

REPORT
ON THE
TOWN OF CLINTWOOD
COUNTY OF DICKENSON
AGREEMENT DEFINING ANNEXATION RIGHTS



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

REPORT ON THE
TOWN OF CLINTWOOD - COUNTY OF DICKENSON
AGREEMENT DEFINING ANNEXATION RIGHTS

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REPORT ON THE
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PROCEEDINGS OF THE COMMISSION

On December 6, 1983 the Council of the Town of Clintwood and the Board of Supervisors of Dickenson County approved the submission of a proposed agreement defining the Town's future annexation rights to this Commission for review in accordance with the provisions of Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia.¹ Consistent with the Commission's Rules of Procedure, the Town subsequently submitted additional material to assist this body in its review of the proposed agreement.²

Following its analysis of the above-mentioned materials, on November 13, 1984 the Commission toured the Town of Clintwood and relevant sections of Dickenson County, received oral testimony from local officials regarding the agreement, and conducted a public hearing for the purpose of receiving citizen comment. The public hearing, which was advertised in accordance with the provisions of Section 15.1-1058.2 of the Code of Virginia, was attended by approximately 25 persons and provided testimony from 4 individuals. In order to allow additional opportunity for public comment, the Commission agreed to keep open its record for the receipt of written testimony through December 14, 1984. Further, the Commission also solicited comment on the proposed agreement from other potentially affected local governments in the area.

¹Agreement Between Town of Clintwood, Virginia and Dickenson County, Virginia Defining Annexation Rights (hereinafter cited as Agreement). See Appendix A for the full text of the Agreement.

²Town of Clintwood, Petition for Review of Proposed Annexation Agreement between the Town of Clintwood and Dickenson County, Virginia (hereinafter cited as Clintwood Petition), July 16, 1985.

SCOPE OF REVIEW

The proposed agreement submitted to the Commission by the Town of Clintwood and Dickenson County is the fourth of its nature to be presented to this body for review since the annexation laws of the State were amended in 1979 to authorize such. Under the authority now granted by Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia, towns may negotiate agreements with their counties which permit them to annex, in accordance with conditions specified in such agreements, merely by the adoption of a municipal ordinance. Thus, where town annexations are pursued under such agreements, the State's general annexation process whereby proposed boundary adjustments are decided by the courts subsequent to Commission review is supplanted by the simple and direct process of annexation by town 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 city status.

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. The law specifies that these agreements must provide for the regular and orderly growth of the town in a manner which assures that municipality of an equitable sharing of the area's resources and liabilities.³ Based in part upon that statutory requirement, the 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 the resources and liabilities of the town and county, and whether the agreement is in the best interest of the community at large, . . .⁴

³Sec. 15.1-1058.1, Code of Virginia.

⁴Sec. 15.1-1058.2, Code of Virginia.

It should be noted here that whatever the findings and recommendations of the Commission regarding an 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

EVALUATION OF THE AGREEMENT

Briefly stated, the principal provisions of the agreement negotiated by the Town of Clintwood and Dickenson County would:

1. require the Town to renounce permanently its authority to become a city;
2. authorize the Town to annex by municipal ordinance territory in the County, comprised of two parcels designated as Area 1 and Area 2, after the approval of the annexation agreement by the Town and the County following the report and recommendations of the Commission on Local Government;
3. require the Town to adopt an ordinance allowing it to impose a lower rate of taxation in qualifying portions of annexed areas than that which prevails elsewhere in the Town for a period of not more than three (3) years;
4. require the Town to extend general municipal services to annexed areas on the date of annexation and water and sewer services as soon as such is reasonably necessary or desired by residents and it is economically feasible to do so in accordance with Town policies; and
5. require the Town to protect existing farm lands within the annexed area through zoning and other land use procedures.

As indicated previously, the Commission is required by law to evaluate the proposed agreement on the basis of three general criteria.

⁵Sec. 15.1-1058.3, Code of Virginia. It should be observed that State law authorizes a town to proceed unilaterally to obtain an order defining its future annexation rights in instances where it is

The Commission is directed to determine whether the agreement (1) provides for the orderly and regular growth of the Town and County together, (2) permits an equitable sharing of the area's resources and liabilities, and (3) is in furtherance of the best interest of the community at large. With respect to the application of these criteria to the proposed Town of Clintwood - Dickenson County annexation agreement, the Commission offers the following comments.

ORDERLY AND REGULAR GROWTH OF TOWN AND COUNTY

The data indicate that between 1970 and 1980 the population of Dickenson County increased from 16,077 to 19,806 persons, or by approximately 23.2%.⁶ During the same period, the population of the Town of Clintwood increased from 1,320 to 1,369 persons, or by only 3.7%.⁷ This wide disparity in growth rates between the County and the Town indicates that the Town has failed to share equally in the population growth of its area.

With respect to fiscal resources, recent data reveal that the growth of real property assessed values in the County has been significantly greater than that experienced in the Town. Between 1975 and 1982 the total assessed value of real estate subject to local taxation in the County increased from \$96.2 million to \$352.9 million, or by 266.7%.⁸ Such values in the Town grew during the same period from

unable to reach an agreement with its county on the issue. (See Sec. 15.1-1058.4, Code of Virginia.)

⁶U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 4. See Appendix B for a statistical profile of the Town, County, and areas covered by the Agreement.

⁷Ibid.

⁸Auditor of Public Accounts, County of Dickinson, Report on Audit for the Fiscal Year Ended June 30, 1983, Schedule 5, p. 36.

\$6.4 million to \$20.1 million, or by 214.1%.⁹ Hence, the rate of growth in population and in real estate values subject to local taxation in the County has been substantially higher than that in the Town in recent years.

