

REPORT
ON THE
TOWN OF BERRYVILLE—COUNTY OF CLARKE
AGREEMENT DEFINING ANNEXATION RIGHTS



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

REPORT ON THE
TOWN OF BERRYVILLE - COUNTY OF CLARKE
AGREEMENT DEFINING ANNEXATION RIGHTS

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REPORT ON THE
TOWN OF BERRYVILLE - COUNTY OF CLARKE
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PROCEEDINGS OF THE COMMISSION

On May 4, 1988 the Town of Berryville, with the concurrence of Clarke 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.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 Further, as required by statute, the Town concurrently gave notice of its filing to 16 local governments with which it shared functions, revenue, or tax sources.³

On May 17, 1988 the Commission met with representatives of the Town of Berryville and Clarke County for purposes of making preliminary arrangements for its review of the proposed agreement. At that meeting the Commission recognized the Ketocin Land Company, a partnership

¹R. John Hogan, Town Manager, Town of Berryville, letter of notice to staff of Commission on Local Government, May 4, 1988. The Town's notice was accompanied by a copy of the Agreement Defining Annexation Rights between the Town of Berryville and Clarke County (hereinafter cited as Agreement). The Commission notes that counsel and the administrative staff of the Town and County, subsequent to the Commission's oral presentations and public hearing, have proposed modifications to the agreement. (See Town of Berryville and Clarke County, Proposed Findings of Fact and Conclusions of Law of the Town of Berryville and the County of Clarke, Virginia, Sep. 22, 1988, pp. 5-6.) The Commission's findings and recommendations contained in this report, however, are based on the original agreement which was filed with this body on May 4, 1988.

²Town of Berryville, Documents, Exhibits, and Materials Filed in Support of Agreement Defining Annexation Rights (hereinafter cited as Town Exhibits), May 17, 1988.

³Sec. 15.1-945.7(A), Code of Va.

owning approximately 208 acres of property in the area subject to annexation under the terms of the proposed agreement, as an interested party and accorded it an opportunity to participate in its proceedings.⁴ Consistent with the schedule adopted at that meeting, the Commission toured the Town of Berryville and relevant sections of Clarke County on July 25 and received oral testimony from the parties on July 25-26,

⁴On October 15, 1987 the Kectoctin Land Company filed notice with the Commission of its intent to petition for the annexation to the Town of Berryville of its property located in Clarke County. The Commission, upon receipt of the notice, proceeded to schedule its review of the proposed petition. On November 25, 1987 the Commission received notice from the Town of Berryville that the Berryville Town Council had adopted an ordinance, pursuant to Section 15.1-1034(B), Code of Va., rejecting the annexation petition of the Kectoctin Land Company and requesting that the Commission terminate its review of the proposed annexation. On December 18, 1987 the Commission met with representatives for the Kectoctin Land Company, the Town of Berryville, and Clarke County and determined that since the Town of Berryville had exercised its authority to reject the annexation petition of the Kectoctin Land Company, it would not review the proposed annexation. On January 14, 1988 representatives of the Kectoctin Land Company filed a petition for appeal and motion for declaratory judgment and mandamus in the Circuit Court of Clarke County asserting, in part, that the Commission was required by Section 15.1-945.7 of the Code of Virginia to review the Kectoctin Land Company's petition for annexation and, further, that the ordinance adopted by the Berryville Town Council rejecting the proposed annexation was void because of certain procedural and statutory defects. At the present time, the Circuit Court of Clarke County has not scheduled a hearing on the Kectoctin Land Company's appeal. As an interested party to the Commission's proceedings in this case, on July 1, 1988 representatives for the Kectoctin Land Company filed materials and exhibits in response to the proposed agreement between the Town and Clarke County. [Robert C. Fitzgerald and E. Scott Smalley, Special Counsel, Kectoctin Land Company, Presentations of the Kectoctin Land Company and Alton C. Echols, Jr., Intervening Parties (hereinafter cited as Kectoctin Presentations), July 1, 1988.] In response to a request filed on June 20, 1988, the Commission also recognized Associated Investments Corporation, a partnership owning approximately 37 acres of property in the area subject to annexation under the terms of the proposed agreement, as an interested party and also accorded it an opportunity to participate in its proceedings. Consistent with the schedule previously adopted by the Commission, Associated Investments Corporation filed materials and exhibits in response to the proposed agreement on July 1, 1988. [E. Scott Smalley, Special Counsel, Associated Investments Corporation, Presentations of Associated Investments Corporation, Intervening Party (hereinafter cited as AIC Presentations), July 1, 1988.]

1988.⁵ In addition to its receipt and consideration of materials from the parties, the Commission solicited comment from other potentially affected political subdivisions and the public. Each political subdivision receiving notice of the proposed agreement from the parties was invited by this Commission to submit testimony on the agreement for consideration. Further, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, on the evening of July 25, 1988 in the Town. The public hearing was attended by approximately 90 persons and produced testimony from 28 individuals. In order to receive additional public comment, the Commission agreed to keep open its record for receipt of written submissions through August 25, 1988.

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.⁶ 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 agreements 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

⁵Because of illness, Commissioner Johnston did not participate in the Commission's review of the proposed agreement and, consequently, is not a signatory to this report.

