

DATE: February 26, 2007

REPORT NO. CD2007-056

TO: Mayor and Members of Council

FROM: Ted Salisbury, General Manager, Community Development Services

1.0 TYPE OF REPORT

CONSENT ITEM []
ITEM FOR CONSIDERATION [X]
PRIVATE AND CONFIDENTIAL ITEM []

2.0 TOPIC

City of Brantford and County of Brant Boundary Negotiations

3.0 RECOMMENDATION

THAT Council ratify the actions of the Strategic Growth Negotiating Committee and terms of the letter of intent titled, Brant-Brantford Growth and Servicing Strategy, A proposal subject to public consultation and the approval of each Council, dated February 22, 2007 attached as Appendix "A" to this report.

AND THAT staff be directed to take the necessary actions to implement the "Growth and Servicing Strategy" and initiate discussions with staff of the County of Brant to develop a restructuring proposal for adoption by each municipal Council.

4.0 PURPOSE

The purpose of this report is to advise Council on the status of the most recent negotiations with the County of Brant and seek ratification of the actions by the Strategic Growth Negotiating Committee and terms of the letter of intent entitled Brant-Brantford Growth and Servicing Strategy.

5.0 BACKGROUND

At the in-camera session of Council held on February 5, 2007 direction was provided by Council to the Strategic Growth Negotiating Committee to complete negotiations with the County of Brant subject to the terms as presented in a report dated February 5, 2007 and numbered CD2007-035.

In 2006 the City adopted a Growth Management Strategy (GMS). The study demonstrated that the City had an immediate need for employment land and a projected need for residential land. The GMS was used as the basis for discussions between the City and County, and also brought the Province of Ontario's Office of the Provincial Development Facilitator to the table. The Province has designated the City as a Growth Centre in the "Growth Plan for the Greater Golden Horseshoe," and has an interest in seeing a solution to the land governance issue.

The Strategic Growth Negotiating Committee was established by Council and included Mayor Mike Hancock, Councillors Carpenter and Martin as well as the City Manager John Brown, General Managers, Wayne Wood and Ted Salisbury, and the City Solicitor, Larry Tansley.

In May of 2006, the County of Brant approached the City to reopen and discuss the provision of services to Cainsville outside of any boundary negotiations. The City position was to request that discussions concerning such a matter be conducted as a part of boundary negotiations. The first meeting between the parties was September 12th, 2006 and since that time, there have been numerous sessions of negotiation and individual meetings between parties and the Facilitator, Mr. Wells.

Negotiations were adjourned in the week prior to the municipal election without a final agreement in principle being reached, but with positive indications that the parties were close to finalizing.

The Provincial Facilitator requested the parties to attend a meeting on February 22, 2007 to resume negotiations. Also in attendance at the meeting were officials of the Ministry of Municipal Affairs and Housing Municipal Services Office and Municipal Governance and Structures Branch. This was the last session of negotiation and has resulted in a letter of intent dated February 22, 2007.

6.0 STRATEGIC PLAN CONTEXT

The basis for the boundary adjustment comes from the approved Growth Management Plan which was a strategic action contained within the Strategic Plan. The finalization of negotiations and ultimate change of boundaries will contribute to our Goal of promoting Economic Vitality and Innovation and Managing our Growth.

7.0 INPUT FROM OTHER SOURCES

The Strategic Growth Negotiating Committee has had the full use of staff resources from across the City as a part of the negotiating process.

8.0 ANALYSIS

The attached document was signed by both Mayor Mike Hancock and Mayor Ron Eddy at the conclusion of negotiations held on February 22, 2007. It was agreed that each Negotiating Committee would place the letter of intent entitled Brant-Brantford Growth and Servicing Strategy, A proposal subject to public consultation and the approval of each Council, before their respective Councils for consideration and ratification.

The agreement-in-principle provides for a set of terms and conditions to facilitate a Brant-Brantford Growth and Servicing Strategy. The attached document sets out the terms and conditions ranging from the area of application, to tax phase-in, compensations to be paid to the County, provision of water to Cainsville, consideration for joint land marketing and consultative planning, electrical distribution, road maintenance and jurisdiction.

