

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



**COMMISSION ON LOCAL GOVERNMENT  
COMMONWEALTH OF VIRGINIA**

**JANUARY 1990**

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

**Commission on Local Government**

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**PROCEEDINGS OF THE COMMISSION**

On September 18, 1989 the Town of Dayton, with the concurrence of Rockingham County, submitted to this Commission for review a proposed agreement defining the Town's future annexation rights which had been negotiated under the authority of Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia.<sup>1</sup> Consistent with the Commission's Rules of Procedure, the Town and County submitted additional material to assist this body in its review of the proposed agreement.<sup>2</sup> Further, as required by statute, Dayton concurrently gave notice of the filing to 11 local governments with which it shared functions, revenue, or tax sources.<sup>3</sup>

Subsequent to its receipt of the proposed agreement, the Commission met in Dayton on November 2, 1989 to tour the Town and relevant areas in Rockingham County, to receive oral testimony from local officials regarding the agreement, and to conduct a public hearing for the purpose of receiving citizen comment. The public hearing, which was advertised in accordance with Section 15.1-1058.2 of the Code of Virginia, was attended by approximately 50 persons and produced testimony from 14 individuals. In order to allow additional opportunity for public comment, the Commission agreed to keep open its record of the proceedings for receipt of written testimony through December 2, 1989. Further, the Commission also solicited comment on the proposed agreement from other potentially affected local governments in the area.

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<sup>1</sup>Town of Dayton and County of Rockingham, Submission to the Commission on Local Government (hereinafter cited as Town-County Submission), Sep. 18, 1989.

<sup>2</sup>Town of Dayton and County of Rockingham, Submission to the Commission on Local Government, Supplement (hereinafter cited as Town-County Supplement), Nov. 2, 1989.

<sup>3</sup>Sec. 15.1-945.7(A), Code of Va.

## SCOPE OF REVIEW

In 1979 the General Assembly amended the annexation laws of the Commonwealth to authorize towns to negotiate agreements with their counties which permit the municipality to annex, in accordance with conditions specified in such agreements, merely by the adoption of a municipal ordinance.<sup>4</sup> Thus, where town annexations are pursued under such agreements, the State's general annexation process whereby proposed boundary changes 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. Based upon such statutory conditions, this Commission is directed to determine in its review:

. . . whether the proposed agreement provides for the orderly and regular growth of the town and county together, for an equitable sharing of resources and liabilities of the town and county, and whether the agreement is in the best interest of the community at large, . . .<sup>5</sup>

It should be noted here that whatever the findings of the Commission regarding the agreement under review, the local governing bodies are free to adopt or reject the proposed agreement as they see fit. If, however, the Commission's review of an agreement is "unfavorable," the local governing bodies may not adopt the agreement

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<sup>4</sup>Article 1.1, Chapter 25, Title 15.1, Code of Va.

<sup>5</sup>Sec. 15.1-1058.2, Code of Va.

until after they have jointly held an advertised public hearing on the issue.<sup>6</sup>

### EVALUATION OF THE AGREEMENT

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

1. require the Town to renounce permanently its authority to become a city;
2. authorize the Town to annex by ordinance territory within a certain area in the County, identified as the Designated Area, any time after the adoption of the agreement;
3. require the Town to take measures to protect agricultural properties which might be annexed under the agreement;
4. require the Town, simultaneously with the first annexation under the agreement, to equalize water and sewer rates charged customers located within the Designated Area with those rates charged customers within the Town's boundaries; and
5. commit the Town not to seek to annex any other areas of the County until the entire Designated Area is annexed.<sup>7</sup>

The proposed Town of Dayton - Rockingham County agreement, unlike other agreements defining annexation rights reviewed by this body, does not commit the Town to annex territory within the Designated Area immediately following its adoption. Rather, Town officials have indicated that Dayton proposes to exercise its annexation authority in the Designated Area intermittently and primarily at the request of

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<sup>6</sup>Sec. 15.1-1058.3, Code of Va. It should be observed that State law also authorizes a town to proceed unilaterally to obtain an order defining its future annexation rights in instances where it is unable to reach an agreement with its county on the issue. (See Sec. 15.1-1058.4, Code of Va.)

<sup>7</sup>See Appendix A for the complete text of the proposed Agreement Defining Annexation Rights between the Town of Dayton and Rockingham County.

affected property owners.<sup>8</sup> While property owner-initiated annexations are authorized pursuant to the provisions of Section 15.1-1034 of the Code of Virginia, the simplified annexation procedure sanctioned by the proposed agreement would permit the Town to respond to such requests for annexation in an expeditious manner and to avoid the protracted review process otherwise required by State statutes. Further, in instances of annexation under the proposed agreement, developers may be required by the Town, as a condition of annexation, to share in the cost of extending utilities to vacant tracts of land in the Designated Area. This arrangement permits Dayton to reduce its fiscal liability for utility extensions which would accompany the expansion of its boundaries.<sup>9</sup> Moreover, the Town's annexation of territory at the request of property owners should reduce the public discord that often accompanies involuntary annexations. While Dayton officials have recognized, however, that future conditions may require the Town to annex territory in the Designated Area without the consent of affected property owners, the Town seeks to avoid such actions for the immediate future.<sup>10</sup>

As indicated previously, the Commission is required to determine in its review whether the proposed annexation agreement (1) provides for the orderly and regular growth of the Town and the County together, (2)

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<sup>8</sup>Presentation of J. Jay Litten, Town Attorney, Town of Dayton, Transcript of Oral Presentations Before the Commission on Local Government (hereinafter cited as Transcript), Nov. 2, 1989, p. 16.

<sup>9</sup>In instances where utility lines are not extended by developers, the proposed agreement requires the Town to install water and sewer lines to serve areas annexed, within five years of the effective date of annexation, if such are needed or requested by property owners, (See Proposed Agreement Defining Annexation Rights, Sec. 5.)

