

REPORT
ON THE
CITY OF SALEM—COUNTY OF ROANOKE
SETTLEMENT AGREEMENT



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

REPORT ON THE
CITY OF SALEM - COUNTY OF ROANOKE
SETTLEMENT AGREEMENT

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THE CITY OF SALEM - COUNTY OF ROANOKE
SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On December 31, 1986 the Commission on Local Government received notice from 48 petitioners (Michael Akers, et al.), pursuant to the provisions of Section 15.1-945.7(A) of the Code of Virginia, of their intent to petition for annexation to the City of Salem of 95.23 acres of property located in Roanoke County.¹ The 48 signatories of the notice represented more than 51% of the landowners in the area covered by the petition, with those individuals holding ownership to more than 51% of that property.² Consistent with the Commission's Rules of Procedure, the notice was accompanied by data and materials supportive of the proposed annexation.³ Further, in accordance with statutory requirements, the petitioners concurrently gave notice of the proposed annexation action to the City of Salem, Roanoke County, and ten other potentially affected local governments.⁴

On January 13, 1987 the Commission received an additional notice from five petitioners (Thomas M. Hufford, et al.), filed pursuant to Section 15.1-945.7(A) of the Code of Virginia, seeking annexation to the City of Salem of 9.41 acres of land located in Roanoke County.⁵

¹See Petition for Voluntary Annexation, Michael Akers, et al. v. County of Roanoke and City of Salem (hereinafter cited as Akers Petition Notice).

²Sec. 15.1-1034 of the Code of Va. permits voters or owners of real estate to petition for the annexation of property to adjacent municipalities. Such petitions must contain the signatures of 51% of the qualified voters or 51% of the owners of real estate in number and land area in the area to be annexed. Annexation actions instituted in this manner are to be reviewed as though initiated by a municipal governing body. Prior to July 1, 1985 such citizen-initiated annexations were not subject to review by the Commission on Local Government.

³See Akers Petition Notice filed with the Commission on Local Government on December 31, 1986.

⁴Sec. 15.1-945.7(A), Code of Va.

⁵See Thomas Michael Hufford, et al. v. County of Roanoke and City of Salem (hereinafter cited as Hufford Petition Notice). This

This notice requested the Commission's joint review of the two annexation proposals. With the consolidation of the two separate notices filed with the Commission, the area petitioned to be annexed to the City of Salem comprised 104.64 acres of territory in Roanoke County.

On January 14, 1987 the Commission met with representatives of the two groups of petitioners, the City of Salem, and Roanoke County for purposes of making preliminary arrangements for its formal review of the annexation actions. At that meeting, the Commission established a schedule which called for the submission of materials by the City of Salem and Roanoke County in response to the annexation petitions by March 16, for public presentations and hearings on April 1, and for submission of the Commission's report by July 1, 1987.⁶

Following negotiations between representatives of the City of Salem and Roanoke County with respect to the two annexation initiatives, a settlement agreement was developed by the two localities and presented to the Commission on March 6, 1987.⁷ This proposed agreement contained provisions which (a) authorized the City's annexation of the 95.23 acres of property included within the Akers Petition, (b) required the City to reject all other citizen-initiated annexations, unless expressly authorized by the County, instituted during calendar year 1987, (c) called for the City to refrain from supporting or encouraging any citizen petition annexations for a

petition was accompanied by data and materials supportive of the proposed annexation. The five signatories of the Hufford Petition represented 100% of the landowners in the area proposed for annexation. The Hufford Petition property was contiguous to the western boundary of the properties included within the Akers Petition.

⁶At the Commission's January 14, 1987 meeting special counsel for the Akers and Hufford petitioners amended the original Akers Petition to include the signature of one person whose property had been included in the petition but who had not initially signed the petition for annexation.

⁷The proposed agreement was submitted for review by the Commission pursuant to Sec. 15.1-1167.1, Code of Va.

period beginning January 1, 1988 and ending July 1, 1993, and (d) committed the City to compensate Roanoke County in the amount of \$175,000 for the loss of net tax revenue.⁸ The City and the County, with the concurrence of the representative of the petitioners, requested the Commission to review the proposed settlement agreement in accordance with the schedule previously established for the review of the Akers and Hufford Petitions.⁹

Consistent with the previously adopted schedule, on April 1, 1987 members of the Commission toured the area proposed for annexation and other relevant areas and facilities in the City and the County and received oral presentations from the parties in support of the proposed settlement.¹⁰ In addition to its receipt and consideration of materials and testimony from the petitioners, the City of Salem, and Roanoke County, the Commission solicited comment from other potentially affected local governments and from the public.¹¹ Each locality qualifying for notice of the proposed annexations under the provisions of Section 15.1-945.7(A) of the Code of Virginia was invited by the Commission to submit testimony on the proposed settlement agreement for its consideration. Further, the Commission held a public hearing, which was advertised in accordance with Section 15.1-945.7(B) of the Code of Virginia, on the evening of April 1, 1987 in Salem. The public hearing was attended by approximately 25 persons and produced

⁸See Appendix A for the text of the Memorandum of Agreement negotiated by the City of Salem and Roanoke County.