In terms of the Town's prospects for future development, it should be noted that of Clintwood's total area of 640 acres, approximately 367 acres, or 57.3% of its total area, are undeveloped.¹⁰ Of this total undeveloped land, approximately 106 acres are situated either in the 100-year floodplain or in areas with slopes greater than 20%.¹¹ At present, 259 acres of the Town's total area are suitable for development based on the absence of environmental constraints.¹² While the cost of developing these 259 acres for residential and commercial purposes would be reasonable, most of this property is unsuited for manufacturing as a result of the fact that it is situated on slopes greater than 5%. In sum, based on consideration of population, fiscal resource, and industrial development factors, we believe, that the Town has a need to extend its boundaries by annexation.

Under the terms of the proposed agreement, the Town would be permitted to annex Areas 1 and 2 by enacting a Town ordinance at any time after the execution of the agreement by the parties.¹³ The annexation of these two areas will bring within the corporate limits of the Town an area of approximately 1.03 square miles (660 acres) containing a population of 481 persons and, based on 1985 data, real and personal

⁹Clintwood Petition, p. 76. Assessed values for the Town and County have been adjusted for the period 1975 to 1980 to reflect a nominal 100% assessment.

¹⁰Ibid., p. 6.

¹¹Ibid.

¹²Ibid.

¹³See Appendix C for a map of the areas proposed for annexation.

property assessed values of \$5,373,476.¹⁴ The addition of this area to the Town will increase Clintwood's population by 35.1% and its assessed property values by 37.3%. Moreover, the annexation of the two areas will provide the Town with 473 acres of undeveloped land that are environmentally suitable for development. However, much of this land is not immediately amenable for commercial or industrial development due to lack of access to transportation facilities and municipal utilities or due to adjacent land uses.

In the opinion of the Commission, the agreement promotes the orderly and regular growth of both the Town and the County. As a result of the authorized annexation, the Town would be provided additional population and fiscal resources and be assured of substantial land for its future development. With such additional population and fiscal resources the Town's ability to contribute to the social and economic viability of Dickenson County should be enhanced.

EQUITABLE SHARING OF RESOURCES AND LIABILITIES

An equitable sharing of resources and liabilities within the context of these agreements requires, in our view, an opportunity for both Town and County to benefit from the growth in the area sufficient to meet the needs of their residents and commensurate with the contributions each makes to the social and economic viability of the general area. The following paragraphs address these concerns.

Resources

As indicated in the previous section of this report, the Town of Clintwood has not witnessed a population and fiscal growth in recent years equal to that of Dickenson County. While the Town has experienced only modest population growth as compared to the County during the past decade, and while it has benefited from relatively modest economic growth in recent years, it has continued to contribute to the

¹⁴Buddy H. Wallen, Town Attorney, Town of Clintwood, letter to staff of the Commission on Local Government, May 13, 1985. Assessed values for the area proposed for annexation do not include public

economic development of its general area.

Clintwood's importance to Dickenson County is evidenced, in part, by the fact that it is the largest municipality in the County and serves as the seat of County government. The Town is also the retail trade center of Dickenson County as shown by estimates of sales tax revenues.¹⁵ In addition, the Town plays a role in the provision of public services to areas of Dickenson County adjacent to its current boundaries. Of the 695 connections to Clintwood's water system, 146 are in the areas sought for annexation.¹⁶ The Town also provides sewage collection and treatment for 23 users in the areas proposed for annexation.¹⁷ Further, Clintwood provides law enforcement and streetlight services to portions of these areas to be annexed under the terms of the proposed agreement. Thus, the Town of Clintwood serves as the center of the County's governmental activities, a focal point of retail trade, and a source of public services to its general community.

In terms of the fiscal resources which would accrue to the Town under the provisions of the agreement, the data indicate that, based on 1984 assessed property values and the Town's 1984 tax rates, the annexation would provide the Town approximately \$5,649 in real property levies and \$7,127 in personal property taxes. Additionally, the two areas will initially provide the Town approximately \$22,003

service corporation properties.

¹⁵Clintwood Petition, p. 45. It is estimated that during 1980 approximately 36.0% of the County's local sales tax revenues were derived from retail transactions which occurred in Clintwood.

¹⁶Patsy L. Sutherland, Town Clerk, Town of Clintwood, letter to staff of Commission on Local Government, June 10, 1985. The Town has 83 water connections in Area 1 and 63 connections in Area 2.

¹⁷Ibid. Area 1 contains 18 Town sewer connections while Area 2 has 4 such connections.

annually in miscellaneous revenues (e. g., ABC profits, sales taxes, garbage fees, and business and vehicle licenses).¹⁸

It is important to note here that town annexations in Virginia, unlike those initiated by cities, do not remove property from a county's tax roles. Thus, Dickenson County's major tax sources will be unaffected by annexations by the Town of Clintwood. To be sure, town annexations do constrict some of a county's more modest revenue sources (e. g., automobile license taxes, consumer utility taxes, and sales tax), but no significant loss of revenue to Dickenson County is anticipated as a result of the annexation authorized by the proposed agreement. On the basis of these considerations, the Commission concludes that the proposed agreement promotes an equitable sharing of the area's resources between the Town and the County.

Liabilities for Services

The Town of Clintwood plays an important role in the provision of public services in Dickenson County. The Town currently provides its own residents a wide spectrum of urban services and extends several of those services to firms and residents beyond its boundaries. As suggested earlier, the availability of Town services has been instrumental in the economic development of areas adjacent to Clintwood.

Annexation by the Town under the terms of the proposed agreement will, however, place new and additional service responsibilities on Clintwood. While this expanded responsibility for urban services constitutes a responsibility 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 sections which follow address this issue.