<sup>10</sup>Presentation of Litten, Transcript, p. 16. Town officials have received a request for annexation from an individual who has an option to purchase a vacant 17-acre parcel located in the Designated Area, which is owned by the Rockingham County School Board. (Ibid., pp. 16-17.) The Commission notes that under the terms of the proposed agreement, the Town would be able to annex that parcel on December 31, 1990.

permits an equitable sharing of the area's resources and liabilities, and (3) is in the best interest of the community at large. In the following sections of this report the Commission endeavors to analyze the proposed Town of Dayton - Rockingham County agreement on the basis of these three general criteria.

#### ORDERLY AND REGULAR GROWTH OF THE TOWN AND COUNTY

Between 1950 and 1980 both the Town of Dayton and Rockingham County experienced population growth generally consistent with that of other localities in Virginia's Shenandoah Valley region. Recent population estimates reveal, however, that while the County has continued to experience modest population growth, the Town has confronted a decline in the number of its residents. According to these estimates, between 1984 and 1988 the County's population increased from 52,980 to 54,800 persons, or by 3.6%, while the Town's populace declined from 1,031 to 960 persons, or by 7.4%.<sup>11</sup> This disparity in population change indicates that Dayton has failed to share equally in the population growth of its area in recent years.

With respect to fiscal resources, recent property assessment data reveal that the growth in the County generally has been somewhat in excess of that experienced within the Town. Between 1984 and 1988 the value of locally assessed real property in Rockingham County increased from \$1.1 billion to \$1.4 billion, or by 23.4%. During the same span of years such values within the corporate limits of the Town of Dayton grew

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<sup>11</sup>U. S. Department of Commerce, Bureau of the Census, 1988 Place Estimate for Virginia, 1989. Population statistics for Rockingham County include persons residing in the Towns of Dayton, Bridgewater, Broadway, Elkton, Mt. Crawford, and Timberville, and that portion of the Town of Grottoes which lies within the County. The Commission notes, however, that due to the annexation by the City of Harrisonburg on December 31, 1982, the County's population was reduced by 4,984 persons. See Appendix B for a statistical profile of the Town, County, and the area covered by the agreement. See Appendix C for a map of the Town of Dayton and that portion of Rockingham County subject to annexation under the terms of the agreement.



from \$17.1 million to \$19.6 million, or by 14.6%. Hence, the rate of growth in real estate values subject to local taxation in the County generally has been greater than that in the Town in recent years.<sup>12</sup>

More significantly, the prospects for future development within the current boundaries of the Town of Dayton appear to be quite limited. Land use statistics collected in 1981 (the most recent data available) revealed that only 20.8 acres, or 10.8% of the Town's total land area, remained vacant. Town officials have indicated, moreover, that since that date the construction of a 3.5-acre municipal park and additional development within Dayton have reduced the supply of vacant land even further.<sup>13</sup> Some evidence of the limited potential for development within the Town is provided by the fact that there have been only ten building permits issued for the construction of new residential, commercial, or industrial structures within Dayton in the last five years.<sup>14</sup>

With respect to the general viability of the Town of Dayton, there is another issue which merits comment. Dayton's fiscal condition is heavily dependent on one manufacturing firm (Rocco Turkeys, Inc.) located within the Town.<sup>15</sup> Data submitted by the Town reveal that in

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<sup>12</sup>Town-County Submission, Table 13-1. The Commission notes that the Town does not tax personal property or machinery and tools. The annexation by the City of Harrisonburg on December 31, 1982 reduced the County's real property assessed values by approximately \$154 million. The real property assessed values for Rockingham County include those within Dayton, five other incorporated towns, and that portion of the Town of Grottoes located within the County.

<sup>13</sup>Ibid., Tab 10. Town officials estimate that there are only four unimproved building lots within Dayton's current boundaries.

<sup>14</sup>Ibid., Tab 22. Building permit data covers the period August 1984 through August 1989.

<sup>15</sup>As of the first quarter of 1987 Rocco Turkeys, Inc. had a manufacturing employment of approximately 920 persons, or nearly 11% of the County's total of such employment (approximately 8,500). (Virginia

1988 that corporation generated 10% of Dayton's real estate assessed values, 24% of its business license tax receipts, 63% of its consumer utility taxes, and 91% of its water and sewer revenues.<sup>16</sup> The expansion of the Town's boundaries will afford Dayton an opportunity to diversify, to some degree, its tax base.

The proposed agreement, if ultimately adopted by the parties, will permit the Town to annex by ordinance within an area comprising 2.2 square miles of territory and currently containing approximately 400 persons and \$12.5 million in real estate property values subject to local taxation.<sup>17</sup> While the Town of Dayton has indicated that it does not propose to annex any portion of the Designated Area immediately following the adoption of the agreement, that area currently embraces commercial development located along State Route 42 southwest of Dayton as well as manufacturing operations adjacent to that same State thoroughfare northeast of the municipality. In addition, the area subject to annexation by the Town under the terms of the proposed agreement contains approximately 1.8 square miles (83.6% of the Designated Area) of vacant land suitable and generally available for development.<sup>18</sup>

In sum, the agreement will permit the Town to annex areas which will increase its population and fiscal resources and which will provide Dayton with land for future development. In addition, the proposed agreement includes a provision permitting the Town and County to modify the annexation accord by joint consent, if such is deemed appropriate.<sup>19</sup>

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Employment Commission, Special Area By Industry Listing for Quarter 1-87, Rockingham County.)

<sup>16</sup>Town-County Submission, Tab 13.

<sup>17</sup>Ibid., Tab 11 and Table 13-2; and Town-County Supplement, Item 1.

<sup>18</sup>Town-County Supplement, Item 1.

<sup>19</sup>Proposed Agreement Defining Annexation Rights, Sec. 12.

This provision constitutes recognition by both jurisdictions that the agreement may require subsequent adaptation to meet future circumstances and needs which cannot now be foreseen. Based on these considerations, it is the Commission's judgment that the proposed agreement does facilitate the orderly and regular growth of the Town and County together.