⁹Steven M. Yost, City Attorney, City of Salem, letter to staff of Commission on Local Government, Mar. 6, 1987; and Richard K. Bennett, Special Counsel, County of Roanoke, letter to staff of Commission on Local Government, Mar. 6, 1987.

¹⁰Because of his residency in the Roanoke Valley area Commissioner William S. Hubbard disqualified himself from participating in the Commission's review of the proposed settlement agreement and is not a signatory of this report.

¹¹On March 16, 1987 the City of Salem filed with the Commission documents and materials in support of the proposed agreement. [See City of Salem, Filing to Commission on Local Government in the Matter of

testimony from two individuals. In order to permit the receipt of additional public comment, the Commission agreed to keep open its record for written submissions from the public through May 1, 1987.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations, petitions for partial county immunity, and other local boundary change and transition issues, as well as negotiated agreements settling such matters prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such a proposed action or agreement, the Commission is directed "to hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and recommendations to the affected local governments regarding the issue.¹² With respect to a proposed agreement negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia, the Commission is required to determine in its review "whether the proposed settlement is in the best interest of the Commonwealth."

It is evident that the General Assembly encourages local governments to attempt to negotiate settlements of interlocal boundary change and transition issues. Indeed, one of the foremost responsibilities of this Commission is to assist local governments, upon appropriate request, in such efforts. In view of this apparent legislative intent, the Commission believes that interlocal agreements, such as that negotiated by the City of Salem and Roanoke County, should be approached with respect and with a presumption of their compatibility with applicable statutory standards.

Michael Akers, et al. v. County of Roanoke and City of Salem, Vol. I (hereinafter cited as City Filings-I); and Vol. II - Map Exhibits (hereinafter cited as City Filings-II), Mar. 1987.]

¹²Sec. 15.1-945.7(A), Code of Va.

As we have noted in other reports; however, the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia must be reviewed by this Commission prior to their final adoption by local governing bodies. We are required to conclude, therefore, that while interlocal agreements negotiated for purposes of resolving boundary change issues are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a pro forma endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities mandates more.

GENERAL CHARACTERISTICS OF THE CITY, THE COUNTY,
AND THE AREA PROPOSED FOR ANNEXATION

CITY OF SALEM

Salem, whose origins can be traced to the Colonial era, was incorporated as a town in 1806 and was granted independent city status in 1968.¹³ As of 1980, the City of Salem had a populace of 23,958 persons, reflecting a population growth of 9.0% since the 1970 census.¹⁴ Demographic estimates for 1985 placed the City's population at 23,900 persons, a decrease of 0.2% since the preceding decennial census.¹⁵ Based on its estimated 1985 population and its

¹³City Filings-I, Tab 3. Salem was originally incorporated as a town in Botetourt County and became the seat of government for Roanoke County in 1838 when that County was created.

¹⁴U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 2. The City's population growth is affected by the presence of Roanoke College, Virginia Baptist Children's Home, and the Veterans Administration Hospital within its corporate boundaries. The Commission notes that between 1970 and 1980 the population of persons residing in group quarters (e. g., college dormitories, hospitals, etc.) decreased by 10.8%. (U. S. Department of Commerce, Bureau of the Census, 1970 Census of Population, Characteristics of the Population, Virginia, Table 120; and 1980 Census of Population, General Social and Economic Characteristics, Virginia, Table 173.)

¹⁵Julia H. Martin and David W. Sheatsley, Estimates of the

current land area of 14.2 square miles, the City has a population density of 1,683 persons per square mile.¹⁶

In terms of fiscal growth, the data indicate that between 1971 and 1981 the total true value of real estate and public service corporation property in the City of Salem increased from \$186.8 million to \$501.7 million, or by 168.6%.¹⁷ As of 1985, the total value of such property in Salem was \$607.0 million, an increase of 21.0% since 1981.¹⁸ These data indicate that the City has experienced modest growth in recent years.¹⁹

With respect to Salem's physical development, 1974 land use data (the latest available) revealed that of the City's total area (14.2 square miles), 26.5% was then utilized for residential purposes, 3.6% was committed to commercial enterprise, 4.2% was engaged in industrial activity, 16.6% was devoted to public or semi-public usage, with 40.3% (3,656 acres) remaining vacant.²⁰ While new residential, commercial and industrial construction in Salem during the intervening years has consumed a portion of the vacant land within the City, Salem officials have indicated that the City still retains a significant amount of unde-

Population of Virginia Counties and Cities: 1984 and 1985
(Charlottesville: Tayloe Murphy Institute, University of Virginia, 1986).

¹⁶City Filings-I, Tab 5.

¹⁷Virginia Department of Taxation, Estimated True (Full) Value of Locally Taxed Property in Virginia Counties, Cities, and Towns Constituting Special School Districts - 1971, June 1973; and Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1981, Mar. 1983.

¹⁸Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1985, Mar. 1987. Between 1981 and 1984 the true value of real estate and public service corporation properties subject to local taxation in all Virginia localities increased by 20.7%.

¹⁹See Appendix B for selected fiscal data for Roanoke Valley jurisdictions.