Water. The Town of Clintwood, which purchases water from the John W. Flannagan Regional Water Authority (JWFRWA), distributes water

¹⁸Wallen, letter to staff of Commission on Local Government, March 28, 1985. Assessed values for public service corporation real and

to a large portion of northwestern Dickenson County.¹⁹ Water withdrawn from the John W. Flannagan Reservoir, a flood management device completed in 1966 by the U. S. Army Corps of Engineers, is treated and pumped approximately 10 miles to a 0.5 million gallon (MG) storage tank within the Town's corporate limits. The water is then distributed through the Town's water system to Town residents and to portions of the areas sought for annexation. The Town has contracted with the JWFRWA to buy a minimum of 120,000 gallons per day, but no ceiling has been established which would constrict its future water purchases. Indeed, the Town's current average daily usage is 249,000 gallons per day.²⁰ Of the present 695 connections to the Town's system, 549 are located in Clintwood, while 146 are in the areas sought for annexation.²¹

In recent years the Town has experienced a number of problems with respect to its water system, due, in large part, to the age of the facilities. These problems have included system leakage and storage tank overflows. In 1982 the Town embarked upon an extensive program to address these problems and to expand its distribution system. Improvements have included the elimination of three booster pump stations, increased pressure in the distribution lines, and the location and reduction of leaks in the system.²²

personal property are not included.

¹⁹In addition to providing water service to the residents of the Town and the areas proposed for annexation, Clintwood also serves those areas of Dickenson County located between the JWFRWA treatment plant and the present Town boundaries. (Wallen, communication with staff of Commission on Local Government, July 25, 1985.)

²⁰Town of Clintwood, Supplemental Clintwood Submission, December 10, 1984, Statement II.

²¹Sutherland, letter to staff of Commission on Local Government, June 10, 1985.

²²Town of Clintwood, Preliminary Engineering Report Water System Improvements, March 10, 1982, p. 5. In 1983 Clintwood received loans and grants totaling \$600,000 from the Farmers Home Administration to

These various improvements indicate, in our judgment, that the Town can and will meet the prospective water needs of the annexed areas. With respect to water service in those areas, it should be noted that the Town already serves a significant percentage of the areas' population through 146 connections outside its present boundaries.²³

Sewerage. The Town of Clintwood currently operates a sewage treatment facility constructed in 1963. This facility, the only such public treatment plant in Dickenson County, is located adjacent to Holly Creek near the extreme eastern Town boundary and has a rated capacity of 0.235 MGD. As part of its sewerage system, the Town presently operates approximately 30,000 linear feet of interceptor and collector lines which serve 601 connections within the Town's corporate limits, as well as 23 in the areas sought for annexation.²⁴

The Town's sewerage system contains a number of deficiencies which must be addressed if the system is to serve properly the areas sought for annexation. In recent years the plant has received an average daily flow of 0.401 MGD for treatment, an amount of effluent which exceeds the plant's rated capacity by approximately 0.165 MGD.²⁵ This excessive flow is due, in part, to infiltration of groundwater and inflow of stormwater resulting from the age of the collection lines. Since 1984, however, the Town has embarked upon an extensive program

make improvements to the Town's water system. These improvements included the extension of Town water lines to residents of the areas proposed for annexation and other portions of Dickenson County.

²³Clintwood officials have stated that Town water service is available to all residents in the areas proposed for annexation. (Sutherland, letter to Wallen, March 28, 1985.)

²⁴Supplemental Clintwood Submissions, Statement 13.

²⁵The average daily flow is based on an average of the minimum and maximum daily flow during 1981. Currently, the Virginia State Water Control Board has issued an order, consented to by Clintwood, which limits connections to the Town's treatment plant to nine residential equivalent connections per year and commits Clintwood to a

to address the problem.²⁶ In addition, Clintwood is in the process of expanding its sewage treatment plant in order to accommodate existing and anticipated needs.²⁷

The proposed agreement between the Town and Dickenson County calls for Clintwood to extend sewer service to the areas annexed "as soon as it becomes reasonably necessary or is desired by the residents to be served and it is economically feasible to do so in accordance with Town policies."²⁸ In response to a significant health problem in the areas proposed for annexation, the Town, in conjunction with the expansion of its sewage treatment plant, has sought and received a grant from the Farmers Home Administration (FmHA) to extend sewage collection lines into those areas.²⁹ The extension of Town sewerage, which is expected to take approximately 18 months after commencement of construction on the plant, will result in sewage collection service being available to almost all of the residents of the areas proposed annexation.

Solid Waste Collection. The Town of Clintwood furnishes solid waste

schedule for correcting infiltration and inflow problems and upgrading the plant by September 1, 1987. (Larry K. Owens, Regional Director, Abingdon Regional Office, Virginia State Water Control Board, communication with staff of Commission on Local Government, July 25, 1985.)

²⁶As of December 1984 statements by the Town concerning the status of infiltration and inflow showed that of the 23 defects found in the Town's sewer lines, 5 had been repaired at a cost of \$2,260. The Town's estimated cost of repairing the remainder of its sewer lines is \$15,000. The remaining improvements are scheduled to be completed by September 1985. (Supplemental Clintwood Submission, Statement 14.)

²⁷Clintwood has been approved to receive a \$916,000 FmHA loan to upgrade the Town's sewage treatment plant to a 0.5 MGD facility. (Supplemental Clintwood Submission, Statement 15.)

²⁸Agreement, Sec. 12.

²⁹A 1979 survey of the Clintwood environs by Cumberland Plateau Health District sanitarians revealed that of the 373 dwelling units inspected, 95 units (25.5%) had failing or inadequate septic

collection and disposal services to Town businesses and residents. The Town also presently provides for a fee collection and disposal services to any residents who live adjacent to the corporate line and to several restaurants located in the western area proposed for annexation.³⁰

At present, the Town of Clintwood has three full-time employees and one newly purchased garbage collection vehicle committed to the provision of these services. The Town's residential pickups are once a week, and collections from business and professional enterprises vary from one to five times per week. Those persons receiving Town collection services pay \$4.25 per month for this service, while the charge to businesses varies according to the frequency of collection.³¹ The Town disposes of its refuse at a landfill which is owned and maintained by the County near Honey Creek. The County does not charge the Town for disposal of waste at its landfill.

