

**Report on the
Town of Broadway - County of Rockingham
Agreement Defining Annexation Rights**



**Commission on Local Government
Commonwealth of Virginia**

October 1990

REPORT ON THE
TOWN OF BROADWAY - COUNTY OF ROCKINGHAM
AGREEMENT DEFINING ANNEXATION RIGHTS

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REPORT ON THE
TOWN OF BROADWAY - COUNTY OF ROCKINGHAM
AGREEMENT DEFINING ANNEXATION RIGHTS

PROCEEDINGS OF THE COMMISSION

On May 23, 1990 the Town of Broadway, with the concurrence of Rockingham County, submitted to this Commission for review a proposed agreement defining the Town's future annexation rights which had been negotiated under the authority of Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia. Consistent with the Commission's Rules of Procedure, the Town's notice was accompanied by data and materials to assist this body in its review of the proposed agreement.¹ Further, in accordance with statutory requirements, the Town concurrently gave notice of the filing to 12 local governments with which it shares functions, revenue, or tax sources.²

Following its receipt of the proposed agreement, the Commission met in Broadway on August 13, 1990 to tour the Town and relevant areas in Rockingham County, to receive oral testimony from local officials regarding the agreement, and to conduct a public hearing for the purpose of receiving citizen comment. The public hearing, which was advertised in accordance with Section 15.1-1058.2 of the Code of Virginia, was attended by 37 individuals and produced testimony from 7 persons. In order to permit receipt of additional public comment, the Commission agreed to keep open its record for written submissions through September 14, 1990.

SCOPE OF REVIEW

In 1979 the General Assembly amended the State's annexation statutes to authorize towns to negotiate agreements with their counties which permit the municipality to annex, in accordance with conditions specified in such agreements, merely by the adoption of a town

¹Town of Broadway, Submission to the Commission on Local Government (hereinafter cited as Town Submissions), May 23, 1990.

²Sec. 15.1-945.7 (A), Code of Va.

ordinance.³ Thus, where town annexations are pursued under such agreements, the Commonwealth's general annexation procedure whereby proposed boundary changes are decided by the courts subsequent to Commission review is supplanted by the simple and direct process of annexation by municipal ordinance. The formal and final adoption of such an agreement by a town and county, however, divests the town permanently of its authority to seek status as an independent city.

While the Code of Virginia grants broad authority to towns and counties to fashion such annexation agreements to meet their peculiar needs and circumstances, there are certain statutorily prescribed conditions which must be met in their development. Based upon such statutory conditions, this Commission is directed to determine in its review:

. . . whether the proposed agreement provides for the orderly and regular growth of the town and county together, for an equitable sharing of resources and liabilities of the town and county, and whether the agreement is in the best interest of the community at large, . . .⁴

It should be noted here that whatever the findings of the Commission regarding the agreement under review, the local governing bodies are free to adopt or reject the proposed agreement as they see fit. If, however, the Commission's review of an agreement is "unfavorable," the local governing bodies may not adopt the agreement until after they have jointly held an advertised public hearing on the issue.⁵

³Article 1.1, Chapter 25, Title 15.1, Code of Va.

⁴Sec. 15.1-1058.2, Code of Va.

⁵Sec. 15.1-1058.3, Code of Va. It should be observed that State statutes also authorize a town to proceed unilaterally to obtain an order defining its future annexation rights in instances where it is unable to reach an agreement with its county on the issue. (See Sec. 15.1-1058.4, Code of Va.)

EVALUATION OF THE AGREEMENT

In brief, the principal provisions of the proposed agreement negotiated by the Town of Broadway and Rockingham County would:

1. require the Town to renounce permanently its authority to become a city;
2. authorize the Town to annex by municipal ordinance specified areas in the County, designated collectively as Phase One, as soon as practicable after the execution of the agreement by the parties;
3. authorize the Town to annex periodically additional contiguous land in specified areas covered by the agreement, designated collectively as Phase Two;
4. require the Town to take measures to protect agricultural properties which might be annexed under the agreement;
5. require the Town, simultaneously with the first annexation effected under the agreement, to equalize water and sewer rates charged customers located within the Phase Two area with those rates charged customers within Broadway's boundaries; and
6. commit the Town not to seek to annex any other areas of the County until ten years following the annexation of the Phase One area or until the entire Phase Two area is annexed.⁶

As indicated previously, the Commission is required to determine in its review whether a proposed town-county agreement (1) provides for the orderly and regular growth of the town and the county together, (2) permits an equitable sharing of the area's resources and liabilities, and (3) is in the best interest of the community at large. In the following sections of this report the Commission endeavors to analyze the proposed Town of Broadway - County of Rockingham agreement on the basis of these general criteria.

⁶See Appendix A for the complete text of the proposed Agreement Defining Annexation Rights between the Town of Broadway and Rockingham County. See Appendix B for a map of the Town of Broadway and that portion of Rockingham County subject to annexation under the terms of the agreement.

ORDERLY AND REGULAR GROWTH OF THE TOWN AND COUNTY

Demographic data indicate that during the decade of the 1970s, the rate of population growth in the Town of Broadway was twice that in Rockingham County generally. Between 1970 and 1980 the population of the Town increased from 887 to 1,234 persons, or by 39.1%.⁷ During the same period, the total population of Rockingham County increased from 47,890 to 57,038 persons, or by 19.1%.⁸ Recent population data reveal, however, that during the decade of the 1980s both the Town and the County have experienced a decline in their respective populations. According to these estimates, between 1980 and 1990 the Town's population decreased by 2.8% while the County's populace declined by 0.37%.⁹ It should be noted, however, that a significant portion of the population loss encountered by the County was due to the annexation of County territory containing 4,702 persons by the City of Harrisonburg on December 31, 1982.