²⁰City of Salem, Land Use Plan, Aug. 1974, pp. 44, 47, 50, 53, 56, 62, and 66. In 1974, 8.8% of the land within the City of Salem

veloped land for future growth within its current boundaries.²¹

COUNTY OF ROANOKE

Roanoke County was created by the General Assembly in 1838 from territory formerly a part of Botetourt and Montgomery Counties.²² Between 1970 and 1980 the County's population increased from 67,339 to 72,945 persons, or by 8.3%, despite a significant annexation by the City of Roanoke.²³ The County's 1985 population was estimated to be 73,700 persons, reflecting an increase of 1.0% since the 1980 census.²⁴ Based on its 1985 population and its current land area of 248.2 square miles, the County has an overall population density of 297 persons per square mile.

With respect to its fiscal development, the data indicate that between 1971 and 1981 the total true value of real estate and public service corporation property in the County increased from \$606.7 million to \$1,689.8 million, or by 178.5%.²⁵ By 1985 the true value of the County's real estate and public service corporation property had increased to \$2,096.0 million, a growth of 24.0% since 1981.²⁶ These data reflect a rate of development closely

was utilized for public thoroughfare rights-of-way.

²¹0. Marvin Sowers, Planning Director, City of Salem, communication with staff of Commission on Local Government, May 13, 1987.

²²J. Devereux Weeks, Dates of Origin, Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967).

²³1980 Census of Population, Number of Inhabitants, Virginia, Table 2. On January 1, 1976 the City of Roanoke annexed a portion of Roanoke County containing 13,522 persons.

²⁴Estimates of the Population of Virginia Counties and Cities: 1984 and 1985.

²⁵Estimated True (Full) Value of Locally Taxed Property in Virginia Counties, Cities, and Towns Constituting Special School Districts - 1971; and Virginia Assessment/Sales Ratio Study, 1981.

²⁶Virginia Assessment/Sales Ratio Study, 1985.

paralleling that in the City of Salem.

In terms of land use patterns, as of 1983 approximately 10.8% of the County's total area was devoted to public or semi-public use, 4.6% to residential development, 0.9% to commercial enterprise, 0.6% to industrial activity, with the remaining 79.9% of the County being principally agricultural property, forest lands, or vacant.²⁷ In regard to the latter category of property, 1982 data revealed that Roanoke County contained 33,475 acres of land engaged in agricultural production, while 1986 data disclosed that the County still had approximately 102,107 acres (159.5 square miles) of forest land.²⁸ In sum, while Roanoke County has experienced considerable development in recent decades, it still contains notable agricultural operations and forest properties.

AREAS PROPOSED FOR ANNEXATION

Akers Petition

Under the terms of the proposed agreement the City of Salem is authorized to annex the property included within the Akers Petition. That petition embraces 95.23 acres of land containing 47 persons and \$2.64 million in assessed real property values based on the County's 1986 assessment.²⁹ Thus, the area contains 0.06% of the County's land area, 0.06% of its 1985 population, and 0.14% of its 1986 total

²⁷Akers Petition Notice, Exh. 5A. Approximately 3.8% of the County's land area was, according to the 1983 data, occupied by road and railway rights-of-way.

²⁸U. S. Department of Agriculture, Forest Service, Forest Statistics for the Northern Mountains of Virginia, 1986; and U. S. Department of Commerce, Bureau of the Census, 1982 Census of Agriculture, Virginia, Ch. 2, Table 1. The Forest Service defines "forest land" as property being at least 16.7% stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use. Such property may also be included in the Census Bureau's definition of "farm land."

²⁹City Filings-I, Tab 5. The area proposed for annexation under the terms of the proposed settlement agreement has a population density of two persons per acre. In addition, the area contains 17 single family dwelling units and has a schoolage population of six

assessed real property values.³⁰ With the exception of two residential subdivisions (Heidelberg Estates and Buckingham Estates) which occupy collectively 22.5% of the land included in the Akers Petition, the area is undeveloped or used for public thoroughfare purposes.³¹ Although there are no County-owned facilities situated in the area proposed for annexation, there is a private water system serving the Buckingham Estates subdivision in the eastern portion of the petition area.³²

With respect to prospects for future development in the area proposed for annexation, the Commission notes that all of the home sites within the Buckingham Estates subdivision are developed and that the Heidelberg Estates subdivision has been subdivided for future single-family residential construction.³³ In sum, since significant portions of the area proposed for annexation are used for public thoroughfares or are currently committed to residential purposes, the petition area contains only a limited amount of vacant land available for other development.

children. "Schoolage population" is defined by the Code of Virginia to include all persons ages 5 - 19 inclusive, plus handicapped persons of ages 2 - 4 and 20 - 21. (Sec. 22.1-281, Code of Va.)

³⁰Ibid. There are no public service corporation properties located within the area proposed for annexation.

³¹Akers Petition Notice, Exh. 5(C). Approximately 21.9% of the undeveloped land in the area proposed for annexation has been subdivided for residential purposes. Of the total land area contained within the area proposed for annexation, 33.2 acres (34.9%) are consumed by the rights-of-way of public thoroughfares.

³²William J. Paxton, Jr., City Manager, City of Salem, communication with staff of Commission on Local Government, May 4, 1987. The City of Salem is the source of treated water for the private water system serving the Buckingham Estates subdivision.