The only significant changes to the document from that presented to Council February 5, was the modification to the title of the letter of intent to confirm that this is a proposal that is subject to public consultation and the approval of each municipal Council. Further, there was clarification to ensure the County that they would be responsible for only the incremental capital cost of water expansion within the City, net of benefits shared with City users. In addition, the City agreed to clarify that the City would not double charge the County for payments to provide additional water to the County.

The final area of discussion and change related to Paragraph 16 wherein there was discussion by both parties concerning the issues that need to be resolved by the Province of Ontario working with both the City and the County. The County wants to receive confirmation that the areas planned for expansion can be accommodated within Places to Grow population schedules (a concern that the City shares with the County) and a concern voiced by the City, that there is a need for transition funding from the Province of Ontario to the City in

consideration of the future costs to the City to upgrade infrastructure and implement the intentions of the Provincial Growth Plan. The City and the County agree that this requirement should be fulfilled by May 18, 2007.

The Ministry of Municipal Affairs and Housing considers this process to be a Restructuring Proposal and requires the following items as a part of a submission for restructuring:

1. Restructuring Proposal/MOU between the City and County
2. Ward Boundary Adjustments for both jurisdictions
3. Meets and Bounds descriptions and reference plan of the area subject to restructuring
4. Confirmation of Public Meetings by both municipalities with an adopting by-law to support the restructuring proposal

The submission is to the Minister of Municipal Affairs and Housing who has the authority to issue an Order. The practice of the Ministry is to issue such orders effective July 1st or January 1st.

9.0 FINANCIAL IMPLICATIONS

Staff has not been in a position to determine the initial costs associated with the restructuring. Staff are reviewing initial costs and shall use the 2008 budget process to estimate additional soft service costs.

The Committee did retain the services of Hemson Consulting to conduct a long-term analysis of the impacts of the proposed annexation. In general, should the City not increase land availability, the positive net impacts for growth (based on growth models) will peak soon after 2025 and will then steadily decline. With non-residential growth declining due to the lack of employment land, the City becomes increasingly less balanced in its relationship between employment and population. A key reason for annexation is to improve financial results for the City by increasing the capacity to accommodate non-residential growth in the short term.

10.0 CONCLUSION

The City of Brantford and the County of Brant negotiating Committees have concluded negotiations and are seeking ratification of the letter of intent entitled Brant-Brantford Growth and Servicing Strategy, A proposal subject to public consultation and the approval of each Council, dated February 22, 2007.

This letter of intent is being recommended as the basis of a more detailed agreement that shall be adopted by both Councils as a part of a Restructuring submission to the Minister of Municipal Affairs and Housing.

Ted Salisbury, MCIP, RPP
General Manager
Community Development Services

Attachments
Appendix "A" Letter of Intent

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required yes no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk yes no

Is the necessary by-law or agreement being sent concurrently to Council? yes no

APPENDIX "A"

**February 22, 2007 Working Draft
Brant – Brantford Growth and Servicing Strategy**

**A proposal subject to public consultation and the approval of
each Council**

Preamble:

The key objectives of this letter of intent are as follows:

- To better position the City of Brantford and the County of Brant to achieve prosperity by growing together as independent municipalities, and planning strategically to accommodate the future growth that is projected to occur in the Brant – Brantford area.
- To make provision for major infrastructure investments while minimizing the financial impact on ratepayers in both the City and the County.
- To achieve orderly and environmentally sustainable development, consistent with provincial legislation, such as the *Planning Act* and *Places to Grow Act*, and provincial policy, such as the Growth Plan for the Greater Golden Horseshoe.
- To negotiate a comprehensive agreement which will deal with all the points summarized in this document. This document will serve as a letter of intent with respect to such future agreement.