#### EQUITABLE SHARING OF RESOURCES AND LIABILITIES

An equitable sharing of resources and liabilities within the context of an agreement defining annexation rights requires, in our judgment, an opportunity for both the Town and the County to benefit from the growth in the general area sufficient to meet the needs of their respective residents and commensurate with the contribution each locality makes to the social and economic viability of the general area. The following paragraphs review this consideration.

##### Resources

Statistics reviewed earlier in this report indicate that the Town of Dayton has not experienced growth in its population and tax base in recent years equal to that of Rockingham County. Further, while Dayton is an important manufacturing center in the County, and while it supports with its utility services development outside its present boundaries, the limited amount of vacant land within the Town suitable for development will constrict Dayton's ability to share in the future growth of its area. Indeed, the issuance of only ten building permits for the construction of new residential, commercial, or industrial structures within Dayton over the past five years supports this concern.

The simplified annexation procedure authorized by the proposed agreement would permit Dayton to annex territory within an area that contains approximately \$12.5 million in real estate assessed values, based on 1989 data, and significant amounts of vacant land suitable for

future development. Thus, by means of such annexations, Dayton could increase its local-source revenue base and obtain additional land for development. While Dayton does not propose to exercise this authority immediately following the adoption of the agreement, Town officials have indicated that future annexations within the Designated Area will be undertaken upon request of affected property owners or when the Town determines such to be appropriate.<sup>20</sup>

It is important to note here that town annexations in Virginia, unlike those initiated by cities, do not remove property from the tax rolls of the affected county. Thus, Rockingham County's major tax sources will be unaffected by annexations by the Town of Dayton. 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 local option sales taxes), but no significant loss of revenue to Rockingham County is anticipated as a result of annexations effected by Dayton under the terms of the proposed agreement. Moreover, any development facilitated by the extension of Dayton's services to annexed areas will benefit not only the Town, but the County as well. On the basis of these considerations, the Commission concludes that the proposed agreement should provide the Town of Dayton and Rockingham County with an equitable sharing of the area's resources.

#### Liabilities for Services

The Town of Dayton plays an important role in the provision of public services in southern Rockingham County. In terms of utilities, the Town serves not only the needs within its corporate limits, but also residential and commercial connections beyond its present boundaries. As suggested previously, the availability of Town utilities has been instrumental in the development of areas adjacent to Dayton. With respect to the future growth in the general area, the Commission notes

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<sup>20</sup>Presentation of Litten, Transcript, p. 16.

that the adopted Rockingham County land use plan, which was based upon a comprehensive analysis of the County's needs and anticipated growth, calls for continued development of the areas immediately adjacent to Dayton and within the territory subject to annexation by the Town under the terms of the proposed agreement.<sup>21</sup> If such development occurs, the Town would be, in our view, the appropriate entity to provide urban services to those areas.

Annexations by the Town under the terms of the proposed agreement will, therefore, place new and additional service responsibilities on Dayton. While this expanded responsibility for urban services constitutes a liability to be borne by the Town, the extension of such services to areas of need represents, at the same time, a consequence of the agreement which is in the general interest of the community at large.

Water. The Town of Dayton owns and operates a public water storage and distribution system which presently serves 421 connections, with 54 of those connections being located in the Designated Area.<sup>22</sup> Water for the system is obtained from a spring which is located in the northeastern portion of the Designated Area.<sup>23</sup> While that spring has an rated capacity of 5.0 million gallons per day (MGD) under normal weather conditions, the Town currently has the pumping capability to withdraw

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<sup>21</sup>Ibid., p. 11; and Town-County Submissions, Tab 20.

<sup>22</sup>Town-County Submission, Tab 14.

<sup>23</sup>Ibid. The spring is owned by the City of Harrisonburg and is also used as a water source by that municipality. Pursuant to an agreement between the City and Dayton, the Town has the right of first use to that water source. Since the agreement with Harrisonburg will expire in the Year 2015, Dayton has established a committee to study the development of an alternative water source for the Town. (Presentation of Litten, Transcript, p. 8.)

only 1.6 MGD from that water source.<sup>24</sup> Since Dayton's present water distribution system requires approximately 0.85 MGD, the system currently retains an unused reserve of 0.75 MGD.<sup>25</sup> Water from this spring enters the Town's distribution system directly after being chlorinated and fluoridated, with any excess water being stored in a 0.2 million gallon (MG) water tank to meet periods of peak usage.<sup>26</sup>

In view of the water service already provided the Designated Area by the Town and the excess capacity in the municipal system, we believe that Dayton is capable of meeting both the current and the prospective needs of that area.<sup>27</sup> Moreover, although portions of the Designated Area are traversed by water lines owned by the County and the City of Harrisonburg, the Town is currently the only source of treated water available to serve the residents and businesses in the Dayton environs.<sup>28</sup> Further, in terms of immediate benefits to residents and

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<sup>24</sup>Town-County Submission, Tab 14. During drought conditions, the spring has a rated capacity of 3.0 MGD. Further, the Town's water distribution system is interconnected with those of the Town of Bridgewater and Rockingham County, and a water sharing agreement with those localities permits Dayton to purchase water from the County in times of emergency. (Ibid., Tab 29.)

<sup>25</sup>Ibid. Tab 14; and presentation of Litten, Transcript, p. 7. The manufacturing processes of Rocco Turkeys, Inc. consumes approximately 83% of the water distributed by the Town.

<sup>26</sup>Ibid., Tab 14. Town also holds one-third interest in a 1.5 MG water tank owned by the County.

<sup>27</sup>Within the Designated Area there are 83 residences served by private wells and 13 households that purchase water from other sources and store it in cisterns or reservoirs. (Town-County Submission, Tab 14.)