³³Akers Petition Notice, Exhs. 4, 5(C).

Hufford Petition

The area proposed for annexation to the City of Salem by the Hufford Petition contains 9.41 acres of territory, 6 persons, and \$212,000 in real estate property values based on the County's 1986 assessment.³⁴ Thus, that petition area contains approximately 0.01% of the County's land area, 0.01% of its 1985 population, and 0.01% of its 1986 real estate property values. In terms of physical development, all of the area included within the Hufford Petition is utilized for residential purposes.³⁵ There are no County-owned facilities situated in that area.

Under the terms of the proposed agreement negotiated by the City of Salem and Roanoke County, the City is required to reject all citizen-initiated annexations instituted during calendar year 1987 except in instances where they are expressly authorized by the County. Since the Hufford Petition was presented to the Commission on January 13, 1987, this provision in the agreement would bar Salem's annexation of the property included therein at this time.³⁶

STANDARD FOR REVIEW

As indicated previously, the Commission on Local Government is charged with reviewing proposed interlocal settlements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia for purposes of determining whether such settlements are "in the best interest of the Commonwealth." In our judgment, the State's interest in this and similar interlocal agreements is fundamentally the well-being of the affected residents and the preservation and promotion of the general viability of the localities involved. In this instance

³⁴Hufford Petition Notice, Exhs. 5(C), 6, 8. The area proposed for annexation by the Hufford petitioners contains two single-family dwelling units and no schoolage children.

³⁵Ibid., Exh. 5(C).

³⁶Memorandum of Agreement, Sec. 3. Special counsel, who represented both the Akers and Hufford petitioners, testified that

the Commission is required to review an interlocal agreement which provides principally for (1) an annexation by the City of 95.23 acres of County territory, (2) the rejection by the City (unless the County agrees otherwise) of any proposed annexation of County territory initiated pursuant to Section 15.1-1034 of the Code of Virginia during calendar year 1987, (3) a commitment by the City not to "support or encourage" any citizen petition annexations filed during the period beginning January 1, 1988 and ending July 1, 1993, and (4) the payment by the City of \$175,000 to compensate Roanoke County for its loss of net tax revenue. Accordingly, proper analysis of the proposed City of Salem - Roanoke County settlement agreement requires consideration of the ramification of these provisions for the affected citizenry and with respect to the future viability of the two jurisdictions.

INTERESTS OF THE AREA PROPOSED FOR ANNEXATION

The proposed agreement, as noted before, allows the City of Salem to annex 95.23 acres of property (Akers Petition) located adjacent to the northern boundary of the municipality. This area contains approximately 17 single-family dwelling units, a resident population of 47 persons, and a schoolage population of 6 children.³⁷ The existing or proposed land uses in the area to be annexed under the terms of the proposed agreement are primarily residential or transportation related. The conditions and characteristics of the land are further evidenced by the fact that all of the properties located within the proposed annexation area have been zoned by Roanoke County

because of the above-cited provision, no evidence would be presented on behalf of the Hufford petitioners during the Commission's oral presentations on April 1, 1987. [Testimony of Edward A. Natt, Special Counsel, Akers and Hufford petitioners, Transcript of Oral Presentations, City of Salem - County of Roanoke Interlocal Agreement (hereinafter cited as Oral Presentations Transcript), Apr. 1, 1987.]

³⁷City Filings-I, Tab 5; and Natt, communication with staff of Commission on Local Government, May 5, 1987.

for residential purposes.³⁸ Thus, the existing and proposed residential nature of that area give it certain urban service needs, especially for the provision of public water and sewerage facilities.

With respect to utilities, Roanoke County currently does not provide any water or sewerage services in the area proposed for annexation.³⁹ Further, examination of Roanoke County's current capital improvement plan reveals that the County does not propose to extend water and sewer service to that area within the next five years.⁴⁰ While the Commission is unaware of any current health problems in the Buckingham Estates subdivision due to sewage concerns, State Health Department officials have indicated that the soils within the Heidelberg Estates subdivision are marginal with respect to the proper operation of septic tank drainage fields.⁴¹ Thus, the evidence suggests that the area proposed for annexation may confront a need for public utilities in future years.

With respect to future provision of utility services in the petition area, the Commission notes that Roanoke County's comprehensive development plan places a portion of that property (containing the Heidelberg Estates subdivision) within a rural public service

³⁸James Lee, Chief Planner, County of Roanoke, communication with staff of Commission on Local Government, May 5, 1987. All of the properties in the area proposed for annexation by the Akers petitioners have been zoned for residential use since 1969.

³⁹The residents of the Buckingham Estates subdivision are served by a private water system which is connected to facilities located on properties owned by the Virginia Baptist Children's Home adjacent to that subdivision. The properties owned by that institution are connected to water facilities within the City of Salem.

⁴⁰County of Roanoke, Capital Improvement Plan, 1986-87/1990-91.