In terms of fiscal resources, recent property assessment data reveal that the growth in the County generally has been somewhat in excess of that experienced within the Town. Between FY1983-84 and FY1988-89 the value of locally assessed property in Rockingham County increased from \$1.4 billion to \$1.9 billion, or by 36.6%. During the

⁷The last annexation effected by the Town of Broadway occurred in 1968 when 238 acres of land were added to the municipality. (Central Shenandoah Planning District Commission, Town of Broadway Annexation Feasibility Study, Feb. 1987, p. 2.)

⁸U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 4. Population statistics for Rockingham County include persons residing in the Towns of Bridgewater, Broadway, Dayton, Elkton, Mt. Crawford, and Timberville, and that portion of the Town of Grottoes which lies within the County. See Appendix C for a statistical profile of the Town, County, and the area covered by the agreement.

⁹Ibid.; and U. S. Department of Commerce, Bureau of the Census, 1990 Decennial Census, Preliminary Housing and Population Counts, Aug. 1990.

same span of years such values within the corporate limits of Broadway grew from \$23.4 million to \$29.8 million, or by 27.6%.¹⁰ Thus, these property values, the principal source of revenue for both jurisdictions, increased at a marginally greater rate in the County generally than they did within the Town of Broadway during that six-year period.

With respect to the Town's prospects for future development, it should be noted that approximately 171 acres, or 37.0% of Broadway's total land area, remain vacant. Of this vacant land, however, 152 acres are actively used for agricultural purposes and, thus, may offer limited development potential in the immediate future.¹¹ Exclusive of this land engaged in agricultural activity, the Town retains approximately 19 acres, or 4.1% of its total land area vacant and currently available for development.¹²

Under the terms of the proposed agreement the Town would be permitted to annex immediately the Phase One area comprising 667 acres (1.0 square miles) and, as of 1989, containing 512 persons and an

¹⁰Town Submissions, "Property Values," pp. 3-4; and Town of Broadway, Report on Examination for the Year Ended June 30, 1989. The annexation by the City of Harrisonburg on December 31, 1982 reduced the County's assessed property values by approximately \$177 million. The assessed property values for Rockingham County include those within Broadway, five other incorporated towns, and that portion of the Town of Grottoes located within the County.

¹¹Town Submissions, "Land Use," p. 1. The majority of the agricultural land within the current Town boundaries (approximately 110 acres) is contained within one farm and has been actively farmed for over 100 years. In addition, that tract is the only property within Broadway that qualifies for both the Town's and County's use value assessment program for agricultural properties. (Charles L. Lohr, Town Manager, Town of Broadway, communication with staff of Commission on Local Government, Aug. 31, 1990.)

¹²Town Submissions, "Land Use," p. 1. Town data indicate that of the vacant land available for development within Broadway, 8 acres are zoned for residential uses and 11.5 acres are designated for commercial uses.

estimated \$13.7 million in assessed real estate values.¹³ The addition of this area to the Town will increase Broadway's population by 42.5% and its assessed real property values by 53.5%. Further, the annexation of Phase One also will bring within the Town commercial development and industrial operations located adjacent to Broadway's current boundary. Furthermore, incorporation of this area into the Town will provide Broadway with approximately 321 acres of vacant land for possible future development.¹⁴ Finally, the proposed agreement affords the Town of Broadway the opportunity to annex property in the Phase Two area. That area contains approximately 862 acres (1.4 square miles) and, as of 1989, 229 persons. While the annexation of the Phase Two area is not immediately contemplated, the inclusion of this area in the agreement also offers Broadway substantial amounts of vacant land suitable for future development.

In our judgment, the proposed agreement does facilitate the orderly and regular growth of the Town and County together. The agreement will enable the Town to benefit from an immediate increase in population and fiscal resources, and it will assure Broadway an opportunity to share in further growth on its periphery. Moreover, the viability of the Town and its expanded fiscal resources will enable Broadway to continue to contribute to the social and economic health of its area and Rockingham County generally. Finally, the proposed agreement contains a provision permitting the Town and County to modify the annexation accord by joint consent, if such is subsequently deemed appropriate.¹⁵ This provision manifests recognition by both the Town and the County that the agreement may require future modification to meet needs and circumstances which

¹³Ibid., "Land Use," p. 2; "Population," p. 1; and "Property Values," p. 2. The Phase One area also contains approximately \$1.4 million in personal property assessed values.

¹⁴Ibid., "Land Use," p. 2. The Commission notes that the vacant land within the Phase One area currently is used for agricultural purposes.

¹⁵Agreement Defining Annexation Rights, Sec. 12.

cannot now be foreseen.

EQUITABLE SHARING OF RESOURCES AND LIABILITIES

Within the context of town-county agreements defining annexation rights, an equitable sharing of resources and liabilities requires an opportunity for both jurisdictions to benefit from the growth in the area sufficient to meet the needs of their respective residents and commensurate with the contribution each makes to the viability of the general area. The following sections consider these issues.

Resources

Statistics cited earlier in this report indicate that both the Town of Broadway and Rockingham County, the latter as a consequence of annexation, experienced a decrease in population during the 1980s. In addition, the total property values subject to local taxation in the Town increased between FY1983-84 and FY1988-89 by 27.6%, somewhat less than the growth of such values in the County generally during the same period (36.6%).¹⁶ These data indicate that the County overall, notwithstanding the annexation by the City of Harrisonburg, experienced growth in excess of that in the Town of Broadway.