Terms and Conditions:

Consistent with the above preamble, the Negotiating Teams for the County of Brant and the City of Brantford hereby agree-in-principle to the following items:

1. The City of Brantford and the County of Brant will agree that the parties will proceed with all matters necessary to bring the lands, shown on attached Map as areas A, B and C , into the City of Brantford on January 1, 2008.
2. All of the lands brought into the City of Brantford shall pay taxes to the City only, and at rates to be determined by the City. Any tax increases for existing ratepayers moving from the County to the City will be phased-in over 6 years (i.e. taxes in the area transferred to the City will be phased in over a period of 6 years. This means that in 2008 they pay taxes at the County rate and in 2009 the properties will pay taxes based on 100% of the County taxation rate plus 20% of the difference between City and County taxes.)
3. The determination of any compensation to be paid to the County of Brant by third parties for lands to be transferred to the City shall be the sole responsibility of the County of Brant.

4. (a) Provision of water up to 50 litres per second

The City of Brantford will agree to provide additional water to the County of Brant for the Cainsville area when needed by the County, at a rate of 50 litres per second at 1.25 times the cost of water provided to customers within the City. All related infrastructure within the County shall be constructed and maintained by the County at the County's sole expense to the standards of the City of Brantford.

All infrastructure within the City relating to any expansion shall be constructed and maintained by the City with the County paying the increased incremental capital costs incurred by the City net of any benefit shared with City water users. The County agrees to finance the carrying costs associated with any such expansion if it asks the City to advance the expansion prior to the date specified in the schedule referred to in Clause 4 (b) ii .

(b) Expansion beyond 50 litres per second

Expansion of the 50 litres per second to a rate not exceeding 120 litres per second will occur if each of the following conditions has been met:

- (i) The County has formally requested the expansion;
- (ii) The City and the County must have agreed upon a schedule for provision of the expanded quantity of water, based upon such considerations as they may each consider appropriate in their absolute discretion. The final agreement will recognize that any agreed-upon schedule will be subject to extension arising from unforeseen events, legal or environmental challenges, and other force majeure causes;
- (iii) The County has demonstrated a need for the additional water to the reasonable satisfaction of the City;
- (iv) The City has determined that it is technically feasible to provide such additional water; and,
- (v) The City has determined that after providing the additional water the City will retain sufficient capacity for its own foreseeable needs within the expanded 2008 urban boundaries of the City.
- (vi) If demanded by the City, the County has made an up-front payment of the City's construction costs in relation to infrastructure within the City relating to the provision of additional water to the County.

All infrastructure within the County relating to any such expansion shall be constructed and maintained by the County at the County's sole expense to the standards of the City of Brantford. All infrastructure within the City relating to any such expansion shall be constructed and maintained by the City with the County paying for the increased incremental capital costs incurred by the City net of the value of any benefit shared with City of Brantford water users. The County also agrees to finance the carrying costs associated with the expansion of water to Cainsville Area if it asks the City to advance the expansion prior to the date specified in the schedule referred to in clause 4(b)ii.

5. The City of Brantford will reduce the cost of water currently provided to the County to 1.25 times the rate charged to City customers over a five-year period. The monies collected because of the 0.25 rate differential in this paragraph and paragraph 4 shall be applied to water capital works by the City, but shall not be counted towards the County's share of related infrastructure costs determined in accordance with paragraph 4.
6. The County will provide to the City payment for all lands developed as a result of the provision of additional water under Clause 4 at the development charges rates for water components levied for similar development within the City. The final agreement will provide clarification to ensure that there is no double charging to the County
7. The City will pay to the County annually an amount equal to 25% of the municipal portion of any municipal taxes levied for a period of fifteen years on employment lands. The fifteen year period will commence on a property by property basis once the development is finally complete as determined by the County and has been entered on the assessment roll as a developed property.

Employment lands are properties assessed under the *Assessment Act* as industrial or commercial.

If requested by the City, the County will reimburse the City for its reasonable initial incremental costs of implementing this section of the agreement.

There will be special provisions in the agreement in relation to the Area "B" shown on the attached map, for which the 25% of the municipal taxes will be paid in perpetuity.