⁴¹David A. Turpin, Sanitarian, Roanoke County Health Department, communication with staff of Commission on Local Government, May 5, 1987; and David L. Taylor, Sanitarian, Roanoke County Health Department, communication with staff of Commission on Local Government, May 6, 1987.

area.⁴² According to the County's policies in that plan, the land encompassing the Heidelberg Estates subdivision is marked for transition to urban uses subsequent to the year 2003 and, accordingly, is due to receive only a limited level of public services prior to that date.⁴³ In terms of the Buckingham Estates subdivision, the County's comprehensive development plan places that subdivision in an urban transition area. The County's plan defines urban transition areas as sectors where development can reasonably be expected to occur within the next 20 years.⁴⁴ Accordingly, development in such areas is encouraged by the County through the provision of a higher level of public services, including public water and sewerage facilities.⁴⁵

With respect to the capacity of the City of Salem to extend utility services to the area proposed for annexation, the Commission observes that the City operates the only public sewage collection system presently available to serve the area. While none of the area proposed for annexation is now served by Salem, there are existing City-owned sewage collection lines in close proximity.⁴⁶ According to City officials, these lines can readily be extended to the petition area, if such is required in the immediate future.⁴⁷

⁴²County of Roanoke, Roanoke County Land Use Plan, 1986, pp. 9, 10.

⁴³Ibid., p. 10. For example, the extension of public water and sewerage facilities within the rural public service areas will be limited, with most development occurring within those areas supported by individual wells and septic tanks.

⁴⁴Ibid., pp. 7, 9.

⁴⁵Ibid., p. 10.

⁴⁶City Filings-II, Exh. S-4. The closest City sewage line to the Heidelberg Estates subdivision is located approximately 600 feet from the entrance to that development. The closest municipal sewer line to Buckingham Estates is located approximately 2,000 feet from that subdivision.

⁴⁷Testimony of Paxton, Oral Proceedings Transcript, pp. 25-27.

Sewage collected by the City of Salem's facilities is treated at the regional sewage treatment plant operated by the City of Roanoke.⁴⁸ Salem's allocated capacity in the regional facility is 6.65 million gallons per day (MGD).⁴⁹ Since Salem delivered 4.66 MGD of effluent to the Roanoke facility during the year ending June 30, 1986, the evidence indicates that the City has the capacity to meet the sewage treatment needs of the petition area.⁵⁰

In addition to being the sole entity presently capable of extending sewage collection service to the area proposed for annexation, Salem offers the only public water service in close proximity to that area. In terms of the production of potable water, the City operates two water filtration plants, which have a collective capacity of 8.0 MGD.⁵¹ Since the City's water distribution system consumed an average of only 3.69 MGD during the year ending June 30, 1986 the system currently retains an unused reserve of approximately 4.31 MGD, or nearly 53.9% of its authorized capacity.⁵² Storage for the City's distribution system is provided by 10 tanks having an aggregate capacity of 4.6 million gallons.⁵³ Although the area proposed for annexation is currently served by a private water system (Buckingham Estates subdivision) and individual wells (Heidelberg Estates subdivision), the City of Salem has, in our judgment, the capacity to

⁴⁸City Filings-I, Tab 4, p. 15. The City of Roanoke's sewage treatment plant is designed to treat wastewater generated from that City as well as from the City of Salem, Town of Vinton, and Roanoke and Botetourt Counties.

⁴⁹Paxton, communication with staff of Commission on Local Government, May 4, 1987.

⁵⁰City Filings-I, Tab 4, p. 15.

⁵¹Ibid.

⁵²Ibid.

⁵³City Filings-II, Exh. S-3. Two water storage tanks with an aggregate capacity of 0.9 million gallons are located within the City of Salem in close proximity to the Buckingham Estates subdivision.

meet that area's central water service needs as they arise.⁵⁴

With respect to other public service considerations, the City of Salem currently operates and maintains a broad array of facilities and services and, in our view, can properly serve the area proposed for annexation. In this regard, the Commission notes that the City operates a police department consisting of approximately 47 full-time sworn law enforcement officers;⁵⁵ that it maintains a fire department which is staffed by 45 full-time paid personnel who have available 12 pieces of equipment located at three stations in various parts of the municipality;⁵⁶ and that the City supports a full service library.⁵⁷ In addition, Salem offers its residents a variety of recreational opportunities through the operation of more than 15 parks (collectively encompassing more than 460 acres), a recreational center, a senior citizens center, and numerous school facilities.⁵⁸

With respect to other urban services of relevance to the area proposed for annexation, we note that Salem offers its residents solid waste collection services in conjunction with its operation of an innovative solid waste energy recovery facility located within the

⁵⁴Testimony of Paxton, Oral Presentations Transcript, pp. 25-27. The private water system serving the Buckingham Estates subdivision obtains its treated water from the City of Salem. City water lines are located approximately 600 feet from the entrance to the Heidelberg Estate subdivision

⁵⁵City Filings-I, Tab 4, pp. 6-10.

⁵⁶Ibid., p. 4. The City fire station located closest to the area proposed for annexation is approximately 1.5 miles from that area. The closest County fire station is located at the County's Public Service Complex, approximately five miles from the area proposed for annexation. County equipment responding to fire calls from the proposed annexation area must transit the City of Salem.

⁵⁷Ibid., p. 20.