With respect to the issue of an equitable sharing of resources and liabilities, it is significant to note that Broadway has contributed substantially to the economic development of its general area through the extension of public utility services to businesses and residents beyond its boundaries. In this regard, data indicate that the Phase One area contains seven commercial and industrial operations, employing collectively more than 600 persons, which are served by Town water and

¹⁶Town Submissions, "Revenue," p. 2; and Report on Examination for the Year Ended June 30, 1989.

sewerage services.¹⁷ Moreover, as the succeeding sections of this report will reveal, Town utility services are found extensively in the remainder of Phase One. Thus, under the terms of the proposed agreement, Broadway would be permitted to annex territory whose existing development has been facilitated by Town services.

Consistent with the terms of the proposed agreement, and as previously noted, Broadway has indicated its intention to annex immediately the Phase One area, which contains 667 acres, 512 persons, and substantial amounts of commercial and industrial property. Further, the Phase One area contains approximately 321 acres of land suitable for future development. Furthermore, the annexation of that area will initially provide the Town approximately \$16,000 additional real property tax revenues annually based on 1989 assessed values and Broadway's 1989 tax rate. Moreover, the Town estimates that Phase One will initially provide approximately \$34,900 in miscellaneous revenues (e.g., personal property taxes, consumer utility taxes, vehicle license fees, merchants licenses, and bank stock taxes).¹⁸ These fiscal benefits to the Town will increase with the future growth and development of the area annexed. Thus, the annexation of the Phase One area, as well as the prospective annexation of property in Phase Two, will, in our judgment, promote an equitable sharing of the resources of the general community.

In regard to the impact on the County of periodic annexations

¹⁷Lohr, letter to staff of Commission on Local Government, Aug. 2, 1990; and communication with staff of Commission on Local Government, Sep. 5, 1990.

¹⁸Town Submissions, "Terms," p. 2. Under the terms of the proposed agreement, the Town will be required, simultaneously with its first annexation, to reduce water and sewer rates for all its customers located within the Phase One and Phase Two areas so that the rates are the same as those charged to the residents of Broadway. (See Agreement Defining Annexation Rights, Sec. 5.) The Town estimates that for FY1991-92 the loss of utility revenue as a result of the rate equalization will be approximately \$15,500. (Town Submissions, "Terms," p. 1.)

effected by the Town of Broadway, the Commission notes that town annexations in Virginia, unlike those initiated by cities, do not remove property from a county's tax rolls and, thus, the major tax sources of Rockingham County will be unaffected by annexations by the Town of Broadway. While town annexations do constrict some of a county's more modest revenue sources (e. g., automobile license fees, consumer utility taxes, sales taxes, etc.), such revenue loss to Rockingham County should be more than offset by future development facilitated by the extension of Broadway's services to annexed areas. Any future development in those areas will accrue to the benefit of both the County and the Town. On the basis of these considerations, the Commission concludes that the proposed agreement should provide the Town of Broadway and Rockingham County with an equitable share of the area's resources.

Liabilities for Services

As with the other towns located in Rockingham County, Broadway plays an important role in the provision of public services to its general area. In terms of utilities, the Town serves not only the needs within its present boundaries, but also residential and commercial connections beyond its corporate limits. The availability of Town utilities has been instrumental in the economic development of areas adjacent to Broadway. With respect to the future growth in the general area, the Commission notes that the current Rockingham County land use plan, which was based upon a comprehensive analysis of the County's needs and anticipated growth, calls for continued development of the areas immediately adjacent to Broadway and within the territory subject to annexation by the Town under the terms of the proposed agreement. If such development occurs, Broadway would be, in our view, the appropriate entity to provide urban services to those areas.

Annexations effected by the Town under the terms of the proposed agreement will, however, place additional service responsibilities upon Broadway. While this expanded responsibility for urban services constitutes a liability to be borne by the Town, the extension of such

services to areas of need represents, at the same time, a consequence of the agreement which is in the general interest of the community at large. The following sections of this report will consider the Town's capacity to meet the service needs of the areas subject to annexation under the terms of the proposed agreement.

Water. The Town of Broadway owns and operates a public water system which serves the Town and substantially all of the Phase One area. The Town's water treatment plant, according to its rated capacity, can receive and treat 0.50 million gallons per day (MGD) of raw water from the North Fork of the Shenandoah River. Since the Town's present water distribution system requires approximately 0.20 MGD, the system currently retains an unused reserve of 0.30 MGD.¹⁹ In terms of storage capacity, Broadway has four storage tanks which collectively hold 1.0 million gallons of treated water, or approximately five days' demand.²⁰

With respect to the Town's capacity to serve the areas covered by the proposed agreement, we note that Broadway's water system currently serves 771 connections, with 185 being located in the Phase One area.²¹ In view of the extent of water service already provided that area by the Town and the excess capacity in the municipal system, we believe that Broadway is capable of meeting the needs of the general area for the

¹⁹Ibid., "Services," pp. 1-2. The safe yield of the North Fork of the Shenandoah River is estimated to be 270,000 gallons per day. Further, the Town has received permission from the Virginia Department of Health to use Linville Creek, which is located near the water treatment plant, as an additional source of raw water if needed.

²⁰Ibid., p. 2. One of the Town's storage facilities, a 500,000 storage tank, was completed in July 1990.