<sup>28</sup>Rockingham County owns a 12-inch water line that extends from the eastern boundary of Dayton to the County's 1.5 MG water tank located at Kaylor's Hill. At the present time, two residences located in the Designated Area are connected to that line. (Town-County Supplement, Item 17.) Under the terms of the proposed agreement, the Town is required to purchase from the County any portion of the water line which is annexed by Dayton. (See Proposed Agreement Defining Annexation Rights, Sec. 9.) In addition, there are four water customers located in the Designated Area that are connected to the City of Harrisonburg's

businesses in the Designated Area, since the Town places a surcharge on water connections and user charges for customers located beyond its present borders, annexations by Dayton will have the effect of substantially reducing the cost of water service to customers in that area.<sup>29</sup>

Sewerage. The Town of Dayton operates a sewage collection system which presently serves 369 connections, with 12 being located in the Designated Area.<sup>30</sup> The sewage collected by the Town's system is treated by the Harrisonburg - Rockingham Regional Sewer Authority (HRRSA) treatment plant located near the Town of Mount Crawford. Dayton, which is a member of the HRRSA, shares treatment allocation at the plant with the City of Harrisonburg, Rockingham County, and the Town of Bridgewater.<sup>31</sup> Dayton currently discharges an average of 0.72 MGD of

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water line which terminates in the extreme northern portion of that area at the City's pumping station at Silver Lake. (Town-County Supplement, Item 17.)

<sup>29</sup>Town-County Submission, Tab 14; and Town-County Supplement, Item 2. The Town places a 100% surcharge on its connection fees and water rates for 43 of the 54 nonresident customers. The remaining 11 nonresident water customers also receive municipal sewage collection services from Dayton and are subject to a 40% surcharge for their combined water and sewer utility service. The proposed agreement, however, calls for the Town, simultaneously with its first annexation, to reduce water rates for all its customers located within the Designated Area so that the rates are the same as those charged to the residents of Dayton. (See Proposed Agreement Defining Annexation Rights, Sec. 4.)

<sup>30</sup>Town-County Submission, Tab 14. According to a house-to-house census conducted by the Town, approximately 136 households in the Designated Area are served by individual septic tanks, and one residence and one business have neither public sewage service nor a septic tank. (Ibid., Tab 11; and Town-County Supplement, Item 15.)

<sup>31</sup>Town-County Submission, Tab 14. The rated capacity of the HRRSA treatment plant is 8.0 MGD. In 1988 the total average daily flow treated at the plant was 6.6 MGD. Under the terms of the agreement governing the operation of the HRRSA facility, Rockingham County is entitled to receive 26% of the plant's treatment capacity. The remaining 74%, or approximately 5.9 MGD, of the plant's treatment capacity is unallocated and is available for use by the Towns of Dayton

effluent to the HRRSA plant for treatment.<sup>32</sup>

As in the case of water service, the Town places a surcharge on sewage connection and user charges for customers located beyond its present boundaries.<sup>33</sup> Thus, annexation will substantially reduce the cost of sewerage service to all residents and businesses connected to the system in the Designated Area.<sup>34</sup>

In the Commission's judgment, the areas annexed to Dayton under the terms of the proposed agreement will benefit from the future extension of Town collection lines and from the reduction in the cost of sewerage services. The Town has both the capability and willingness to meet the prospective sewerage needs of the areas annexed.

Solid Waste. The Town of Dayton offers its residents and commercial concerns solid waste collection services on a twice-weekly basis.<sup>35</sup> The cost of this public service is borne by general tax receipts and is not supported by user charges. Dayton also provides

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and Bridgewater and the City of Harrisonburg. (Town-County Supplement, Item 7.) For the year ending June 30, 1989, Dayton utilized 11.7% of the plant's total capacity.

<sup>32</sup>Of the amount delivered by the Town to the HRRSA treatment plant (0.72 MGD), approximately 97% emanated from Rocco Turkeys, Inc.

<sup>33</sup>All but one of the Town's sewer customers receive municipal water service from Dayton and are subject to the 40% surcharge. The sole customer receiving only sewage collection service from the Town is assessed a 100% surcharge. (Town-County Supplement, Item 2.)

<sup>34</sup>The proposed agreement requires Dayton, upon initiation of its first annexation, to reduce sewer rates for its customers located in the Designated Area so that the rates are the same as charged to the residents of the Town. (See Proposed Agreement Defining Annexation Rights, Sec. 4.)

<sup>35</sup>Town-County Submission, Tab 14; and Town-County Supplement, Item 12. Rocco Turkeys, Inc. utilizes the services of a private collection contractor due to the volume and nature of the waste generated by its industrial operation.



those residents of the Designated Area who live adjacent to the Town's western boundary solid waste collection service on a fee basis.<sup>36</sup> Residents and business firms in the Designated Area not served by the Town must dispose of their waste in containers located at various sites in the County or contract with private concerns for the collection and disposal of their refuse.<sup>37</sup>

As the areas adjacent to Dayton grow in population and commercial activity, the need for public solid waste collection services will increase accordingly. The extension of Town's services to areas annexed will result not only in the elimination of monthly contractor charges for annexed residents, it should also promote the increased utilization of regular refuse collection services within those areas. Clearly, the Town can and should bear responsibility for the provision of this public service in the Designated Area.

Law Enforcement. Law enforcement services in Dayton are provided by the Town's police department, which is staffed by two full-time officers, a police chief, and one additional officer.<sup>38</sup> Each of these officers is assigned patrol responsibility, with the duty shifts structured so that the Town is regularly patrolled during most hours of the day.<sup>39</sup>

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<sup>36</sup>William T. Sheppard, III, Town Superintendent, Town of Dayton, communication with staff of Commission on Local Government, Dec. 5, 1989. Nonresidents pay \$10 a month for Town solid waste collection services. The Town disposes its refuse in a sanitary landfill owned by Rockingham County without charge to the municipality.

<sup>37</sup>There are no County-owned solid waste disposal containers located in the Designated Area. (Ibid.)

