Plan (Section 14.2.9 ii) provides a list of the general types of Public Benefit(s) that are acceptable to the Town. The determination of appropriate Public Benefit(s) for a specific application shall be consistent with Section 14.2.9 ii as well as the other "Bonusing" policies of the Urban Centres Secondary Plan.

In accordance with Section 14.2.9 iii of the Urban Centres Secondary Plan, development applications requesting bonusing shall be required to be supported by a Bonusing Justification Report that sets out the Public Benefits proposed to be provided, the increase in density and/or height requested, the planning rationale for the requested increase in density and/or height, and demonstrate, to the satisfaction of staff, that the development:

1. Represents good planning;
2. Is consistent with the objectives of the Urban Centres Secondary Plan;
3. Meets the applicable urban design and built form policies of the Urban Centres Secondary Plan;
4. Represents appropriate development in the context of the surrounding character;
5. Can be accommodated by existing or improved infrastructure; and
6. Will not adversely impact the transportation network or, where cumulative impacts are identified, such impacts are accommodated through existing or planned road, transit improvements and/or other Transportation Demand Management measures.

Following submission of the application, including the Bonusing Justification Report, staff will circulate the Notice of Complete Application to Council advising that Section 37 bonusing is being requested.

Staff will then prepare the Preliminary Planning Report describing details of the requested height/density and proposed Public Benefit(s) and, if appropriate, recommend that the application proceed to a statutory Public Meeting where public feedback can take place.

Following the Public Meeting, staff and Members of Council will work with the applicant/owner on the bonusing details including the form of Public Benefit(s). The following additional matters may also play a role in determining the appropriate types of Public Benefit(s):

1. Consultation with Members of Council;
2. Consultation with staff;
3. Council approved studies or assessments outlining community needs; and/or
4. Consultation with the community.

Staff will then prepare the final Report to be considered by Committee of the Whole. If appropriate, this Report will recommend: (i) the preparation of the Section 37 Agreement by staff; and (ii) approval of the Zoning By-law Amendment (subject to securing the Public Benefit(s)).

7.0 Securing the Public Benefit(s)

Prior to the enactment of the zoning by-law amendment, the applicant/owner will execute a Section 37 Agreement securing the Public Benefit(s). The agreement will be registered on title and will identify the Public Benefit(s), and how any cash benefit will be used. Cash

contributions will be paid prior to the issuance of the first full (above-grade) building permit for the respective development.

Proceeds will be placed in a dedicated “Section 37 Reserve Fund” managed by staff. In accordance with legislative requirements, the Town will prepare an annual financial statement detailing monies collected under Section 37 bonusing, and make it available to the public.

Should excess funds remain after the reasonable completion and closing of a Public Benefit project, the Town shall maintain the excess funds in the Section 37 Reserve Fund to be used at the Town’s discretion towards other Public Benefit projects.

8.0 Valuation Methodologies of Public Benefits

Two methodologies will be utilized to determine the value of Public Benefit(s), depending on whether the Public Benefit(s) can be quantified monetarily or not: (i) a quantitative approach; and (ii) a qualitative approach. The applicability of each methodology to each Public Benefit is set out below.

8.1 Quantitative Public Benefit(s) / Increase in Land Value Formula

The Public Benefit(s) listed in Section 14.2.9 ii of the Urban Centres Secondary Plan (except for those regarding: (i) the provision of publically accessible private roads; (ii) the provision of affordable housing; (iii) the provision of rental housing; and (iv) the provision of social housing), shall utilize an “increase in land value” approach as a means of setting the value of Section 37 contributions. The contribution for Public Benefit(s) represents a reasonable portion of the increase in the land value resulting from an increase in height and/or density over the limits (i.e. “Base Density”) identified in the Urban Centres Secondary Plan.

For these Public Benefit(s), the Town will seek to achieve a value for Public Benefit(s) of 25% of the increase in land value resulting from the increase in height and/or density.