²¹Ibid., p. 1. Approximately 92% of the residents in the Phase One area are currently served by Town water. Those Phase One residents not connected to public water lines are served by wells, but have access to Town water mains. (Lohr, communication with staff of Commission on Local Government, Aug. 28, 1990.) In addition, 29 of the Town's 67 fire hydrants are located beyond the current Town boundaries.

foreseeable future.²² Further, it is important to observe that, at the present time, the Town is the only source of treated water available to serve residents and businesses in the Broadway area.²³

Sewerage. The Town's sewage treatment plant, which has a rated capacity of 0.32 MGD, was constructed in 1966 and upgraded in 1988.²⁴ The plant currently treats an average daily flow of 0.23 MGD, leaving an excess capacity of approximately 0.10 MGD.²⁵ Due to the age of the Town's collection lines, however, a portion of the flow through Broadway's facility is the result of the infiltration of groundwater and inflow of stormwater. The Town is in the process of replacing or rehabilitating a number of collection lines, and Town officials have indicated that the improvements to those lines should make the treatment system more efficient and provide additional capacity at the sewage treatment plant.

With respect to the capacity of the Town to provide sewerage service to the areas subject to annexation under the agreement, we note that Broadway currently operates 5.25 miles of sewage collection lines beyond the Town limits. Those lines currently serve 190 connections in

²²The Town proposes to install a new water line in the western portion of Phase One to address existing low pressure and fire flow problems in that area. Broadway estimates that the project (which will cost approximately \$110,000 and will be undertaken following the effective date of the annexation of Phase One. (Town Submissions, "Services," p. 2; and Lohr, letter to staff of Commission on Local Government, Aug. 27, 1990.)

²³The County-owned water lines closest to the areas subject to annexation under the terms of the proposed agreement are located approximately 18 miles from that area. (Town Submissions, "Services," p. 2.)

²⁴Ibid., p. 1.; and Lohr, communication with staff of Commission on Local Government, Aug. 31, 1990.

²⁵Town Submissions, "Services," p. 1.

the Phase One area.²⁶

In our judgment, the Town of Broadway has the capacity to assume responsibility for serving the areas eligible for annexation under the terms of the proposed agreement. The Town has both the capability and the willingness to meet the prospective sewerage needs in the areas annexed.

Solid Waste. The Town of Broadway provides solid waste collection services to its residents on a weekly basis through contract with a private collector. The cost of this service is borne by the Town's general fund and is not supported by user charges.²⁷ At the current time, residents in the areas subject to annexation under the terms of the proposed agreement must dispose of their waste in containers located at various sites in the County or contract with private concerns for the collection and disposal of their refuse.²⁸ The Town of Broadway can, in our view, assume responsibility for the extension of solid waste collection service to the areas eligible for annexation.

The developed areas adjacent to Broadway will benefit, in our

²⁶Ibid. There also is one Town sewer customer located in the Phase Two area. Those residents in the Phase One area not connected to Town sewerage are served by septic systems, but have access to Broadway's sewer collection lines.

²⁷Town Submissions, "Services," p. 3. Businesses within the Town of Broadway utilize the services of private solid waste contractors. The Town disposes of its refuse in a sanitary landfill owned by Rockingham County and is charged a fee for that service. The Town is currently charged a monthly rate of \$3.49 per customer for solid waste service. (Lohr, communication with staff of Commission on Local Government, Sep. 13, 1990.)

²⁸There are no County-owned solid waste containers in either the Phase One or Two areas. The closest County solid waste container site to Broadway is located approximately five miles east of the Town. Residents of the areas covered by the agreement currently are charged between \$8.50 and \$11.00 per month for private solid waste collection services. (Lohr, communication with staff of Commission on Local Government, Sep. 13, 1990.)

judgment, from the solid waste collection services provided by the Town. The extension of the Town's services to the areas annexed will result not only in the elimination of monthly contractor charges for the annexed residents, it should also promote increased utilization of regular refuse collection services within those areas. The Town can and should bear responsibility for the provision of this public service in the areas covered by the agreement.

Law Enforcement. Since the law enforcement activities of Virginia towns augment those provided by county Sheriff's departments, the expansion of Broadway's boundaries under the terms of the proposed agreement will have the effect of providing additional and more intensive law enforcement services to residents of the areas annexed. The Town presently has two full-time police officers, with each assigned patrol responsibility.²⁹ The duty shifts of those officers are structured so that the Town is regularly patrolled from 7:00 a. m. to midnight.³⁰ The Rockingham County Sheriff's Department, which maintains its headquarters in the City of Harrisonburg, assists the Town in meeting its law enforcement needs. This assistance is provided by Sheriff deputies who regularly patrol within Broadway and by the County's management of dispatch services for the Town.³¹

The Commission has no knowledge of any extraordinary law enforcement problems in the areas to be annexed under the terms of the proposed agreement, and the addition of those areas to the Town is not expected to add substantially to the law enforcement burden carried by

²⁹Town Submissions, "Services," p. 4.

³⁰Ibid. Broadway's police department has available two vehicles to assist in its law enforcement responsibilities.

³¹Lohr, communication with staff of Commission on Local Government, Aug. 31, 1990. In addition, Broadway utilizes the Rockingham County jail facilities as needed.

Broadway's police department.³²

Streetlighting. Streetlighting in Broadway is provided by the Town under contractual arrangements with Virginia Power Company and the Shenandoah Valley Electric Cooperative, Inc. There are currently 170 publicly-funded streetlights in Broadway, while none are in the areas proposed for annexation.³³ The Town has advised, however, that it plans to install streetlights in areas annexed, with the sites for the installation of those fixtures being selected by the Town Council based upon need and requests from residents.³⁴ Streetlighting can be a factor in crime prevention, the reduction of traffic related accidents, and the enhancement of public areas. Broadway's policy of providing this service at municipal expense to areas annexed will beneficially serve such areas and their residents.

