



**SUBJECT: Section 37 Community Benefits for 401-413 Brant Street  
444, 448 & 450 John Street, and 2002 & 2012 James Street**

**TO: Planning and Development Committee**

**FROM: Department of City Building - Planning Building and  
Culture**

Report Number: PB-68-18

Wards Affected: 2

File Numbers: 505-01/18 & 520-01/18

Date to Committee: July 10, 2018

Date to Council: July 16, 2018

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**Recommendation:**

Approve community benefits in relation to the development of 401, 403, 405, 409, 411, & 413 Brant Street, 444, 448 & 450 John Street, 2002 & 2012 James Street in relation to the proposal submitted by Reserve Properties Inc. consisting of direct and indirect benefits as outlined in this report; and

Direct staff to prepare and execute an agreement pursuant to Section 37 of the Planning Act securing the benefits agreed to and to the satisfaction of the Director of City Building and the City Solicitor and that such Agreement be registered on title to the lands in a manner satisfactory to the City Solicitor to secure said community benefits.

**Purpose:**

The purpose of this report is to outline to Planning and Development Committee the direct and indirect community benefits that staff propose to be secured related to the development of the subject properties by Reserve Properties Inc.

The modified development proposal and the recommendations contained within this report align with the following objectives in Burlington's Strategic Plan 2015-2040.

A City that Grows

- Promoting Economic Growth
- Intensification
- Focused Population Growth

A City That Moves

- Increased Transportation Flows and Connectivity

An Engaging City

- Good Governance
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## **Background and Discussion:**

On April 10, 2012, Council approved a Protocol for the Provision of Community Benefits in association with approvals for developments that seek to increase height and/or density as permitted by section 37 of the Planning Act. The Protocol, contains the following policies, among others:

- The City will consider the provision of community benefits associated with increases in height and/or density pursuant to Section 37 in the urban area with special regard for areas that are deemed to be suitable candidates for intensification (1.1).
- The normal tests of good planning practice must be met in all applications approved by Council for Official Plan and Zoning By-law amendments, including those involving the provision of community benefits (2.1).
- The community benefits are to be secured in an agreement registered on title pursuant to Section 37 of the Planning Act (2.2).
- There is a location or functional connection between the development proposed and the facilities, services, or other benefit being required under the Section 37 Agreement (2.3).
- Under no circumstances will a community benefits provision be considered where an application or any particular elements of an application has not been determined to be acceptable in terms of good planning practice (2.4).
- In accordance with Section 37, eligible community benefits will be identified in the Official Plan (2.5).
- The increased value of the land resulting from the height and/or density increase will be determined through the appraisal of increased value, prepared by the City or on the City's behalf and to its satisfaction (4.3).
- Prior to the approval of the Official Plan and/or Zoning By-law amendment, the owner shall execute the Section 37 Agreement securing the community benefits in consultation with City staff. The Agreement shall be registered against the title of the subject lands (5.1).
- The Ward Councillor be consulted by staff prior to any negotiations with the applicant (5.9).

Staff can confirm that the aforementioned Protocol has been followed with respect to the contents of staff report PB-68-18.

On January 23, 2018, the Department of City Building received complete Official Plan amendment and Zoning By-law amendment applications filed by Glenn Wellings of Wellings Planning Consultants Inc. on behalf of Reserve Properties Inc. proposing a mixed-use building up to 24 storeys in height, including rooftop amenity area, retail uses at grade, the retention of two heritage listed building facades, and five storeys of underground parking with a 0.93 spaces per unit parking ratio, and floor area ratio of 10:1 (among other variances). The application underwent a typical application process including circulation and a Neighbourhood Meeting held on May 1, 2018. The statutory public meeting and recommendation report will be considered by Planning and Development Committee on July 10, 2018.

On July 10, 2018, Planning and Development Committee will consider Recommendation report PB-67-18 in conjunction with the subject report, PB-68-18. Recommendation report PB-67-18 recommends a modified approval of the proposed development by Reserve Properties Inc. The modifications include a mixed-use building consisting of a maximum height of 18 storeys (including rooftop amenity area), retail uses at grade, heritage conservation efforts to preserve all or part of two heritage listed building attributes, parking at a ratio of 1.25 spaces per dwelling unit, and a floor area ratio of 8.2:1 (among other variances). Council will make a decision on the proposed development and the proposed community benefits at their meeting to be held on July 16, 2018.