<sup>38</sup>Town-County Submissions, Tab 14. The police department also employs a part-time dispatcher. Town police officers have available one vehicle to assist in their law enforcement duties.

<sup>39</sup>Town police officers work 40 hours a week and employ split and staggered shifts to ensure law enforcement coverage during periods when crimes are likely to occur. (Ibid., Tab 26.)

The Rockingham County Sheriff's Department, which maintains its headquarters in the City of Harrisonburg, assists the Town in meeting its law enforcement needs. Sheriff deputies regularly patrol within Dayton during the periods when the Town's police officers are not on duty.<sup>40</sup> Further, the County provides dispatch services and jail facilities for the Town as needed.

The Commission has no knowledge of any extraordinary law enforcement problems in the areas subject to annexation under the terms of the proposed agreement. The incorporation of those areas into the Town should not add substantially to the law enforcement burden of Dayton's police department.

Streetlighting. The Town of Dayton has a policy of operating and maintaining at public expense streetlights where such are deemed appropriate for the public welfare. There are currently 109 publicly funded streetlights within the Town's corporate limits.<sup>41</sup> Dayton accepts requests for additional streetlights from residents, and if such requests are considered meritorious, the lights are installed by Virginia Power Company and subsequently operated at Town expense.<sup>42</sup>

Streetlighting can be a factor in crime prevention, the reduction of traffic related accidents, and the enhancement of public areas. The extension of the Town's policy of providing this service at municipal expense to areas annexed under the proposed agreement will beneficially serve such areas and their residents.

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<sup>40</sup>Sheppard, communication with staff of Commission on Local Government, Dec. 5, 1989. During off-duty periods, emergency calls placed to the Town's police department are automatically forwarded to the County's Sheriff's Department.

<sup>41</sup>Town-County Submission, Tab 14.

<sup>42</sup>Town-County Supplement, Item 11.

### Summary

Under the terms of the proposed agreement, the Town of Dayton will be permitted to enlarge its present boundaries through the use of a simplified annexation procedure. While the Town does not propose to exercise this prerogative immediately following the adoption of the agreement by the parties, the annexation authority bestowed by the agreement will provide Dayton with an opportunity for future economic growth. This authority will permit the Town to share appropriately in the growth of its area and will provide it with the resources to extend its services to areas of need. From our perspective, the proposed agreement does allow an equitable sharing of both the area's resources and liabilities.

### INTEREST OF THE COMMUNITY AT LARGE

The third criterion prescribed by statute for Commission consideration in reviewing an agreement defining a town's annexation rights is whether such an agreement is in the "best interest of the community at large."<sup>43</sup> As indicated previously, the Commission considers the proposed Town of Dayton - Rockingham 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 relevant to this criterion and which merit comment in this report.

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<sup>43</sup>Sec. 15.1-1058.2, Code of Va.

### Relinquishment of Authority to Seek City Status

A principal element of the proposed agreement calls for the Town of Dayton to relinquish permanently its authority to seek independent city status. To be sure, the Town does not have the requisite population (5,000) at this time to be eligible for city status, nor will any annexation under the terms of the proposed agreement result in Dayton's immediately reaching such a population threshold. However, growth and development in and around Dayton could make such a population level for the Town a reality at some point in the future. If the Town of Dayton were to exercise at a later date its current legal prerogative to seek city status, such an event would remove totally the Town's population and tax resources from County authority, with the consequence that remaining County residents would be confronted with bearing a greater local tax burden for the provision of public services. With the adoption of the proposed agreement, the Town commits itself to remaining permanently a part of Rockingham County and supporting with its people and resources the needs of the County generally. Unless a variance in political values and service needs create irreconcilable differences, the best interest of the community at large is served by Dayton remaining a constituent element of Rockingham County.

### Simplification of Annexation Process

The proposed Town of Dayton - Rockingham County agreement will enable the growth of the Town by a simplified process which avoids the prospect of costly adversarial annexation proceedings. While the State's traditional annexation process has many commendable features, the resolution of cases by that procedure can be costly in terms of legal fees, consultants' charges, administrative time, and other expenses incidental to litigation. Besides such tangible costs, contested annexation cases have often resulted in strained interlocal relations which can inhibit cooperative efforts and collaboration on mutual problems and long-range planning. The proposed agreement will

permit the growth of Dayton in a simple, nonadversarial manner with a minimum of attendant costs.<sup>44</sup> This provision in the proposed agreement can serve the best interest of the community at large.

#### Economic Development of the Dayton Area

The proposed agreement can facilitate the growth of the Town of Dayton and provide that municipality with additional fiscal resources which can be used to improve its public services. The Town's increased capability for the provision of public services can be a positive factor in supporting desirable development in the area. Any such development which does occur in areas annexed will benefit both the Town and Rockingham 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 several provisions designed to protect agricultural properties.<sup>45</sup> First, the agreement states:

The Town has no desire to 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, be reasonably excluded therefrom.

While this provision would allow the incidental annexation of agricultural properties which might be embraced by areas appropriate for annexation, it is intended to prevent any large and indiscriminate

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<sup>44</sup>The present language of the agreement precludes the Town from using the traditional annexation process under Article 1, Chapter 25, Title 15.1, Code of Va. until all of the Designated Area is annexed by Dayton. The proposed agreement does not, however, restrict the Town's authority under Section 15.1-1034(B), Code of Va. to accept or reject such petition annexations affecting territory beyond the Designated Area. (See Proposed Agreement Defining Annexation Rights, Sec. 8.)

<sup>45</sup>Proposed Agreement Defining Annexation Rights, Sec. 6.

incorporation of such properties into Dayton. Further, the proposed agreement commits the Town to protecting agricultural operations in areas annexed through the use of zoning and the adoption of use value assessment.<sup>46</sup> Furthermore, the Town states in the proposed agreement that it does not intend to implement any procedures which would place "undue restrictions or hardships" on agricultural properties which are annexed. These various provisions constitute, in the aggregate, a strong commitment by the Town to protect and sustain agricultural properties in the Designated Area.