Summary

The annexation of the Phase One area will provide the Town of Broadway with an immediate infusion of additional revenues. Moreover, that area and the territory in Phase Two which might subsequently be annexed under the agreement will provide the Town with an opportunity

³²The Commission notes that while the Town has included funds in its adopted five-year capital improvements plan to hire and equip an additional police officer to assist in providing law enforcement services to Phase One following annexation, Broadway officials have indicated that such may not be required immediately since Town officers currently patrol the areas adjacent to the Town and respond to calls for service from that area on an informal basis. The Town's position on the issue appears reasonable to the Commission. (Lohr, letter to staff of Commission on Local Government, Aug. 27, 1990; and communication with staff of Commission on Local Government, Aug. 28, 1990.)

³³Town Submissions, "Services," p. 6.

³⁴Lohr, communication with staff of Commission on Local Government, Aug. 31, 1990. The Town plans to commence the installation of approximately 60 publicly-funded streetlights in Phase One following the effective date of the annexation.

for future economic development. Such future annexations will permit the Town to share appropriately in the growth of its general area and will provide it with the resources to extend its services to areas of need. From our perspective, the proposed agreement does allow an equitable sharing of both the area's resources and liabilities.

INTEREST OF THE COMMUNITY AT LARGE

In reviewing a proposed agreement defining a town's annexation rights, the Commission is also directed by the Code of Virginia to consider whether such an agreement is in "the best interest of the community at large."³⁵ In the preceding sections of this report the Commission has considered whether the proposed agreement provides for the orderly and regular growth of the Town of Broadway and Rockingham County and whether it promotes an equitable sharing of the area's public resources and liabilities. While these factors are clearly promotive of the best interest of the community at large, there are other attributes of the proposed agreement which are relevant to this criterion and which merit comment in this report.

Enhancement of Public Service in Broadway Environs

As previously observed, annexations effected under the proposed agreement will place additional service responsibilities upon the Town of Broadway. However, the Town's assumption of such service responsibilities concurrently promotes the interests of the community at large. In this regard, annexation by the Town will result in an immediate reduction in water and sewer connection fees and charges for all residents of the Phase One and Phase Two areas.³⁶ Similarly, the

³⁵Sec. 15.1-1058.2, Code of Va.

³⁶At the present time, nonresident customers of Broadway's water system pay a 30% surcharge per connection and a 60% surcharge on user fees, while nonresident customers of the Town's sewerage system pay a surcharge of approximately 15% on connections and a 27% surcharge on user fees. (Lohr, letter to staff of Commission on Local Government,

Town will extend its solid waste collection service to annexed areas. As a consequence, the proposed agreement facilitates and encourages greater community utilization of public utilities and refuse disposal service, which clearly is in the interest of the general area. In sum, the extension of these Town services and others to areas presently beyond Broadway's corporate limits will serve the community at large.

Simplification of the Annexation Process

The proposed Town of Broadway - Rockingham County agreement permit the growth of the Town by a simple process (i. e., annexation by municipal ordinance) which would avoid extended, and often costly, adversarial annexation proceedings. Although the State's traditional annexation process has many commendable features, experience has shown that such proceedings can be costly in terms of litigation expenses. Moreover, contested annexation cases can result in strained intergovernmental relations which often inhibit cooperative efforts, collaboration on mutual problems, and long-range planning. The proposed agreement will permit the growth of Broadway in a nonadversarial manner with a minimum of attendant cost. This provision in the proposed agreement can serve the best interest of the community at large.

Relinquishment of Authority to Seek City Status

A significant element of the proposed agreement is the provision which calls for the Town of Broadway to relinquish in perpetuity its authority to seek city status. While the Town does not at the present time have the requisite population (5,000) to be eligible for the transition to independent city status, nor will any annexation contemplated under the terms of the proposed agreement result in Broadway reaching that population threshold, future economic and

demographic conditions might significantly alter that situation.³⁷ If the Town were to exercise its present statutory prerogative to seek city status at some future date, it would remove totally its population and tax resources from County authority, with the consequence that the remaining residents of Rockingham County would be confronted with bearing a greater local tax burden for the provision of public services. With the adoption of this agreement, Broadway commits itself to remaining permanently a part of Rockingham County and supporting with its residents and resources the needs of the County generally. Unless a variance in political values or service needs creates irreconcilable differences, the best interest of the community at large is served, from our perspective, by the Town of Broadway remaining a part of Rockingham County.

Economic Development of the Broadway Area

The proposed agreement facilitates the growth of the Town of Broadway which, in turn, will provide that municipality with additional fiscal resources which can be used to extend and improve its public services. Broadway's increased capability for the provision of public services can be a positive factor in the attraction of desirable development in the area. Any such development which does occur will redound to the benefit of both the Town and Rockingham County. This aspect of the proposed agreement is clearly in the best interest of the general community.

Protection of Agricultural Properties

The proposed Broadway - Rockingham County agreement includes three provisions which commit the Town to the protection of agricultural

³⁷The immediate annexation of the entire Phase One and Two areas would increase Broadway's population from 1,350 persons to approximately, 2,000 persons.

operations.³⁸ First, the agreement states:

The Town has no desire to annex acreage which is devoted principally and actively to agricultural production unless such acreage largely is embraced by property appropriate for annexation and cannot, in the judgment of the Town, be reasonably excluded therefrom.