8. To achieve prosperity by growing together as independent municipalities, the parties shall consider establishing a joint land and marketing function on a cost-shared basis for new industrial land.
9. Consultative planning for lands in both municipalities adjacent to the mutual municipal boundary shall be implemented during the ongoing municipal land use and infrastructure planning processes, and, the review of each municipality's official plan.

Furthermore, the City will waive its rights pursuant to Section 474.12 of the *Municipal Act* with respect to future development applications in the vicinity of Paris and Cainsville as depicted in hatching on the attached map (Areas north of Highway 54 on the East and Whiteman's Creek on the West), provided those applications are approved by the Province.

10. The County will be compensated by the City for the loss of existing industrial or commercial assessment in the area transferred to the City. The compensation will be based on the existing taxes with the compensation to be phased out over a 10-year period, net of the City's cost of providing services to those properties. The agreement will provide that it is assumed that the cost of providing services to the industrial or commercial property is equal to the taxes that would be paid by that property at the "City's residential tax rate". The difference between that amount and the amount actually paid will be paid to the County with the amount reducing by 10% each year until totally phased-out at the end of the 10th calendar year.

11. The City and the County will exercise their rights as sole shareholders of Brantford Power Inc. and Brant County Power Inc. respectively, to require the two electrical distributors to undertake the sale and transfer of the distribution assets within the lands brought into the City as previously agreed between the two electrical distributors in their agreement dated December 6, 2004, with necessary amendments only to account for the difference in the lands now being brought into Brantford as changed from an earlier proposal between the parties. Brantford Power will not charge any wheeling fee to Brant County Power within the land to be included into the City. Further, Brant County will support the City of Brantford Power Inc.'s application to the OEB to affect the transference of service area registry and assets.
12. Roads or portions of roads located wholly within either the City or the County shall be maintained by the municipality in which they are situate at their sole cost.

The future agreement will acknowledge the creation of the following boundary roads:

- Where Highway #2 borders area "A" on Map 1
- Where Powerline Road borders area "A" on Map 1
- Where Highway #99 and Highway #5 borders area "A" on Map 1
- Where Lynden Road borders areas "B" on Map 1
- Where Adams Road borders area "B" on Map 1
- Where Johnson Road borders area "B" on Map 1

The City will maintain all boundary roads with the exception of Highway #99 and Highway #5 which shall be maintained by the County. All capital and maintenance costs will be divided between the City and the County on the basis of population. Although the boundary line for each such boundary road shall be the centre line of the road, the legislative jurisdiction over the road for regulation of traffic and all other purposes shall lie with the municipality performing the maintenance. Responsibility for purposes of civil liability and policing, and any traffic fines resulting, shall lie with the municipality performing the maintenance.

13. The City recognizes that there may be planning matters and development applications in process at the County in relation to the lands to be transferred to the City leading up to the proposed January 1, 2008 municipal restructuring date. During the lead-up period, the City will work with the County regarding those matters so that any ongoing *Planning Act*-related processes may continue in a timely manner following the date of restructuring. It is understood that any final approvals will be subject to City planning processes, financial impact, infrastructure feasibility and costs, and applicable provincial policy and legislation.
14. Both parties will recognize any provincial directives, orders, policy or legislation pertaining to any clause in the future agreement.
15. Dispute resolution

The agreement will provide that any dispute arising out of the interpretation of the agreement may be settled by any of the following means:

- i) either party may retain a mediator, at the cost of that municipality, to assist in the resolution of a dispute arising out of the interpretation of this Agreement, or
- ii) in accordance with the provisions of the Arbitration Act, or
- iii) the matter may be referred to the councils of the two municipalities for resolution

16. This letter of intent does not create any enforceable legal rights. These rights will be created by the formal legal agreement to follow. The parties recognize that there are outstanding issues that will need to be finalized before the final agreement is entered into between the City and the County and among these issues are the following: the resolution of Schedule III, Population and Employment of Places to Grow and transition funding from the Province of Ontario. It is anticipated that these issues shall be finalized by May 18, 2007.

Executed at Brantford this 22nd day of February 2007 on behalf of the negotiating Committees

Mayor Mike Hancock
City of Brantford

Mayor Ron Eddy
County of Brant