### **In-Effect Official Plan**

Section 2.3.2 of the in-effect existing Official Plan sets out that “community benefit provisions pursuant to Section 37 of the Planning Act may be used by the City in the Zoning By-law to allow increases in height and density of development beyond those permitted by the Zoning By-law in exchange for facilities, services, or matters of public benefit as are set out in the Community Benefits section of the implementing Zoning By-law. The City may encourage the use of community benefit provisions with regard to the following matters:

- (i) Provision of a wide range of housing types including special needs, assisted or other low-income housing;
- (ii) Provision of parkland dedication beyond the requirements of the Plan;
- (iii) Protection of natural features such as woodlots, beyond the parkland dedication requirements of the Plan;
- (iv) Improved access to public transit or implementation of a Travel Demand Management Plan;

- (v) Provision of public areas, crosswalks and walkways and connections to external public walkways/trail systems;
- (vi) Provision of public parking;
- (vii) Provision of community and open space facilities such as small parks, day care centres, schools, community centres and recreational facilities, cultural facilities, and other municipal facilities such as fire halls and libraries;
- (viii) Conservation of cultural heritage features;
- (ix) Protection or enhancement of significant views;
- (x) Provisions of affordable housing, beyond the basic Provincial requirements;
- (xi) Provision of public art;
- (xii) Provision of green technology and sustainable architecture, such as green roofs;
- (xiii) Provision of streetscape improvements in accordance with Council approved design guidelines; and
- (xiv) Other local improvements identified in community design plans; community improvement plans, capital budgets or other implementing plans or studies.”

The proposed community benefits discussed in the section below support many of these objectives. Staff can confirm that the proposed community benefits comply with the Official Plan.

### **Adopted Grow Bold Official Plan**

In April 2018, Council adopted the new Grow Bold Official Plan which is currently with the Region of Halton awaiting review and final approval. In the new adopted Official Plan, the subject lands are identified as being within the Brant Main Street Precinct – Special Policy Area. This precinct acknowledges that the intent of the designation is to maintain and enhance the existing main street character along Brant Street and that development should form a podium and terracing height away from Brant Streets, among other policy directions. Furthermore, the Special Policy Area acknowledges that where views from James Street to the Civic Square, City Hall tower, and War Memorial are maintained and/or enhanced and an at-grade public plaza is provided at the intersection of Brant and James Streets, that greater heights could be permitted in exchange for these view corridor and public realm improvements.

Section 12.1.8 of the adopted Grow Bold Official Plan provides that “community benefits are an integral part of community and city building in an intensifying city. Section 37 of the Planning Act provides the City with the opportunity to secure facilities, services, or matters that are either new features or represent an enhanced level of service. These support quality of life of new and existing residents and provide services and facilities that the City would otherwise be unable to provide.”

Specifically, section 12.1.8(2)(b) of the Grow Bold Official Plan sets out that “the City may require the use of community benefit provisions with regard to the following matters:

- (i) Provision of special needs, assisted and affordable housing, in the form of land, residential units, and/or cash contributions, to be transferred to the appropriate housing provider as determined by the City;
- (ii) Provision of parks, trails and open space;
- (iii) Protection, restoration, enhancement and/or dedication of the Natural Heritage System and/or other natural heritage features such as woodlots;
- (iv) Provision of improved pedestrian and cycling access to public transit and enhanced public transit infrastructure, facilities and services;
- (v) Provision of public areas, crosswalks and walkways and connections to external public walkways/trail systems;
- (vi) Provision of new and/or enhancements to existing public service facilities and open space facilities such as parks and community, cultural and recreational facilities;
- (vii) Conservation of cultural heritage resources or contributions to community heritage initiatives;
- (viii) Provision of public art and/or contribution to the City’s public art reserve fund;
- (ix) Provision of sustainable building and development measures;
- (x) Provision of public streetscape improvements including the enhanced ability to accommodate active transportation, to support more trees and tree viability and bury utilities;
- (xi) Provision of land, or contribution to a strategic land reserve fund; and/or
- (xii) Other community benefits that may be identified in area-specific plans, community improvement plans, or other community improvements that may be identified through the development approval process.”