⁵⁸Ibid., pp. 12-15. The closest County recreational facility is located at the Glenvar school complex, which is approximately six miles from the area proposed for annexation.

municipality.⁵⁹ Further, the City's development control instruments are appropriate measures for the regulation of urbanizing areas.⁶⁰ Furthermore, Salem bears responsibility for the construction and maintenance of its public thoroughfares and has demonstrated a willingness to invest local funds in meeting such responsibility.⁶¹ In sum, the City offers its residents a broad array of urban services and, in our view, can properly serve the area proposed for annexation.

The annexation authorized under the terms of the proposed agreement would assign responsibility for the education of children from the area annexed to the City of Salem. Thus, consideration should be given to the capacity of the City to meet the educational needs of those students. As noted previously, the area proposed for annexation currently has a schoolage population of only six children, and although future residential development in the petition area could modify that statistic, increases will be limited.⁶² Salem officials have indicated that the City school system can readily accommodate within existing facilities all the students from the area proposed for annexation.⁶³ It should also be noted that the school facilities within the City of Salem will be closer to students from the area proposed for annexation than the County schools which those children

⁵⁹Ibid., pp. 16-19. As part of the solid waste service provided its residents, Salem makes available a mobile container for the use in the collection and storage of residential refuse.

⁶⁰See Salem City Code, Chapt. 26, 32.

⁶¹The City discharges its street and road responsibilities through the operation of several departments. (City Filings-I, Tab 4, pp. 15-16.)

⁶²Concerning the prospects for future residential development in the area proposed for annexation, the Commission notes that there are no vacant lots remaining in the Buckingham Estates subdivision and only five vacant lots in the Heidelberg Estates subdivision. Further, only 19.79 acres of the area proposed for annexation (20.7%) remain vacant and undeveloped.

⁶³Paxton, communication with staff of Commission on Local Government, May 4, 1987. As of September 1, 1986 the City reported that

currently attend.⁶⁴ In our judgment, the proposed annexation will not adversely impact the educational experiences of the affected students nor the educational programs of the two localities.

In analyzing the proposed annexation consideration should also be given to the community of interest between the area proposed for annexation and the City of Salem. The evidence suggests that the area proposed for annexation has significant ties to the City. First, the data reveal that Salem is the source of treated water for the private utility system which serves the Buckingham Estates subdivision and that it provides electrical utility service, including street lighting, within the petition area. Second, the City of Salem contains numerous businesses, governmental offices, medical facilities, and civic and social organizations which currently serve the residents of the area proposed for annexation.⁶⁵ Finally, geographical considerations foster a community of interest between the City and the area proposed for annexation. In sum, the Commission finds that the area proposed for annexation has a strong community of interest with the City supportive of the proposed annexation.

INTERESTS OF THE CITY

The annexation authorized under the terms of the proposed agreement between the City of Salem and Roanoke County will, as noted previously, provide the City with 95.23 acres of territory containing 47 persons and \$2.64 million in assessed real estate property values (based on 1986 assessment data). Since the area contains 40.6 acres

it had an excess capacity of 1,189 spaces in its three schools.

⁶⁴The closest Roanoke County elementary, middle and high schools to the area proposed for annexation are located approximately six road-miles from that area. School buses serving the area proposed for annexation must transit the City in order to reach the County schools. Salem schools are located approximately one mile from the proposed annexation area.

⁶⁵Located within the City of Salem are 20 banks and savings and loan associations, Roanoke County governmental offices, a Veterans Administration Hospital, and the Lewis Gale Hospital and Clinic.

of undeveloped property, it also provides the City with some limited opportunity for future demographic and fiscal growth.

The proposed annexation will, however, place upon the City additional public service responsibilities. In our view, the City can respond to the needs of the area proposed for annexation with modest additional cost. Certain public services, such as solid waste collection and disposal, fire prevention and protection, crime prevention and detection, public planning and development control, street maintenance, public recreational facilities and programs, and library services can be extended to the area by the City on the effective date of the annexation without any immediate capital expenditure. City officials have also indicated that water and sewerage facilities can be extended easily to the annexed area when such is required.⁶⁶

In addition to the City's increased public service responsibility, the proposed agreement contains a provision whereby the City of Salem will pay Roanoke County \$175,000 in compensation for the County's loss of net tax revenue.⁶⁷ Evidence indicates that such payment will not place any substantial burden on the City.⁶⁸

Based upon the information cited above, the Commission finds that the various provisions of the proposed settlement provide the City of Salem with a reasonable balance of fiscal assets and liabilities.

INTERESTS OF THE COUNTY

The proposed annexation sanctioned by the agreement between the City and the County will have minimal impact on Roanoke County. The proposed transfer of territory to Salem will result in the County's loss of only 0.06% of its land area, 0.06% of its 1985 population, and

⁶⁶Testimony of Paxton, Oral Proceedings Transcript, pp. 25-27.

⁶⁷Memorandum of Agreement, Sec. 6. Under the terms of the agreement the City will pay the amount in full to Roanoke County within 30 days following the effective date of the annexation.