The County offers refuse disposal services to the County residents by the provision of "green boxes." However, since no "green boxes" are presently located in the areas sought for annexation, residents of these areas must transport their solid waste to such facilities

tank systems and 98 units (26.3%) had disposal systems which had obvious direct discharge of sewage to a water course or consisted of a pit privy. The territory surveyed included a much larger area than that currently sought for annexation by the Town. (Town of Clintwood, Preliminary Engineering Report, Sewage Treatment Plant Expansion and Collection System Extension, June 1984, pp. 36-37.) The total cost of expanding the Town's collection system into the areas proposed for annexation is estimated to be \$1.4 million. Clintwood has received a \$700,000 grant from FmHA for a portion of the project and has applied for a Community Development Block Grant from the State to fund the remaining portion of the project. (Wallen, communication with staff of Commission on Local Government, April 11, 1985.)

³⁰Sutherland, communication with staff of Commission on Local Government, April 11, 1985.

³¹Supplemental Clintwood Submission, Statement 16.

situated elsewhere in the County or dispose of it by other means.³²

As the areas adjacent to Clintwood increase in population and commercial activity, the need for on site public solid waste collection services will increase accordingly. The Town of Clintwood can and should be expected to meet this need.

Law Enforcement. Law enforcement services in Clintwood are provided by the Town's police department, which is staffed by three full-time officers.³³ Each of these officers is assigned patrol responsibility, and the duty shifts of the police department are structured so that the Town is regularly patrolled 24 hours per day.³⁴ There are two sworn officers on duty throughout evening hours and one sworn officer on duty during the other portions of each day. The Town's police department has available two vehicles to assist in its law enforcement responsibilities. All dispatching services for the Town's law enforcement activities are provided by the Dickenson County Sheriff's Department.

The County Sheriff's Department, which is located in the Town of Clintwood, assists the Town in meeting its law enforcement needs. Close cooperation exists among the two departments, with each agency responding to calls to the other if units of that department are not readily available. The Town police department, in cooperation with the State Police and the Dickenson County Sheriff's Department, currently patrols most of the two areas proposed for annexation.³⁵

According to State Police tabulations for 1984, Clintwood has a rate of major crime 29.0% higher than that in the unincorporated por-

³²Ibid., Statement 5.

³³Ibid., Statement 17.

³⁴Ibid., Statements 18, 20.

³⁵Clintwood officials state that Town police officers currently provide law enforcement services to 90% of the proposed annexation areas. (Sutherland, letter to Wallen, March 28, 1985.)

tions of the County.³⁶ However, the data indicate that, with respect to those 1984 major crimes, the Town's police department had a clearance rate nearly 39.0% higher than that of the County Sheriff's Department. It is significant to note, however, that the County's Sheriff's Department was confronted with 159 crimes as compared to only 14 in the Town during the same period.³⁷

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 these areas to the Town is not expected to add substantially to the law enforcement burden carried by Clintwood's police department. Moreover, as noted previously, Town police currently serve most of the areas proposed for annexation, as a result of informal arrangements with the County Sheriff's Department.

Planning, Zoning and Subdivision Regulation. The Town of Clintwood conducts its planning efforts with the assistance of a planning commission and through the application of a comprehensive plan, adopted in June 1985, and zoning ordinance.³⁸ The Commission notes, however, that the Town has not adopted the State-mandated subdivision ordinance as required by Section 15.1-465 of the Code of Virginia. Further, in view of the increased residential and commer-

³⁶Virginia Department of State Police, Crime in Virginia 1984, Table III. In 1984 the crime rate in Clintwood was 1057.4 per 100,000 persons, while the similar statistic for the unincorporated portion of the County was 820.9 per 100,000. The category of "major crime" consists of murder, non-negligent manslaughter, forcible rape, robbery aggravated assault, burglary, larceny, and motor vehicle theft.

³⁷Ibid. In 1984 the clearance rate for the Clintwood Police Department was 78.6% while that for the County's Sheriff's Department was 42.8%. A crime is "cleared when a known occurrence of a major crime is followed by an arrest or other decision which indicates a solved crime at the police level of reporting." (U. S. Department of Justice, Bureau of Justice Statistics, Dictionary of Criminal Justice Data Terminology, 1981.)

³⁸Supplemental Clintwood Submission, Statement 25. The Commission notes that the Town's zoning ordinance has not been revised since it was adopted in 1946.

cial activity taking place in the area sought for annexation, the absence of that planning instrument becomes increasingly significant. Proper oversight and regulation of development in the areas proposed for annexation, as well as within the Town's current boundaries, require the full array of planning instruments.

Street Maintenance. While the Virginia Department of Highways and Transportation (VDH&T) bears total financial responsibility for the maintenance of the predominant share of public roadway within the Town of Clintwood, the Town has followed a policy in recent years of expending local funds to assist with this activity.³⁹ The data reveal that during the period from 1979 to 1984, the Town expended \$117,039 for the improvement of its public thoroughfare, or 46.0% of total public expenditures (\$255,322) for that purpose during that period.⁴⁰ This policy of augmenting State expenditures for street and road maintenance will benefit, in terms of addressing both immediate and prospective needs, the areas annexed by the Town.⁴¹

Summary

The Town of Clintwood will benefit from an immediate infusion of significant additional revenues as a result of the annexation of Area 1 and Area 2. Moreover, these areas will provide the Town with significant vacant land for future economic growth. Thus, the annexation should permit the Town to share in the growth of its area and should 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.

³⁹Of the 7.71 miles of public thoroughfares within Clintwood, 5.38 miles, or 69.8%, are maintained by VDH&T. (Ibid., Statement 22.)

⁴⁰Sutherland, letter to staff of Commission on Local Government, April 15, 1985.

⁴¹Of the 5.15 miles of public thoroughfares in the areas proposed for annexation, only 0.55 mile (0.4 mile in Area 1 and 0.15 mile in Area 2) do not qualify for State maintenance.