The proposed community benefits discussed in the section below support many of these objectives. Staff can confirm that the proposed community benefits comply with the adopted Grow Bold Official Plan.

### **Strategy/process**

Section 37 of the Planning Act is a planning tool which allows municipalities to accept tangible community benefits when granting increased density and/or height through a change in zoning or Official Plan policy. A fundamental requirement of the use of Section 37 is that the application being considered must first and foremost be considered “good planning” irrespective of the potential for the community benefit. City Building staff must be able to recommend approval of the application with or without a community benefit being received. Generally speaking, there should also be a

locational or functional connection between the proposed development and the facilities, services, or other benefits being required under the Section 37 Agreement.

The benefits obtained through Section 37 Agreements may be in the form of a financial contribution (direct benefit) or indirect benefits (facilities, services, or installations built or provided by the developer, at their expense, which are accessible by the general community). Community benefits are typically secured for items over and above those funded through development charges or other legislation.

Reserve Properties Inc. intends on entering into the section 37 agreement with the City after the July 10, 2018 Planning and Development Committee meeting and prior to the July 16, 2018 Council meeting, at which Council will consider Committee's recommendation on the subject development applications in PB-67-18.

### Proposed Community Benefits

In accordance with the Section 37 Protocol discussed above, the following community benefits are proposed to be secured for the modified development proposal at the subject properties:

<b>Proposed Community Benefit</b>	<b>In-Effect Official Plan Section</b>	<b>Adopted Grow Bold Official Plan Section</b>
To assist in the pursuit of long-term affordable housing, the Developer agree to provide a direct community benefit of a discount of \$250,000 to be used against the purchase price of up to 6 dwelling units within the subject development by the Region of Halton, or in the event that a purchase(s) is/are not to occur within the subject development by the time set out in the section 37 agreement, the Developer agrees to provide the City with a cash contribution of \$250,000 prior to condominium registration, to be held in trust for use in the Urban Growth Centre, to the satisfaction of the Director of City Building.	Part VI, Section 2.3.2 (i)  Part VI, Section 2.3.2 (x)	Section 12.1.8(2)b)(i)
The Developer agrees to provide a direct community benefit of a \$100,000 contribution towards the future expansion and improvement of Civic Square; to the satisfaction of the Executive Director of Capital Works.	Part VI, Section 2.3.2 (v)	Section 12.1.8(2)b)(v)
The Developer agrees to provide a direct community benefit of a \$50,000 contribution towards the future	Part VI, Section 2.3.2 (iv)	Section 12.1.8(2)b)(iv)

improvement of the downtown transit terminal; to the satisfaction of the Director of Transit.		
The Developer agrees to provide a direct community benefit of a \$25,000 contribution towards a new Downtown Burlington Farmers Market; to the satisfaction of the Director of City Building.	Part VI, Section 2.3.2 (vii)	Section 12.1.8(2)b)(vi)
The Developer agrees to provide a direct community benefit of a \$25,000 contribution towards improvements to walking, cycling, and/or active transportation connections in the vicinity of the Elgin Street Promenade, Brant Street, and John Street; to the satisfaction of the Director of Transportation.	Part VI, Section 2.3.2 (iv)	Section 12.1.8(2)b)(iv)
The Developer agrees, and it is enshrined within the amending zoning by-law, that increased building setbacks, including widening sidewalks on Brant Street, James Street, and John Street, and view corridors on Brant Street and James Street to City Hall and the Civic Square (indirect community benefit accessed at \$250,000), to the satisfaction of the Director of City Building.	Part VI, Section 2.3.2 (ix)	Section 12.1.8(2)b)(v)
The Developer agrees to provide public access by way of an easement to be registered on title for lands located at the northwest corner of Brant Street and James Street, the minimum dimensions of which are in the form of a triangle measured at 16m by 16m (128m <sup>2</sup> )(an indirect community benefit assessed at \$75,000), to the satisfaction of the Executive Director of Capital Works.	Part VI, Section 2.3.2 (v)	Section 12.1.8(2)b)(vi)
The Developer agrees to implement the new City of Burlington Streetscape Guidelines Standards within the Brant Street, James Street, and John Street public realm areas, including the expanded setback areas at-grade and the publicly accessible open space easement area outlined above (an indirect community benefit accessed at \$150,000), to the satisfaction of the Director of City Building.	Part VI, Section 2.3.2 (xiii)	Section 12.1.8(2)b)(x)
The Developer agrees to retain, preserve, rehabilitate, and/or restore the heritage attributes of	Part VI, Section	Section