The Increase in Land Value Formula shall be implemented using the following steps:

1. Determine “Base Density”
2. Determine the Buildable Gross Floor Area (GFA) from Base Density
3. Determine the Land Value that corresponds to Base Density
4. Determine the Land Value that corresponds to the Proposed Density

5. Calculate the Increase in Land Value and Section 37 Contribution (being 25% of the increase in land value resulting from the increase in height and/or density)

Where terms used in this methodology are defined in the Urban Centres Secondary Plan, including but not limited to Gross Floor Area, Floor Space Index, and Land Area, the definition of those terms in the Urban Centres Secondary Plan shall be used.

8.1.1 Determine the “Base Density”

The “Base Density” represents the maximum height and FSI permitted (without the respective discretionary maximums for height and FSI with bonusing) of a development site according to the Urban Centres Secondary Plan.

8.1.2 Determine the Buildable Gross Floor Area (GFA) of Base Density

$$\begin{array}{l} \text{Lot Area} \\ (\text{sq m}) \end{array} \times \begin{array}{l} \text{Base} \\ \text{Density} \end{array} = \begin{array}{l} \text{Buildable GFA of} \\ \text{Base Density} \end{array}$$

8.1.3 Determine the Land Value that corresponds to Base Density

A land value per square metre of buildable GFA shall be calculated according to the location and size (buildable floor area) of the development parcel. The values provided will be determined by an appraisal prepared by an accredited professional appraiser selected by the Town and at the sole expense of the applicant/owner, or by such other reasonable method as determined by the Town using MPAC and/or recent sale values for the property.

The total value of the development site according to Base Density will be calculated as follows:

$$\begin{array}{l} \text{Buildable GFA of} \\ \text{Base Density} \end{array} \times \begin{array}{l} \text{Est. Value per sq. m} \\ \text{of GFA} \end{array} = \begin{array}{l} \text{Total Land Value} \\ \text{under Base Density} \end{array}$$

8.1.4 Determine the Land Value that corresponds to the Proposed Density

The corresponding Land Value to the Proposed Density shall be calculated as follows:

$$\begin{array}{l} \text{Buildable GFA of} \\ \text{Proposed Density} \end{array} \times \begin{array}{l} \text{Est. Value per sq. m} \\ \text{of GFA} \end{array} = \begin{array}{l} \text{Total Land Value} \\ \text{under Proposed Density} \end{array}$$

8.1.5 Calculate the Increase in Land Value and Section 37 Contribution

The Increase in Land Value and Section 37 contribution shall be calculated as follows:

Step 1

$$\begin{array}{l} \textit{Total Land Value} \\ \textit{under Proposed} \\ \textit{Density} \end{array} - \begin{array}{l} \textit{Total Land Value} \\ \textit{under Base} \\ \textit{Density} \end{array} = \begin{array}{l} \textit{Increase in} \\ \textit{Land Value} \end{array}$$

Step 2

$$\begin{array}{l} \textit{Increase in} \\ \textit{Land Value} \end{array} \times \begin{array}{l} \textit{25\% of Increase in Land Value} \end{array} = \begin{array}{l} \textit{Section 37 Contribution} \\ \textit{or cash-in-lieu value} \end{array}$$

8.2 Qualitative Public Benefit(s) / Council Discretion

Public Benefit(s) that are more qualitative in nature will utilize a qualitative approach as a means of setting the value of Section 37 contributions. Public Benefit(s) subject to this approach are those regarding: (i) the provision of publically accessible private roads; (ii) the provision of affordable housing; (iii) the provision of rental housing; and (iv) the provision of social housing. Utilizing the outlined Procedure, these Public Benefit(s) shall be fully justified by the applicant in the Bonusing Justification Report, then assessed by staff and considered by Council.

8.3 Phased Developments

The appraisal for phased developments shall proceed in stages. The initial land valuation shall be based on the Phase 1 Site Plan Agreement. The Town will appraise each additional phase at the time of building permit issuance. The appropriate Section 37 benefits may be collected in stages according to the timing of each phase.

9.0 Altering, Modifying or Replacing Guidelines

Council reserves the right to alter, modify or replace these Guidelines as deemed appropriate. The first such review shall occur three years after initial approval of these Guidelines.