While this provision would allow the incidental annexation of agricultural properties which might be encompassed by developed areas, it is intended to prevent any large and indiscriminate annexation of such properties by Broadway. Second, the proposed agreement obligates the Town to protect existing agricultural operations in areas annexed "through the use of zoning and the establishment of use value taxation procedures."³⁹ Third, the proposed agreement would protect agricultural properties which might be incidentally annexed by prohibiting Broadway from implementing any procedure which would place undue restrictions or hardships on land devoted to agricultural production. This Commission recognizes the State's strong concern for the preservation of agricultural properties and the significance of Rockingham County as the preeminent agricultural resource in the Commonwealth.⁴⁰ We consider the provisions of the agreement concerning the protection of agricultural lands to be fully consistent with the best interest of the community at large.

³⁸Agreement Defining Annexation Rights, Sec. 7.

³⁹Ibid. The Commission observes that Broadway has adopted use value assessment for all properties within its present borders qualifying for such under the County ordinance.

⁴⁰Of the total market value of agricultural products sold by farming operations in the Commonwealth in 1987 (\$1.59 billion), 17.5% was as the result of agricultural operations in Rockingham County. (U. S. Department of Commerce, Bureau of the Census, 1987 Census of Agriculture, Virginia State and County Data, Ch. 2, Table 1.)

FINDINGS AND RECOMMENDATIONS

The Commission finds that the proposed agreement provides concurrently for the orderly and regular growth of the Town of Broadway and Rockingham County, facilitates an equitable sharing of the area's public resources and liabilities, and is in the best interest of the community at large. While the Commission has reviewed the proposed agreement and reports it "favorably," it offers the following recommendation set forth below.

FUTURE ANNEXATION RIGHTS

Section 9 of the proposed agreement defining annexation rights between Broadway and Rockingham County addresses the issue of the Town's future utilization of the traditional annexation process authorized by Article 1, Chapter 25, Title 15.1 of the Code of Virginia. This section states that Broadway will not voluntarily file for the annexation of County territory beyond that covered by the agreement ". . . until ten (10) years from the annexation of 'Phase One' or the entire 'Phase Two' area is annexed, whichever event shall last occur, . . ."

The Commission notes that this provision of the proposed agreement is susceptible to several interpretations. One interpretation would bar the Town from exercising its traditional authority for ten years after the annexation of the entire Phase Two area, regardless of the time such might occur. While officials of both the Town and the County have indicated that the language of Section 9 is not intended to unduly restrict the future annexation rights of Broadway, the Commission recommends that Section 9 be amended to avoid any possible ambiguity with respect to the intentions of the parties.

CONCLUDING COMMENT

As stated previously in this report, agreements defining a town's annexation rights are significant documents containing major grants and concessions of legal authority by the two jurisdictions which are

parties to them. Accordingly, the proposed Town of Broadway - Rockingham County agreement has merited and has received careful review by this body. While this Commission recommends the adoption of the amendment herein proposed, we find the agreement consistent with statutory standards, and we hereby report it "favorably."

Respectfully submitted,

Harold S. Atkinson
Harold S. Atkinson, Chairman

Wm S. Hubbard
William S. Hubbard, Vice Chairman

Layton R. Fairchild Jr
Layton R. Fairchild, Jr.

Mary Sherwood Holt
Mary Sherwood Holt

Frank Raflo
Frank Raflo

AGREEMENT DEFINING ANNEXATION RIGHTS

THIS AGREEMENT is made this ____ day of _____, 1990, between the Town of Broadway, a municipal corporation of the Commonwealth of Virginia (the "Town") and the County of Rockingham, Virginia (the "County"):

PREAMBLE:

A. The Town and the County desire to enter into an Agreement defining the Town's future annexation rights;

B. The Town has completed several feasibility studies concerning annexation and has reviewed the Comprehensive Land Use Plan of Rockingham County which promotes growth in and around the incorporated towns of the County;

C. The Town desires first to annex two tracts, one containing 545.05 acres (adjacent to the western and southern boundaries of the Town) and the second containing 121.89 acres (adjacent to the eastern boundary of the Town), being described on the attached plat as Phase 1A and Phase 1B, respectively; and the Town desires to have the right to annex at any time in the future all or any portion of the lands containing 766.51 acres (lying southwest, south and east of the Town) and 95.28 acres (lying northwest of the Town), described on the attached plat as Phase 2A and Phase 2B, respectively; and

D. The Town is willing to renounce permanently its right to become a city and to enter into an Agreement with the County providing for the regular and orderly growth of the Town and County in order to effectuate and carry out the goals and purposes stated in the Town's and County's Comprehensive Land Use Plans.

THEREFORE, IT IS AGREED:

1. Renunciation of City Status. The Town permanently renounces its right to become a city, as provided by § 15.1-1058.1 of the Code of Virginia, 1950, as amended, such renunciation to become effective simultaneously with the effective date of the annexation of "Phase One".

2. Annexation of Phase One". The parties agree that the Town shall annex first all of "Phase One" (which includes Phase 1A with 545.05 acres and Phase 1B with 121.89 acres), and such annexation shall become effective after review and recommendations by the Commission on Local Government and compliance with all the provisions of Virginia laws pertaining to annexation, including the adoption of the Town of an ordinance of annexation. Any survey required under this Agreement will be along established property lines, to the extent feasible.

3. Right to Annex "Phase Two". The Town shall have the right to annex all or any portion of the lands described on the plat as "Phase Two" (which includes Phase 2A with

766.51 acres and Phase 2B with 95.28 acres), which are contiguous and compact, by enacting an ordinance at any time after the execution and final approval of this Agreement. Any annexation ordinance adopted shall meet all requirements of law, and whether required by law or not the Town commits itself first to hold a public hearing and to advertise such hearing for two consecutive weeks in a newspaper of general circulation in the Town. The Town further commits itself prior to adopting any such ordinance to give formal written notice of such hearing to the County. Any annexation ordinances adopted shall provide that the effective date shall be December 31 of the year of final adoption. Certified copies of any and all annexation ordinances shall be filed where required by law including the Clerk of the Circuit Court of Rockingham County, Virginia, the Secretary of the Commonwealth of Virginia, and all other appropriate local, state and federal agencies that require notice of such annexation, but the failure to file with any such state and federal agency shall not of itself affect the validity of any such ordinance. Prior to the effective date of any annexation, the Town shall, at its expense, cause an accurate survey and a census of the proposed annexed area to be made.