<p>the built heritage resource currently located at 401 Brant Street and incorporate into the new development as per the approved site plan (an indirect community benefit assessed at \$300,000), to the satisfaction of the Director of City Building).</p>	<p>2.3.2 (viii)</p>	<p>12.1.8(2)b)(vii)</p>
<p>The Developer agrees to retain, preserve, rehabilitate, and/or restore the heritage attributes of the built heritage resource currently located at 444 John Street and incorporate into the new development as per the approved site plan (an indirect community benefit assessed at \$300,000), to the satisfaction of the Director of City Building).</p>	<p>Part VI, Section 2.3.2 (viii)</p>	<p>Section 12.1.8(2)b)(vii)</p>

The combined total of the proposed community benefits as outlined above is \$1,525,000.00, categorized as follows:

- \$250,000: financial contribution to the Region of Halton for use against purchasing up to 6 dwelling units in the subject building. Alternatively, should the Region opt not to purchase units in the subject building, the applicant would provide the City with a \$250,000 financial contribution to be held in trust until such time Council attributes it towards an affordable, assisted, and/or supportive housing opportunity within the Urban Growth Centre.
- \$200,000: financial contribution to be held in reserve funds and allocated as per the discussion above (Civic Square improvements, downtown Transit Terminal improvements, cycling and pedestrian improvements in the vicinity, and future Farmer’s Market).
- \$1,075,000: indirect community benefits in which the developer agrees to provide additional public realm space, built to an enhanced standard, register an agreement on title to allow public access to the new public square, and to incorporate appropriate cultural heritage attributes into the site redevelopment, as per a future Cultural Impact Assessment to be undertaken prior to site plan approval.

Before enacting the amending zoning by-law, the applicant will be required to execute an Agreement pursuant to Section 37 of the Planning Act to the satisfaction of the Director of City Building and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure said benefits. The provisions for community benefits are also captured in the amending zoning by-law, attached as Appendix C to Report no. PB-67-18.

### **Financial Matters:**

Not applicable.

### **Total Financial Impact**

The City will receive a total of \$1,525,000 in direct and indirect community benefits. A financial contribution of \$250,000 will be placed into a specific reserve fund for the uses described above. An additional \$250,000 financial contribution to the City may be held in trust for future affordable housing opportunities in the Urban Growth Centre should the Region of Halton opt not to purchase dwelling units in the subject development.

### **Source of Funding**

The applicant will provide the funds and/or construct the facilities anticipated within in line with the timeframes agreed to by the City in the Section 37 Agreement.

### **Other Resource Impacts**

Not applicable.

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### **Connections:**

City Building staff met with the Ward 2 Councillor on two occasions to discuss this matter.

Members of the Section 37 Protocol Committee have met to discuss this matter and concur with the appropriateness of the types of community benefits sought and recommended in this report.

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### **Public Engagement Matters:**

The development applications were subject to the standard notification requirements to residents within 120 metres of the site. A neighbourhood meeting was held on May 1, 2018, and the statutory public meeting will be held on July 10, 2018. Council will make their decision on July 16, 2018.

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### **Conclusion:**

Report PB-67-18 recommends modified approval of a mixed-use development on the subject properties. Staff are of the opinion that the proposed community benefits are

appropriate based on the increased density recommended for the site and are to be used on facilities and/or services in proximity to the subject properties and/or within the Urban Growth Centre.

Staff recommend that the proposed community benefits as outlined in this report be approved by Council and that staff be directed and the applicant be required to execute an Agreement pursuant to Section 37 of the Planning Act to the satisfaction of the Director of City Building and the City Solicitor, and that such agreement be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure the proposed community benefits.

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Respectfully submitted,

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**Notifications:**

Shane Fenton - shane@reserveinvest.com

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.