BEST INTEREST OF THE COMMUNITY AT LARGE

The third criterion prescribed by law for Commission consideration in the review of an agreement defining a town's annexation rights is whether such an agreement is in the "best interest of the community at large." As indicated previously, the Commission considers the proposed Town of Clintwood - Dickenson County agreement as providing for the orderly and regular growth of the Town and County together and facilitating an equitable sharing of the area's public resources and liabilities. These attributes of the proposed agreement are clearly promotive of the best interest of the community at large. There are, however, additional aspects and ramifications of the agreement which are in the best interest of the general community and which merit comment in this report.

Relinquishment of Authority to Seek City Status

A fundamental element of the proposed agreement is the provision which calls for the Town of Clintwood to relinquish permanently its authority to seek city status. At present, the Town does not have the necessary population (5,000) to petition for city status, nor will any annexation under the terms of the proposed agreement result in Clintwood's immediately reaching such a population threshold. Further, while growth and development in and around Clintwood are unlikely to produce such a population level in the foreseeable future, economic and demographic conditions might significantly alter that situation. If the Town were to exercise at a later date its right to seek city status, such an event would remove the Town's tax resources from County authority, with the consequences that remaining County residents would likely confront a greater local tax burden for the provision of public services. With the adoption of this agreement, the Town commits itself to remaining permanently a part of Dickenson County and supporting with its people and resources the needs of the County generally.

Simplification of Annexation Process

The proposed agreement would permit growth of the Town by a simple

process which will avoid long and costly adversarial annexation proceedings. While the State's prescribed annexation process has many commendable features, the resolution of annexation issues by that process can be costly in terms of legal fees, consultants' charges, administrative time, and other expenses associated with litigation. Moreover, contested annexation cases have often resulted in strained interlocal relations which can inhibit cooperative effort and collaboration on mutual problems and long-term planning. The proposed agreement will permit the growth of Clintwood in a simple, nonadversarial manner with a minimum of attendant costs. This provision of the proposed agreement can serve the best interest of the community at large.

Economic Development of the Clintwood Area

The proposed agreement facilitates the growth of the Town of Clintwood which, in turn, will provide that municipality with additional fiscal resources which can be used to extend and improve its public services. The Town'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 of Clintwood and Dickenson County. This ramification of the proposed agreement is clearly in the best interest of the general community.

Protection of Agricultural Properties

The proposed agreement contains a provision designed to protect agricultural properties. The proposed agreement states:

The Town will establish, as soon as possible, means with which to protect existing farm lands within the annexed areas through the use of zoning and land use procedures. It is the intent of the Town to allow for the continued use of farm land for agricultural purposes and the Town does not propose to implement procedures which will place undue restrictions or hardships on lands used for

agricultural purposes.⁴²

This provision is intended to afford some measure of protection to agricultural properties located within the areas annexed. The Commission wishes to acknowledge here its recognition of the State's strong concern for the protection of agricultural properties, as well as our understanding that such preservation is vital to the well being of this Commonwealth and our nation. The Commission considers this provision in the proposed agreement fully consistent with the best interest of the community at large.

FINDINGS AND RECOMMENDATIONS

The Commission finds that the proposed agreement appropriately provides concurrently for the orderly and regular growth of the Town of Clintwood and Dickenson 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 hereby reports it "favorably," we offer the recommendations set forth below.

1. Annexation Ordinance

Section 2 of the proposed agreement authorizes the Town, consistent with the law governing agreements of this nature, to annex portions of Areas 1 and 2 merely by the adoption of a municipal ordinance. The Commission recommends that this section of the proposed agreement be amended to provide that such ordinances address, mutatis mutandis, the various elements prescribed for traditional annexation ordinances by Section 15.1-1033 of the Code of Virginia. Hence, the Commission recommends that Section 2 of the proposed agreement be amended to state explicitly that such annexation ordi-

⁴²Agreement, Sec. 13

nances adopted by the Town under the terms of the proposed agreement include in part:

- (a) a metes and bounds description of the areas sought for annexation;
- (b) information, which may be recorded on a map attached to the ordinance, indicating the location of subdivisions, major industrial and commercial sites and vacant areas, as well as other information relative to possible future uses of property within the area proposed for annexation; and
- (c) a statement of the conditions under which the annexation will be effected, including a detailed listing of the provisions for the extension of utilities and the installation of other public improvements.

Such elements, as recommended above, in annexation ordinances should provide the residents and businesses affected by annexations with clearly identifiable boundaries and a list of specific improvements which may be expected and the timeframes within which such will be completed. Such specificity can remove grounds for citizen complaint.

2. Differential Real Property Tax Rates

Section 4 of the proposed agreement requires the Town to adopt an ordinance "allowing" a lower real property tax rate, for a period not to exceed three years, on land annexed than that imposed on similar property within the Town's previous boundaries. With respect to this section of the proposed agreement, the Commission recommends two modifications. First, the Commission recommends that this section be expanded to define explicitly the property which would legally qualify for such a reduced tax rate. Accordingly, this section should be amended to state expressly that qualification for a reduced tax rate is contingent upon a variance in the level on non-revenue generating public services. Second, the Commission notes that Section 4, as presently drawn, does not commit the Town to the actual acceptance and utilization

of differential tax rates, it merely requires the Town's adoption of an ordinance "allowing" the application of differential rates. In order to avoid the possibility of future public controversy over this provision, we recommend that Section 4 be amplified to indicate clearly the nature of the Town's commitment.

3. Protection of Agricultural Properties

The proposed agreement contains a provision designed to protect agricultural properties. However, the Commission recommends that Section 13 of the agreement be amended to state that the Town shall not annex acreage which is principally and actively devoted to agricultural production, unless such acreage is largely embraced by property appropriate for annexation and cannot, in the judgment of the Town, reasonably be excluded therefrom. While the Commission recommends that the Town exclude active agricultural properties from annexations effected under the proposed agreement, it recognizes that occasions will arise where the inclusion of some agricultural acreage in an annexation may be required, and should be authorized, in order that annexed areas might be reasonably compact or for other appropriate purposes. The present provisions of Section 13 should be retained and made applicable to any active agricultural acreage which may be brought into the Town incidental to the annexation of other property. The proposed amendment should be of assistance to the agricultural areas adjacent to Clintwood, while not adversely affecting the Town's viability. As agricultural properties are converted to other use, or as they are proffered for development, they would become subject to annexation. This proposed amendment would allow the incidental annexation of agricultural properties which might be embraced by developed areas, but it is intended to prevent any large and indiscriminate incorporation of agricultural properties into the Town.