⁶⁸For FY1985-86 the City of Salem had a general governmental fund balance of \$6.8 million. (City Filings-I, Tab 4, p. 32.) Further, City officials have indicated that Salem's payment to the County for

only 0.14% of its total 1986 assessed real estate property values.⁶⁹ Further, the agreement contains provisions by which the City of Salem will reject any proposed citizen-initiated annexation of County territory, without the express consent of Roanoke County, instituted during calendar year 1987. Furthermore, under the terms of the proposed agreement, the City has agreed not to support or encourage any citizen petition annexations initiated during the period between January 1, 1988 and July 1, 1993.⁷⁰ In addition the City has agreed to compensate Roanoke County in the amount of \$175,000 for the loss of net tax revenue resulting from the annexation. This amount is to be paid by the City within 30 days following the effective date of the annexation.⁷¹ These various provisions in the proposed settlement between the City and the County, coupled with the modest impact of the proposed annexation, are features of the settlement which are, in our judgment, in the interest of Roanoke County.

FINDINGS AND RECOMMENDATIONS

The interest of the State in this and similar interlocal issues is, from our perspective, the development of a resolution which

the loss of net tax revenue has already been included in the City's FY1987-88 budget. (Testimony of Paxton, Oral Proceedings Transcript, p. 21.)

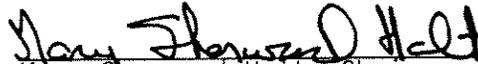
⁶⁹City Filings-I, Tab 5.

⁷⁰See Memorandum of Agreement, Secs. 3, 4. Under the terms of the proposed settlement agreement, the City has agreed not to finance directly or indirectly the cost of any citizen petition annexation, not to encourage in any way citizen groups seeking annexations, and not to reimburse any petitioners should their annexation efforts be successful. Further, the City has agreed to take no position before the Commission on Local Government or the special three-judge annexation court in any citizen petition annexation case which is filed during the period from January 1, 1987 until July 1, 1993.

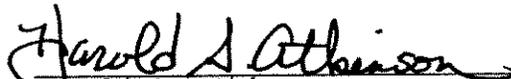
⁷¹See Memorandum of Agreement, Sec. 6.

equitably reconciles the interests of the affected residents and which protects and promotes the viability of jurisdictions involved. In our judgment, the proposed agreement meets that standard. Accordingly, we find the agreement, as presented, consistent with the best interest of the Commonwealth and recommend the court's approval.

Respectfully submitted,


Mary Sherwood Holt, Chairman


Donald N. Johnston, Vice Chairman


Harold S. Atkinson


Frank Raflo

APPENDIX A

MEMORANDUM OF AGREEMENT

THIS AGREEMENT made and entered this 3rd day of March, 1987, and executed in duplicate originals (each executed copy constituting an original) by and between the CITY OF SALEM, an incorporated city of the Commonwealth of Virginia (City) and the COUNTY OF ROANOKE, a county of the Commonwealth of Virginia (County).

WHEREAS, a Petition for annexation has been filed pursuant to § 15.1-1034 of the Code of Virginia, as amended, in the style of Akers, et al v. County of Roanoke and City of Salem, and

WHEREAS, a separate Petition for annexation has been filed pursuant to § 15.1-1034, Code of Virginia, as amended, in the style of Hufford, et al v. County of Roanoke and City of Salem, and

WHEREAS, these Petitions are currently under review by the Commission on Local Government, and

WHEREAS, the City and the County have reached this Agreement concerning the pending annexation actions and further defining the City's responsibilities regarding annexations in the future,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree with each other as follows:

1. For the purposes of this Agreement, the term "initiated" means the initial act of notice to the Commission on Local Government of any proposed annexation.

2. The County agrees to consent to the annexation by the City of the area described in the pending annexation Petition of 95.225 acres under the style of Akers, et al v. County of Roanoke and City of Salem as specifically described by the metes and bounds description contained in that Petition. The effective date of this annexation shall be midnight on December 31, 1987, or such later date as set by the Court.

3. The City agrees that it will reject any proposed annexation of County territory initiated pursuant to § 15.1-1034 of the Code of Virginia, without the express consent of the County. This Agreement to reject will apply to any annexation initiated after January 1, 1987, and until January 1, 1988.

4. For a period beginning January 1, 1988, ending July 1, 1993, the City agrees not to support or encourage any citizen petition annexations initiated during this period. Specifically, it is agreed that the City will absolutely refrain from directly or indirectly financing the cost of any citizen annexation petitions including any and all attorney's fees, survey fees, engineering fees, or other costs related to such an effort. The City further agrees that it will not encourage in any way citizen groups seeking annexation and will not reimburse, or agree to reimburse, any expenses incurred should such annexation efforts be successful. The City further agrees to take no position before the Commission on Local Government and any annexation court in any case subject to this Agreement.

5. If the City violates any of the provisions of paragraphs 3 or 4, the County will have the right to seek an injunction in the Circuit Court of Roanoke County and the City hereby consents to the jurisdiction of that Court. Should this Court, or any other court of competent jurisdiction, find that the City has violated the provisions of paragraph 3 or 4 of this Agreement, then the County will be entitled to an Order enjoining such violation, and an award of all attorney's fees and costs incurred in investigating and prosecuting such action.

6. The City and the County agree that the County is entitled to the loss of net tax revenue for the five years after the annexation. It is agreed that such loss is \$175,000, payable in a lump sum thirty (30) days following the effective date of annexation.