4. No reimbursement of Revenues. Each party shall be entitled to keep whatever revenues flow to it by reason of any annexations, which shall be the regular and usual revenues received by the County and the Town within its present boundaries as expanded by this Agreement.

5. Equalization of Utility Charges. The Town agrees that simultaneously with its first annexation it will equalize the rates it charges water and sewer customers for services outside of its boundaries but within the area marked "Phase Two", so that the rates are the same as those charged within its corporate boundaries.

6. Water, Sewer and Other Municipal Services in Annexed Areas. The Town commits itself to extend water and sewer services into any annexed area to the property lines of all property owners, including residential, commercial and industrial, in accordance with existing policies of the Town, such extension of utility services to be concluded within five (5) years from the date of annexation if the same are needed or if they are requested by property owners. Other municipal services, exclusive of water and sewer, will be extended by the Town into annexed areas on the effective date of each annexation. All such services will be at the same level and quality as are available generally within the entire Town.

7. Protection for Agricultural Land. The Town has no desire to annex acreage which is devoted principally and actively to agricultural production unless such acreage largely is embraced by property appropriate for annexation and cannot, in the judgment of the Town, be reasonably excluded therefrom. The Town commits that it will, as soon as reasonably possible, establish means by which to protect existing farmlands within any annexed area through the use of zoning

and the establishment of use value taxation procedures. The Town states its intention to allow the continued use of any farmland which it annexes for agricultural purposes and the Town further states it does not propose to implement any procedures which will place undue restrictions or hardships on agricultural land.

8. Commitments to Serve Needs of "Phase Two" Land.

Although the Town does not absolutely commit itself to annex any of the lands within the area designated as "Phase Two", it does intend from time to time to consider seriously requests for annexation and the needs therefor and the feasibility thereof within such areas. The goal of both the Town and County is to provide for orderly development of such land and to serve the needs of the area as and when they arise. County pledges that as to any unannexed lands within the area designated as "Phase Two" it will notify the Town before approving subdivisions and rezoning. The County's obligation to give notice shall be complied with if Town is given 20 days to comment on any final subdivision plat. As to zoning, County shall give the written notice of the public hearing date and Town must give its written comments, if any, to the County within 30 days of such notice. The right to permit subdivisions and to rezone within "Phase Two" prior to annexation is reserved by County, but Town shall be notified in each instance by County. Failure to so notify the Town, however,

shall not affect the validity of any such subdivision or zoning, or any other rights or obligations of the parties under this Agreement.

9. No Annexation Outside Agreed Area. Town agrees that until ten (10) years from the annexation of "Phase One" or the entire "Phase Two" area is annexed, whichever event shall last occur, it will not seek voluntarily to annex any other areas. Citizen petitions for annexation shall be processed in accordance with the applicable provisions of the Code of Virginia in effect at the time of the application.

10. Sections of Agreement are Severable. In the event any section of this Agreement is found to be illegal or unconstitutional by a court of competent jurisdiction, such finding shall apply only to that section or sections and all other provisions shall remain in full force and effect, except that if the Town's renunciation of city status is held illegal or unenforceable County shall have the right to withdraw its consent to annexation in the "Phase Two" area and Town shall have the right to rescind its agreement under paragraph 5 to equalize utility charges.

11. Costs and Attorney's Fees. Town agrees to pay the county attorney and its attorney for the preparation of this Agreement, and all other costs of annexation proceedings.

12. Right to Modify or Amend. Town and County reserve the right to modify or amend this Agreement by joint consent whenever it is felt the needs of the Town and County

and of the citizens of each require such modification or amendment.

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed in its name and on its behalf by its Mayor, attested by its Clerk, as thereunto duly authorized by the Town Council; and the County has caused this Agreement to be signed in its name and on its behalf by its Chairman, attested by its County Administrator, as thereunto duly authorized by the Board of Supervisors.

TOWN OF BROADWAY

By _____
Mayor

ATTEST:

Clerk

COUNTY OF ROCKINGHAM

By _____
Chairman

ATTEST:

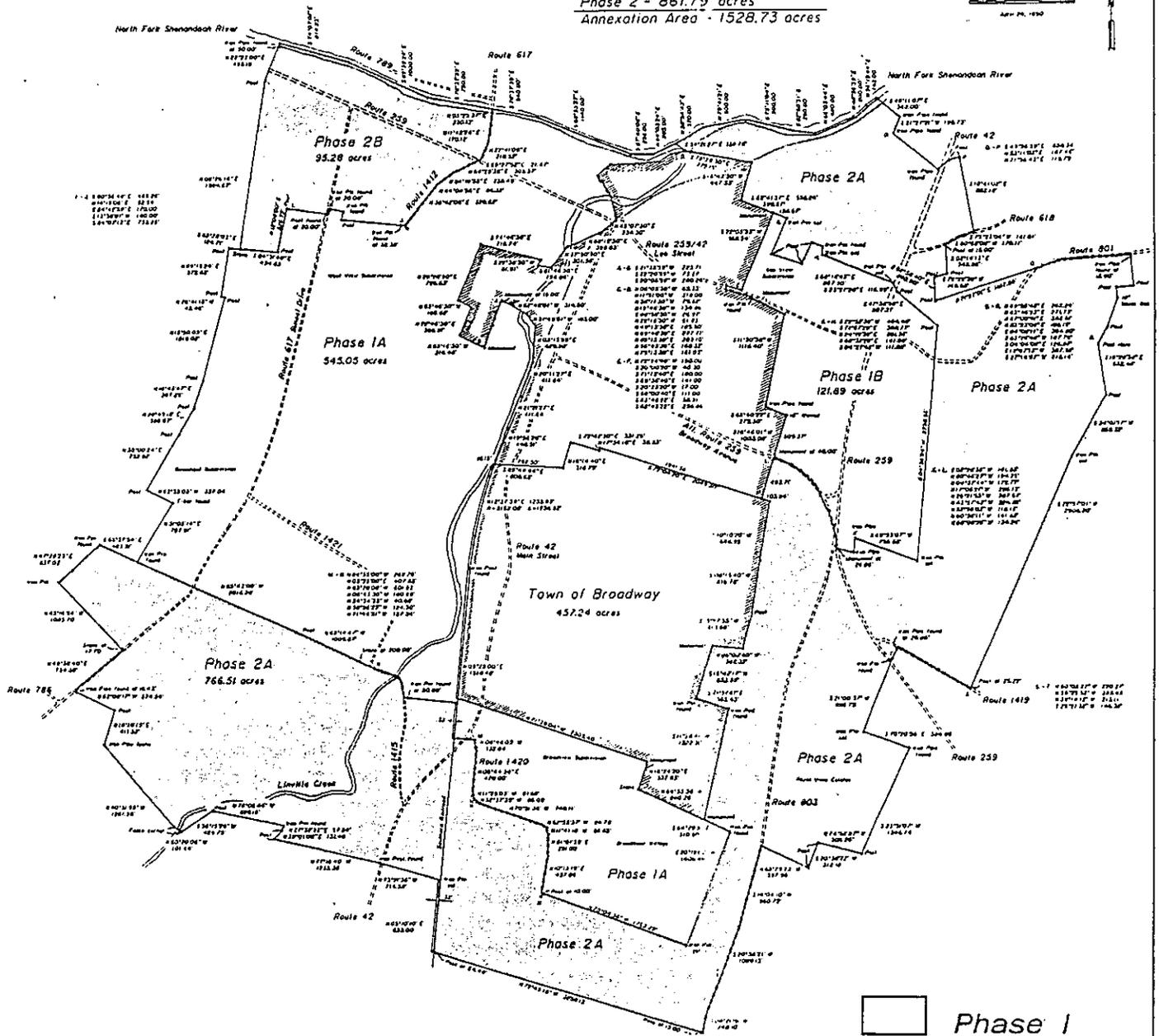
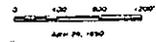
County Administrator

A/C37850/BF1

Annexation Survey for Town of Broadway

Rockingham County, Virginia

Phase I - 666.94 acres
Phase 2 - 861.79 acres
Annexation Area - 1528.73 acres



Phase I
 Phase II

David Lee Ingram & Associates, Inc.
Land Surveyors - Land Planners
Route 2, Box 204
Mount Crawford, Virginia 22841-9718
Telephone (703) 828-2778

This is not a Plat. It is a Survey. It is subject to change in accordance with the Virginia Surveying Act of 1978.

Appendix C

STATISTICAL PROFILE OF THE TOWN OF BROADWAY, COUNTY OF ROCKINGHAM AND THE AREAS COVERED UNDER THE AGREEMENT DEFINING ANNEXATION RIGHTS

| | <u>Town of Broadway</u> | <u>County of, Rockingham¹</u> | <u>Phase I</u> | <u>Phase II</u> |
|---|-----------------------------|--|----------------|-----------------|
| Population (1988) ² | 1,350 | 54,800 | 478 | 214 |
| Land Area (sq. Mi.) | 0.72 | 853.40 | 1.04 | 1.35 |
| Total Assessed Values (1988) ³ | \$29,846,950 | \$1,929,121,098 | N/A | N/A |
| Real Estate Values | \$25,635,360 | \$1,520,561,534 | \$13,663,750 | \$7,536,230 |
| Personal Property Values | \$3,479,200 | \$160,929,313 | \$1,366,188 | \$475,000 |
| Machinery and Tools Values | \$732,390 | \$87,179,690 | N/A | N/A |
| Merchants Capital Values | N/A | \$28,113,130 | N/A | N/A |
| Public Service Corporation Values | N/A | \$81,401,554 | N/A | N/A |
| Mobile Home Values | N/A | \$16,658,168 | N/A | N/A |
| Farm Equipment Values | N/A | \$34,277,709 | N/A | N/A |
| Land Use (Acres) | | | | |
| Residential | 176.8 | 68,193.0 | 180.9 | N/A |
| Commercial | 17.6 | 3,755.0 | 17.5 | N/A |
| Industrial | 21.7 | 600.0 | 46.9 | N/A |
| Public and Semi-Public | 10.2 | 181,158.0 | 100.7 | N/A |
| Streets or Rights-of Way | 65.8 | N/A | N/A | N/A |
| Vacant Wooded or Agricultural | 171.2 | 286,636.0 | 321.0 | N/A |

NOTES:

N/A = Not Available

1. Statistics for Rockingham County include data for the Town of Broadway.
2. Population statistics for the area proposed for annexation under the terms of the agreement are for 1986.
3. Assessed values for the Phase I and II areas are for Tax Year 1989.

SOURCE:

Town of Broadway, Submission to the Commission on Local Government, May 23, 1990.