4. Subdivision Ordinance

The Commission recommends that the Town adopt a subdivision ordi-

nance to promote the orderly development of the area. Such ordinances are mandated for localities by Section 15.1-465 of the Code of Virginia and are important for the proper construction and coordination of thoroughfares, public utilities, and other community facilities. Thus, a subdivision ordinance constitutes a vital component of a community's planning and development program.

5. Revision of Zoning Ordinance

The Commission recommends that the Town revise and update its zoning ordinance to reflect the conditions and circumstances that have taken place since the adoption of the original zoning ordinance in 1946. The recommended revision of the Town's Zoning Ordinance should be initiated immediately in order to prepare the Town for the proper management of the areas proposed for annexation.

6. Mining Operations

The local economies of both the Town of Clintwood and Dickenson County are dependent to a large degree on the coal mining industry. In 1984 Dickenson County ranked third among Virginia's eight (8) coal producing counties in terms of tonnage of coal produced.⁴³ Further, as of the same year coal mining operations provided 52.6% of Dickenson County's employment positions.⁴⁴

Currently, the Town has two active mines within its corporate limits. The annexation of the two areas covered by the proposed agreement will bring additional active mines, and the roadways over which products of these mines are transported to market, within the

⁴³Christopher E. Loftus, Statistician, Virginia Department of Mines, Minerals and Energy, communication with staff of Commission on Local Government, July 2, 1985. In 1984 more than 7 million tons of coal were mined in the County.

⁴⁴Virginia Employment Commission, Special Area by Industry for Quarter 1-84--Dickenson County.

Town's corporate boundaries. Clintwood has expressed concern that such mining operations within its corporate limits have the potential for adversely affecting the Town's general environmental quality and that mine-related traffic along its thoroughfares can increase the Town's financial burden for street maintenance.

In response to this concern, the Town has adopted a surface mining regulatory ordinance regarding coal mined within or transported through Clintwood's corporate limits. Among the ordinance's principal provisions are those which provide (1) that all persons desiring to surface mine coal within the Town shall first apply to the Town Council for a permit, (2) that such permit shall be granted provided the applicant posts a \$500,000 bond for the purpose of "indemnifying the Town in the event the Town should "suffer any damages as a result of the applicant's mining within the Town," and (3) that a \$0.25 per ton "inspection and administration fee" be imposed on coal which is (a) mined within Town limits or (b) transported through the Town before entering a State highway.⁴⁵

The Commission has received substantial expression of concern from a coal operator who presently maintains mining operations in the Town and in the area sought for annexation west of the Town (Area 1). The Commission is cognizant of the fact that the Town's regulatory ordinance is currently being challenged in the courts and that this issue has legal ramifications appropriately left for resolution in another forum.

While the legal issues surrounding Clintwood's coal mining regulatory ordinance require judicial resolution, we acknowledge the Town's legitimate concern for the protection of its environment and existing properties. We also note that both the Town of Wise and the City of Norton have, through municipal ordinances, adopted measures to protect their jurisdictions from the potentially injurious effects of mining

⁴⁵"Ordinance Regulating Coal Surface Mining in the Town of Clintwood."

activities. The Commission is unable to see any reason why the Town's mining regulatory ordinance should affect our endorsement of the proposed annexation agreement. The Town's adoption and application of its mining regulatory ordinance, if sustained by the courts, is consistent with general municipal efforts to regulate commercial and industrial activity in the interest of public welfare. We find no basis for recommending changes in the agreement, nor with respect to areas covered by the agreement, as a result of the Town's mining regulatory efforts.

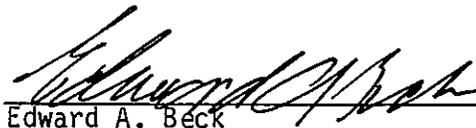
Respectfully submitted,



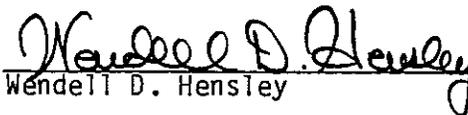
Harold S. Atkinson, Chairman



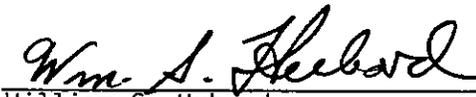
Benjamin L. Susman, III, Vice Chairman



Edward A. Beck



Wendell D. Hensley



William S. Hubbard

ADDENDUM STATEMENT

EDWARD A. BECK

I am obliged to state my objection to the Commission's unqualified endorsement of the Town's mining regulatory ordinance as it would apply to mining activities brought within the corporate boundaries of Clintwood as a result of annexations effected under the terms of the proposed agreement. As a result of that regulatory ordinance mining operations brought within the Town by annexation will confront additional economic costs. While I fully understand the interest of the Town in annexing the properties in question and while I support its legitimate efforts to protect its environment, I recommend that the Town investigate various means by which the imposition of additional costs on existing mining operations might be avoided. The interest of the Town and the existing mining operations are, in my judgment, capable of reconciliation.