The Commission recognizes the State's strong concern for the preservation of agricultural properties. In our judgment, the provisions of the proposed agreement concerning the protection of agricultural operations to be fully consistent with the best interest of the community at large.

#### FINDINGS

As this Commission has noted previously, agreements defining a town's annexation rights are significant documents containing major grants and concessions of legal authority by the two jurisdictions which are parties to them. Accordingly, the proposed Town of Dayton - Rockingham County agreement has merited and received careful review by this body.


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<sup>46</sup>The Commission notes that the Town of Dayton's zoning ordinance contains provisions for two agricultural zones which are designed to permit farming and other related activities. Neither zone allows residential subdivisions as permitted or special exception uses. Further, the Town's A-2 Agricultural District is designed exclusively for the protection of agricultural and forestal uses. (See Town of Dayton, Charter and Code of Ordinances, Title 9, Chapt. 11, 12.) Moreover, a provision in the Town's zoning ordinance permits property annexed to Dayton to continue to be subject to the County's zoning classifications and regulations as such territory was subject at the time of annexation until rezoned by the Town. (See Ibid., Chapt. 2.) Thus, property in the Designated Area zoned by Rockingham County for agricultural uses and subsequently annexed by the Town would retain its agricultural zoning classification following incorporation into Dayton.


As a result of our review, this Commission finds that the proposed agreement appropriately provides concurrently for the orderly and regular growth of the Town of Dayton and Rockingham County, that it facilitates an equitable sharing of the area's public resources and liabilities, and that it is in the best interest of the community at large. Based on such findings, we report the proposed agreement "favorably."

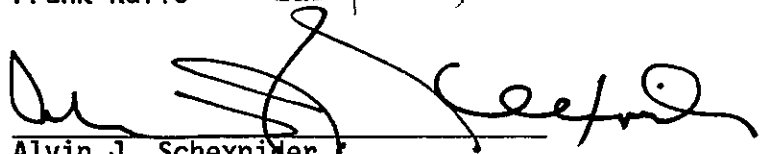
Respectfully submitted,

  
Harold S. Atkinson, Chairman

  
William S. Hubbard, Vice Chairman

  
Mary Sherwood Holt

  
Frank Raflo

  
Alvin J. Schexnider



## APPENDIX A

### AGREEMENT DEFINING ANNEXATION RIGHTS

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 1989, between the Town of Dayton, a municipal corporation of the Commonwealth of Virginia (the "town") and the County of Rockingham, Virginia (the "county").

#### **PREAMBLE:**

- A. The town and the county desire to enter into an agreement defining the town's future annexation rights;
- B. The town has completed several feasibility studies concerning annexation and has reviewed the Comprehensive Land Use Plan of Rockingham County which promotes growth in and around the incorporated towns of the county;
- C. The town desires to have the right to annex the land described on the attached exhibit at any time in conformity with this agreement; and
- D. The town is willing to renounce permanently its right to become a city and to enter into an agreement with the county providing for the regular and orderly growth of the town and the county in order to effectuate and carry out the goals and purposes stated in the town's and county's Comprehensive Land Use Plans.

#### **THEREFORE, IT IS AGREED**

1. Renunciation of City Status. The town permanently renounces its right to become a city, as provided by § 15.1-1058.1 of the Code of Virginia, 1950, as amended, such renunciation to become effective simultaneously with the execution of this agreement.
2. Right to Annex "Designated Land." The area described on the plat attached to this agreement is the "designated land." The town shall have the right to annex all or any

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

3. No Reimbursement of Revenues. Each party shall be entitled to keep whatever revenues flow to it by reason of any annexations, without any reimbursement of revenues by the town to the county. This provision is subject to the terms of the joint water agreement among the county, the town, and the Town of Bridgewater, dated April 11, 1983.
4. Equalization of Utility Charges. The town agrees that simultaneously with its first annexation it will equalize the rates it charges for water and sewer customers outside of its boundaries but included in the designated land so that the rates are the same as those charged within its corporate boundaries.
5. Water, Sewer and Other Municipal Services in Annexed Areas. The town commits

itself to extend water and sewer services into any annexed area to the property lines of all property owners, including residential, commercial and industrial, in accordance with the existing policies of the town; such extension of utility services to be operational within five years from the effective date of each annexation if the same are needed or if they are requested by the property owners. Other municipal services, exclusive of water and sewer, will be extended by the town into annexed areas on the effective date of each annexation. All such services will be at the same level and quality as are available generally within the entire town.

6. Protection for Agricultural Land. The town has no desire to 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, be reasonably excluded therefrom. The town commits that it will, as soon as reasonably possible, protect existing farmlands within any annexed area through the use of zoning and land value assessment. The town states its intention to allow the continued agricultural use of any farmland which it annexes; and the town further states it does not propose to implement any procedures which will place undue restrictions or hardships on agricultural land.
7. Commitments to Serve Needs of "Designated Land." Although the town does not commit itself to annex any of the designated land, it does intend to consider requests for annexation and the needs therefor and the feasibility thereof within such areas from time to time. The goal of both the town and the county is to provide for orderly development of such land and to serve the needs of the area as and when they arise. County pledges that as to any unannexed portions of the designated land that it will consult the town before approving subdivisions and rezoning. The county's obligation to consult shall be complied with if town is given 20 days to comment on

any final subdivision plat. As to zoning, county shall give the written notice to the town of the public hearing date and town shall have 30 days after receipt of such notice to provide its written comments to the county. The right to make such changes prior to annexation is reserved by county, but town shall be consulted in each instance by county.

8. No Annexation Beyond Designated Land. The town agrees that until all of the designated land is annexed it will not voluntarily seek to annex any other areas. Citizen petitions for annexation shall be processed in accordance with the applicable provisions of the Code of Virginia in effect at the time of the application.