7. The parties agree to take whatever steps necessary to obtain approval of this Agreement.

8. The rights and obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns including any future governing bodies.

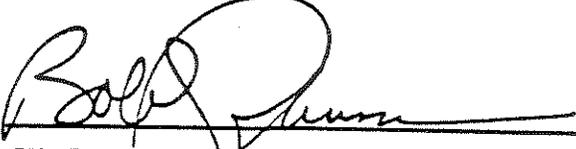
This memorandum represents an agreement of the representatives below and is subject to confirmation by the governing bodies of each jurisdiction in the proper legal documents.



MAYOR, City of Salem

Date: March 3, 1987

ATTEST: Chris Boyd



CHAIRMAN, Board of Supervisors
County of Roanoke

Date: March 3, 1987

ATTEST: William J. Taylor, Jr.

APPENDIX B

FISCAL CAPACITY, 1984
RATIO SCORES BASED ON LOCAL RESOURCES

Locality	Population, 1 1984	True Value ² Per Capita	Total Adj. Gross Income ³ Per Capita	Taxable Retail Sales ⁴ Per Capita	Modified Index of Wealth ⁵ Per Capita
Roanoke County	73,400	\$26,499	\$10,119	\$5,057	\$17,803
Salem City	24,100	\$23,770	\$9,034	\$8,475	\$16,346
Roanoke City	100,600	\$20,752	\$8,248	\$8,532	\$14,529
State Average	41,441	\$30,503	\$7,906	\$4,528	\$18,867

FISCAL EFFORT, FY1984-85
 RATIO SCORES BASED UPON THE LOCAL-SOURCE REVENUES OF GENERAL GOVERNMENT⁶

Locality	Population, 1984	Local-Source Revenues Per Capita	Local-Source Revenues Per \$1,000 of True Value	Local-Source Revenues Per \$1,000 of Total Gross Income	Local-Source Revenues Per \$1,000 of Modified Wealth Index
Roanoke County	73,400	\$540.75	\$20.41	\$53.44	\$30.37
Salem City	24,100	\$744.97	\$31.34	\$82.46	\$45.57
Roanoke City	100,600	\$651.05	\$31.37	\$78.93	\$44.81
State Average	41,441	\$429.74	\$15.58	\$53.20	\$24.02

NOTES

¹Computed by the Tayloe Murphy Institute of the University of Virginia, the overall population figure for each locality is an estimate developed from a series of jurisdictional indicators (i. e., the number of federal tax returns submitted, the number of state tax returns filed, the incidence of births and deaths by race, total public and non-public school enrollment in grades 1 through 8, the level of Medicare participation, the number of military personnel quartered in barracks and on non-deployed ships, and the total permanent and quasi-permanent population of civilian institutions with 50 or more residents).

²The concept of true value refers to the full-market worth of locally taxed real estate and public service corporation property within a particular jurisdiction.

³Derived from the administrative records of the State Department of Taxation, the adjusted gross income (AGI) statistics for a locality, while encompassing most dimensions of income, exclude Social Security benefits and various other transfer payments, contributions made by employers to private pension and health plans, non-cash imputed income, payments in-kind, 60% of long-term capital gains, and the income received by non-resident military personnel stationed in Virginia. It should be noted, too, that jurisdictional AGI figures do not reflect the income of residents who are exempt from the filing of state tax returns.

⁴With respect to each county and city, the Virginia Department of Taxation annually estimates the level of taxable sales from tax revenue deposits rather than actual sales figures reported by local retailers.

⁵The allocation of state aid to the public schools of a locality is based largely on a formula which takes measure of jurisdictional wealth through an additive index that combines 50% of the total true value of real estate and public service corporations, 40% of the total personal income, and 10% of the total value of taxable retail sales within the entitlement county or city. The Commission has modified this local wealth index by substituting adjusted gross income for personal income, a necessary revision stemming from the estimation errors which have beset the latter variable in recent years. [See Dr. John L. Knapp, Deputy Director, Tayloe Murphy Institute, University of Virginia, "Statement of the Tayloe Murphy Institute in Regard to Virginia Personal Income Estimates" (presented to the House Appropriations Committee of the Virginia General Assembly on January 31, 1984); Tayloe Murphy Institute, University of Virginia, "Bureau of Economic Analysis Estimates: Virginia Personal Income by City and County, 1979-84," May 15, 1986.]

⁶The local-source revenues of general government, as defined by the Virginia Auditor of Public Accounts, exclude payments from federal and state authorities, non-revenue receipts, and inter-fund transfers.

SOURCES

Taylor Murphy Institute, University of Virginia, Estimates of the Population of Virginia Counties and Cities: 1984 and 1985, July 1986, Table 1.

Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1984, Table 6. This annual publication reports the true value of real estate and public service corporations by county and city.

Taylor Murphy Institute, University of Virginia, Distribution of Virginia Adjusted Gross Income by Income Class and Locality, 1984, Table A1.

Virginia Department of Taxation, Taxable Sales in Virginia Counties and Cities: Annual Report, 1984.

Virginia Auditor of Public Accounts, Comparative Report of Local Government Revenues and Expenditures, FY1985, Exhibit A.