Edward A. Beck

APPENDIX A

AGREEMENT BETWEEN TOWN OF CLINTWOOD, VIRGINIA
AND
DICKENSON COUNTY, VIRGINIA, DEFINING ANNEXATION
RIGHTS

AGREEMENT DEFINING ANNEXATION RIGHTS

WHEREAS, the Town of Clintwood, Virginia, (herein called "the Town"), and the County of Dickenson, Virginia, (herein called "the County"), desire to enter into an agreement defining the Town's annexation rights in the future; and,

WHEREAS, the Town has completed a study to determine the feasibility of annexing certain lands located in the County adjacent to the corporate limits of the Town; and,

WHEREAS, the said study presented by Blazer and Associates, Consulting Planners, Marion, Virginia, is entitled Clintwood, Virginia, The Planning Document (herein called "the plan"). See Exhibit "A". This plan has defined two areas for future annexation by the Town and these areas are hereinafter designated Area 1 and Area 2 respectively; and,

WHEREAS, Area 1 lies to the west of the presently existing corporate limits of the Town of Clintwood and is described as follows:

BEGINNING at a point which is southwest corner of the existing corporate limits thence S 90° 00' W (due west) 2515 feet to a point; thence N 0 00 E (due north) 5280 feet to a point; thence N 90° 00 E (due east) 2515 feet to a point which is the northwest corner of the existing corporate limits; thence S 0 00 W 5280 feet to the BEGINNING, containing 304.85 acres; and,

WHEREAS, Area 2 lies to the east and north of the presently existing town limits and being more particularly bounded and described as follows:

BEGINNING at a point which is the southeast corner of the presently existing corporate limits; thence N 90° 00 E (due east) 2010 feet to a point; thence N 0 00 E (due north) 6580 feet to a point; thence S 90° 00 W (due west) 3780 feet to a point; thence S 0 00 W (due south) 1300 feet to a point in the northern boundary of the presently existing corporate limits; thence with the presently existing corporate

limits N 90° 00 E (due east) 1770 feet to a point; being the northeast corner of the existing corporate limits; thence with the eastern boundary of the existing corporate limits S 0 00 W 5280 feet to the BEGINNING containing 356.45 acres, Area 1 and Area 2 shown on a plat prepared by Mattern and Craig labeled Exhibit B and attached hereto.

WHEREAS, the Town wishes to permanently renounce its right to become a city; and,

WHEREAS, the Town and the County desire to enter into an agreement to provide for the regular and orderly growth of the Town in conjunction with the County, and the Town and the County desire to provide for an equitable sharing of resources and liabilities;

NOW THEREFORE WITNESSETH: That for and in consideration of the premises and in further consideration of the mutual promises and covenants herein contained, the Town and County do mutually agree as follows:

1. The Town by the execution of this agreement as provided by S15.1-1058.1 of the Code of Virginia, 1950 as amended, does hereby permanently renounce its right to become a city effective upon the final review and recommendations concerning the agreement by the Commission on Local Government in a form acceptable to the Town.

2. The Town shall have the right to annex such portion of the County as the Town shall deem expedient as is described in Area 1 and Area 2 of the attached plan. Such annexation may be accomplished by enacting a Town Ordinance at any time after the execution of this agreement by the parties and the review and recommendations concerning this agreement by the Commission on Local Government and the final adoption of the Town and County of such agreement with modifications, if any, subsequent to such review and recommendations by such Commission as provided in

S15.1-1058.2 and 15.1-1058.3 of the Code of Virginia, 1950 as amended.

3. No such annexation ordinance shall be enacted by the Town without first holding a public hearing after advertising such hearing for four (4) consecutive weeks in a newspaper of general circulation in said Town.

4. The Town shall pursuant to Virginia Code Section 15.1-1047.1 adopt an Order allowing a lower rate of taxation to be imposed for a period not to exceed three (3) years upon land added to the Town's corporate limits pursuant to the agreement, than is imposed on similar property within the Town limits at the time such land is added.

5. No loss of revenue to the County resulting from annexation is anticipated.

6. The Town shall pay all of the costs of the feasibility plan and the costs of the proceeding as well as its own attorney's fees for such proceeding.

7. The County shall pay the costs of its attorney's fees for the proceeding.

8. The Town has authorized the execution of this agreement as indicated by the attached attested copy of the minutes of its meeting of December 6, 1983. See Exhibit "C".

9. The County has authorized execution of this agreement as indicated by the attached attested copy of the minutes of its meeting of December 30, 1983. See Exhibit "D".

10. The Commission on Local Government shall review the agreement, and any modifications suggested by the Commission on Local Government shall be considered.

11. This agreement shall become void in the event no annexation ordinance is adopted by the Town within five years of the date of the final approval of the annexation agreement by the Commission on Local Government.

12. The Town shall extend water and sewer services into the annexed areas as soon as it becomes reasonably necessary or is desired by the residents to be served and it is economically feasible to do so in accordance with Town policies, using revenue generated from the annexed areas whenever possible. The Town will extend other municipal services (exclusive of water and sewer services) into annexed areas on the effective date of each annexation, and such services will be at the same level and quality as is available within the Town generally.

13. The Town will establish, as soon as possible, means with which to protect existing farm lands within the annexed areas through the use of zoning and land use procedures. It is the intent of the Town to allow for the continued use of farm land for agricultural purposes and the Town does not propose to implement procedures which will place undue restrictions or hardships on lands used for agricultural purposes.

14. The maps attached hereto and marked Exhibit B shall be filed in the Clerk's Office of Dickenson County upon the final execution and final approval by the Town and County of this agreement.

15. This agreement shall remain in full force and effect until all of the land described in Area 1 and Area 2 in the map attached hereto and marked Exhibit B, has been annexed to the Town of Clintwood.

16. No annexation proceeding for involuntary annexation under S15.1-1033 of the Code of Virginia of 1950

shall be instituted by the Town against the County, prior to January 1, 1995, however nothing in this agreement shall deprive the citizens in Dickenson County of exercising their right to petition the Court for voluntary annexation to the Town of Clintwood, under S15.1-1034 of the Code of Virginia, of 1950 as amended.

17. The Town and County reserve the right to modify this agreement by joint consent whenever the density of the population and the needs of the Town and the County citizens require such amendment.