9. Water and Sewer Lines Owned by the County. The parties agree that the town will purchase from the county the water line shown on "Diagram 1" attached to this agreement upon the annexation of the land on which the water line lies. The purchase price shall be calculated as follows:

$$\left( \begin{array}{c} \text{Original cost of the line} \\ + \\ \text{6\% simple interest from} \\ \text{the date it was installed} \end{array} \right) \times \left( \begin{array}{c} \text{Life expectancy of the line less} \\ \text{the years it has been in service} \\ + \\ \text{Life expectancy of the line} \end{array} \right)$$

The town and the county agree that the original cost of the line was \$134,052.27, that the line was installed on May 13, 1981, and that the life expectancy of the line is 50 years.

The purchase price shall be paid within 10 days of the effective date of an annexation of the land on which the water line lies. As used in this section, the term "water line" means all pipe and the easements and appurtenances associated with it. If only a portion of the land on which the water line lies is annexed, the obligations of this section shall be pro-rated accordingly.

Further, if on the effective date of any annexation made under this agreement the

county owns any other water or sewer facilities in the area annexed, the town will purchase (and the county will sell) those facilities in accordance with the principles set forth in this section.

- 10. Sections of Agreement are Severable. In the event any section of this agreement is found to be illegal or unconstitutional by a court of competent jurisdiction, such finding shall apply only to that section or sections and all other provisions shall remain in full force and effect, except that if the town's renunciation of city status is held illegal or unenforceable county shall have the right to withdraw its consent to annexation of any unannexed portions of the designated land and town shall have the right to rescind its agreement under paragraph 4 to equalize utility charges.
- 11. Costs and Attorney's Fees. Each party to this agreement shall pay its own attorney's fees; all other costs of annexation proceedings shall be paid by town.
- 12. Right to Modify or Amend. Town and county reserve the right to modify this agreement by joint consent whenever it is felt the needs of the town and county and of the citizens of each require such modification or amendment.
- 13. Void if No Annexation Within Five Years. This agreement shall become void in the event no annexation ordinance is adopted by the town within five (5) years from the date of the final approval of this agreement by the Commission on Local Government, but after one annexation is effected the agreement shall remain in effect regardless of whether any other areas are annexed by the town.

WITNESS the following signatures and seals.

TOWN OF DAYTON

By \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Recorder

**COUNTY OF ROCKINGHAM**

By \_\_\_\_\_  
Chairman, Board of Supervisors

**ATTEST:**

\_\_\_\_\_  
County Administrator

APPENDIX B

STATISTICAL PROFILE OF THE TOWN OF DAYTON, COUNTY OF ROCKINGHAM  
AND THE AREA COVERED UNDER THE AGREEMENT DEFINING ANNEXATION RIGHTS

	<u>TOWN OF DAYTON</u>	<u>COUNTY OF ROCKINGHAM</u> <sup>1</sup>	<u>DESIGNATED AREA</u>
Population (1988)	960	54,800	402
Land Area (Sq. Mi.)	0.30	853.40	2.20
Total Assessed Values (1988)	\$26,157,473	\$1,802,174,482	N/A
Real Estate Values	\$19,609,930	\$1,400,624,860	\$12,475,300
Personal Property Values	\$ 2,940,540	\$ 161,041,282	\$ 5,380,396
Machinery and Tools Values	\$ 3,012,710	\$ 77,303,250	N/A
Merchants Capital Values	\$ 521,333	\$ 28,173,103	N/A
Public Service Corporation Values	N/A	\$ 81,551,407	N/A
Mobile Home Values	\$ 53,050	\$ 17,133,380	N/A
Farm Equipment Values	\$ 19,910	\$ 36,347,200	N/A
Land Use (Acres) <sup>2</sup>			
Residential	85.4	N/A	127.8
Commercial	5.3	N/A	44.3
Industrial	8.6	N/A	13.3
Public and Semi-Public	29.1	N/A	18.5
Streets or Rights-of-Way	42.1	N/A	N/A
Vacant, Wooded or Agriculture	20.8	N/A	1079.6
Other	0.8	N/A	106.3

NOTES:

N/A = Not Available

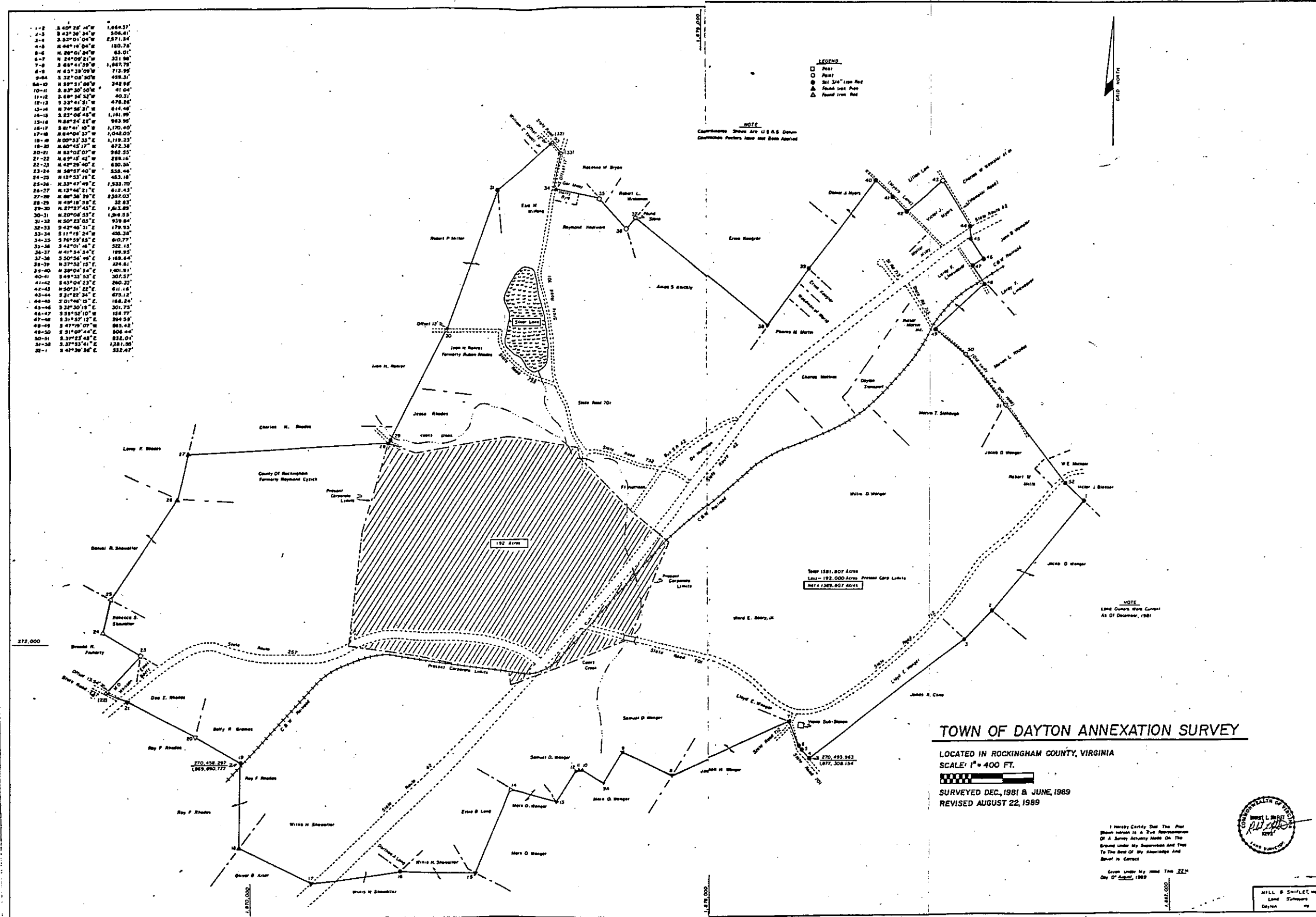
1. Statistics for Rockingham County includes data for the Town of Dayton.
2. Land use statistics for the Town of Dayton were collected in 1981 and for the Designated Area in 1988.

SOURCES:

Town of Dayton - County of Rockingham, Submission to the Commission on Local Government, Sep. 18, 1989.

Town of Dayton - County of Rockingham, Submission to the Commission on Local Government, Supplement, Nov. 2, 1989.

1-2	S 40° 25' 14" W	1,066.37'
1-3	S 43° 36' 34" W	1,006.81'
1-4	S 53° 01' 04" W	2,571.34'
4-8	N 44° 16' 04" W	180.78'
8-8	N 89° 01' 04" W	63.51'
6-7	N 84° 09' 21" W	331.96'
7-8	S 85° 41' 59" W	1,447.78'
8-9	N 83° 38' 09" W	713.95'
9-10	S 22° 08' 50" W	458.31'
10-10	N 89° 51' 06" W	342.86'
10-11	S 83° 30' 50" W	41.04'
11-12	S 88° 34' 32" W	40.21'
12-13	S 33° 41' 51" W	478.85'
13-14	N 74° 56' 37" W	814.46'
14-15	S 23° 06' 48" W	1,161.99'
15-16	N 82° 24' 22" W	963.95'
16-17	S 81° 41' 10" W	1,170.40'
17-18	N 84° 04' 37" W	1,042.05'
18-19	N 00° 53' 33" E	1,119.23'
19-20	N 60° 45' 17" W	612.33'
20-21	N 83° 02' 07" W	962.35'
21-22	N 67° 15' 43" W	289.16'
22-23	N 42° 29' 40" E	650.35'
23-24	N 58° 27' 40" W	555.46'
24-25	N 12° 53' 18" E	483.18'
25-26	N 33° 47' 49" E	1,333.70'
26-27	N 12° 46' 21" E	612.43'
27-28	N 89° 36' 29" E	2,387.03'
28-29	N 49° 18' 38" E	32.83'
29-30	N 27° 27' 45" E	1,612.89'
30-31	N 20° 04' 53" E	1,248.55'
31-32	N 50° 23' 05" E	938.84'
32-33	S 42° 46' 31" E	179.93'
33-34	S 11° 19' 24" W	485.36'
34-35	S 78° 59' 55" E	610.77'
35-36	S 42° 01' 16" E	522.15'
36-37	N 41° 34' 54" E	189.95'
37-38	S 50° 54' 49" E	1,189.44'
38-39	N 37° 52' 15" E	124.81'
39-40	N 38° 04' 34" E	1,401.91'
40-41	S 69° 13' 53" E	307.51'
41-42	S 43° 04' 23" E	280.32'
42-43	N 50° 31' 22" E	611.18'
43-44	S 1° 02' 34" E	673.12'
44-45	S 21° 46' 15" E	188.24'
45-46	S 32° 30' 18" E	301.75'
46-47	S 39° 32' 10" W	188.77'
47-48	S 1° 57' 12" E	204.91'
48-49	S 47° 19' 07" W	863.42'
49-50	S 31° 09' 44" E	806.44'
50-51	S 39° 23' 48" E	812.01'
51-52	S 27° 53' 41" E	1,281.05'
52-1	S 47° 29' 26" E	532.47'



**TOWN OF DAYTON ANNEXATION SURVEY**

LOCATED IN ROCKINGHAM COUNTY, VIRGINIA  
SCALE: 1" = 400 FT.

SURVEYED DEC., 1981 & JUNE, 1989  
REVISED AUGUST 22, 1989

I Herby Certify That The Plot Shown herein is a True Representation of a Survey Actually Made On The Ground Under My Supervision and That To The Best of My Knowledge and Belief is Correct

Given Under My Hand This 22<sup>nd</sup> Day of August, 1989



WILL S. SHIBLEY, No. 12957  
Land Surveyor  
Dayton, VA