WITNESS the following signatures and seals:

TOWN OF CLINTWOOD

BY: Bernard Rapis (SEAL)
MAYOR

Attest:

Oatsy J. Sutherland

COUNTY OF DICKENSON

BY: Ray Merndon (SEAL)
Chairman, Board of Supervisors

Attest:

[Signature]

APPENDIX B

STATISTICAL PROFILE OF THE TOWN OF CLINTWOOD, COUNTY OF DICKENSON
AND THE AREA COVERED UNDER THE AGREEMENT DEFINING ANNEXATION RIGHTS

	<u>TOWN OF CLINTWOOD</u>	<u>COUNTY OF DICKENSON</u>	<u>AREAS PROPOSED FOR ANNEXATION</u>
Population (1980)	1,369	19,806	481 ^A
Land Area (Square Miles)	1.0	335.0	1.03
Total Assessed Values (1981)	\$22,107,340	\$392,937,289	N/A
Real Estate Values (1981)	\$20,116,850	\$350,599,347	\$5,135,898
Personal Property Values (1981)	\$163,610	\$11,484,657	\$237,578
Public Service Corp. Values (1981)	\$1,162,268	\$22,774,603	N/A
Machinery and Tools Value (1981)	\$18,466	\$7,875,060	N/A
Merchant Capital Values (1981)	\$100,608	\$203,622	N/A
Mobile Homes Values (1981)	\$575,838	—	N/A
Existing Land Use (Acres) ^B			
Residential	141	2,499	57
Commercial	38	20	22
Industrial	5	1,970	—
Public and Semi-Public	4	152	3
Rights-of-Way	42	N/A	40
Vacant, Wooded or Agricultural	410	209,759	537

Notes:

N/A = Not Available

A = 1981 Estimates

B = Land use data for the Town and the areas proposed for annexation was collected in 1980 and 1981 and for the County in 1977.

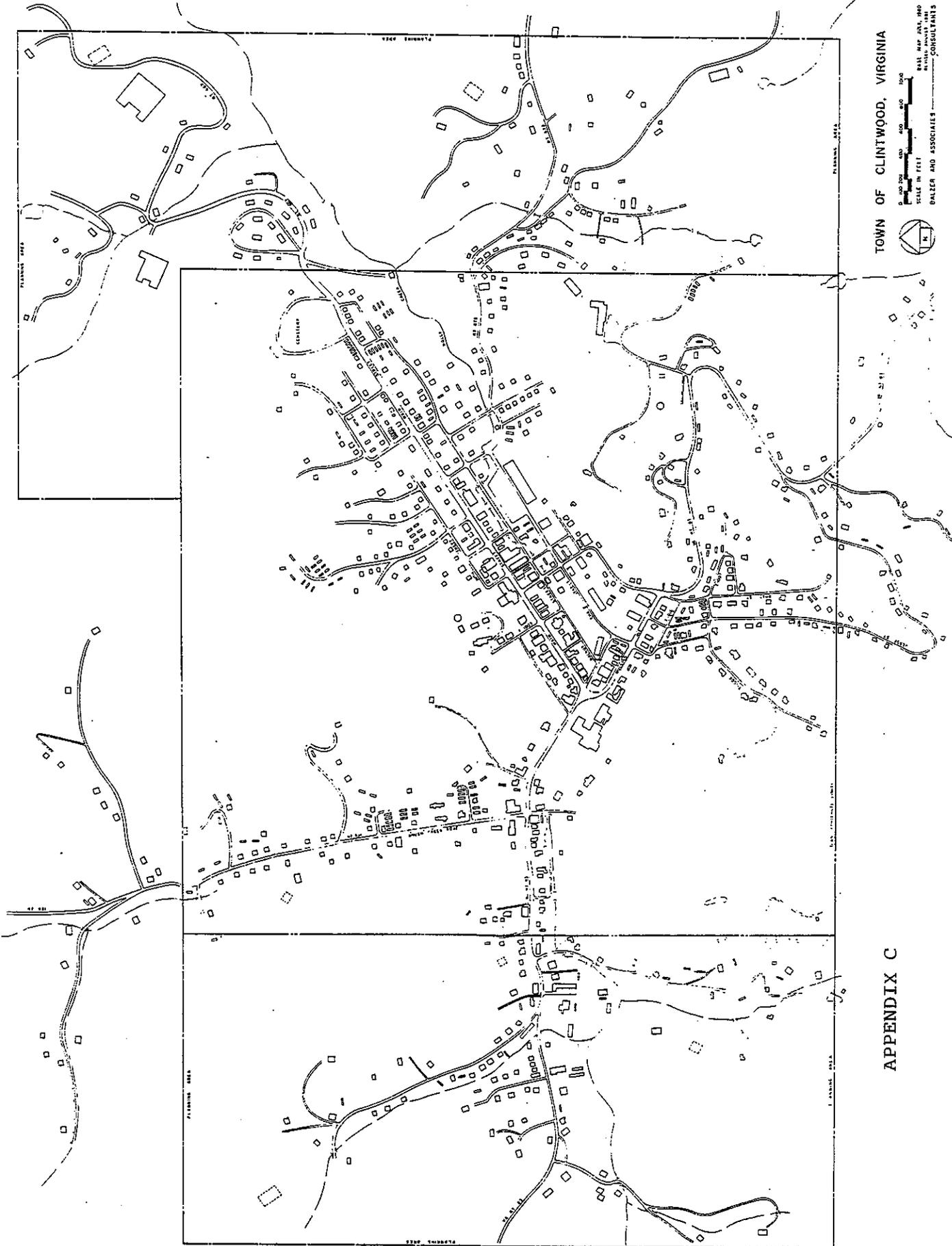
Sources:

Town of Clintwood, Petition for Review of Proposed Annexation Agreement between the Town of Clintwood and Dickenson County, Virginia, July 16, 1985.

Virginia Auditor of Public Accounts, County of Dickenson, Report on Audit for the Fiscal Year Ending June 30, 1983.

Buddy H. Wallen, Town Attorney, Town of Clintwood, letter to staff of Commission on Local Government, March 28, 1985.

County of Dickenson, Dickenson County Comprehensive Plan.



TOWN OF CLINTWOOD, VIRGINIA



APPENDIX C