⁶Article 1.1, Chapter 25, Title 15.1, Code of Va.

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, . . .⁷

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.⁸

EVALUATION OF THE AGREEMENT

Briefly stated, the principal provisions of the agreement negotiated by the Town of Berryville and Clarke County would:

1. require the Town to renounce permanently its authority to become a city;

⁷Sec. 15.1-1058.2, Code of Va.

⁸Sec. 15.1-1058.3, Code of Va. 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 unable to reach an agreement with its county on the issue. (See Sec. 15.1-1058.4, Code of Va.)

2. authorize the Town to annex by municipal ordinance a specified area in the County, designated as Area A, as soon as practicable after the execution of the agreement by the parties;
3. authorize the Town to annex additional contiguous property in a specified area covered by the agreement, designated as Area B, at such time as the Town has agreed to provide water and/or sewer services to such property and when the development requiring such utility service has been approved by the County; and
4. require cooperation between the Town and the County on the development and application of land use plans, ordinances, and regulations within all areas covered by the agreement.⁹

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

ORDERLY AND REGULAR GROWTH OF THE TOWN AND COUNTY

In terms of population, the data reveal that both the Town and County experienced growth during the previous decade. Between 1970 and 1980 the population of the Town of Berryville increased from 1,569 to 1,752 persons, or by approximately 11.7%, while that of Clarke County

⁹See Appendix A for the complete text of the proposed Agreement Defining Annexation Rights between the Town of Berryville and Clarke County.

grew from 8,102 to 9,965 persons, or by 23.0%.¹⁰ 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 1980 and 1986 the County's population increased by 3.4%, while the Town's population declined by 7.0%.¹¹ This disparity in population changes indicates that Berryville has failed to share in the population growth of its area in recent years.

With respect to fiscal resources, recent property assessment data reveal that the growth within the Town has been slightly in excess of that experienced by the County generally. Between FY1981-82 and FY1986-87 the total assessed value of property subject to local taxation in the Town increased from \$32.5 million to \$50.7 million, or by 55.7%, while such values in the County overall grew during the same period from \$259.2 million to \$398.5 million, or by 53.7%.¹² While both the Town and the County have a variety of sources of revenue to support their governmental functions, property taxes are by far the largest component of revenue available to support their operations.

In terms of Berryville's prospects for future development, it should be noted that only 48.5 acres, or 9.8% of the Town's total land area, remain vacant. Further, of this total vacant land, approximately 25 acres are situated within the 100-year floodplain, are located on slopes exceeding 20%, or are affected by other natural factors which would restrict their development potential. Consequently, only 23.5 acres, or 4.8% of the Town's total area, are located on vacant land

¹⁰U. 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 the areas covered by the agreement.

¹¹Town Exhibits, p. 27.

¹²Ibid., p. 29. The assessed property values for Clarke County include those for the Towns of Berryville and Boyce.

environmentally suited for development.¹³ It should also be observed, however, that a substantial portion of this acreage is restricted in its development potential due to limited accessibility, locational concerns, or parcel size.¹⁴ Some evidence of the limited development potential of the Town is provided by the fact that there has been no subdivision of property within Berryville in the last five years.¹⁵

Under the terms of the proposed agreement, the Town of Berryville would be permitted to annex Area A immediately and would be eligible to annex subsequently within Area B subject to certain qualifications.¹⁶ The annexation of Area A would bring within the corporate limits of Berryville an area of approximately 0.6 square miles (350 acres)

¹³Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, pp. 2-3. The largest tract of vacant land within the present Town corporate limits is located on the Rosemont Estate, the home of the Byrd family. Although this tract, a portion of which is located in Area A, has been offered for sale, the current property owners are continuing agricultural operations on that property. [Testimony of Hogan, Transcript of Commission Proceedings in Re: Agreement Defining Annexation Rights Between the Town of Berryville and Clarke County (hereinafter cited as Transcript), July 25, 1988, pp. 36-37.]

¹⁴Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, pp. 2-3. Of the net vacant land environmentally suited for development (23.5 acres), approximately 14.5 acres consist of scattered residential lots, many of which lack adequate area and width for residential development.

¹⁵Ibid., p. 9. Between January 1, 1983 and August 31, 1988 there were 223 subdivision lots platted in Clarke County. There was no subdivision of land, however, during that period in the areas covered by the proposed agreement.

¹⁶Under the terms of the proposed agreement, in order for property in Area B to be eligible for annexation the County must approve the zoning, rezoning and final site plan of any development proposed for such property and the Town must agree to the extension of Town water and/or sewer service. (See Agreement, Sec. 3.) According to testimony by Town and County officials, Berryville could annex portions of Area B which do not require the extension of public utility services and County site plan approval. Such areas include property which is zoned for single-family detached dwelling units. (Testimony of Hogan, Transcript, July 25, 1988, pp. 146, 170-171; and testimony of G. Robert Lee, County Administrator, Clarke County, Transcript, July 25, 1988, pp. 191, 245.)

containing a population of approximately 922 persons and assessed property values estimated at \$33.5 million in 1987.¹⁷ The addition of this area to the Town will increase Berryville's population by 56.6% and its assessed property values by 66.1%. Further, the annexation of Area A will also bring within the Town commercial development which has occurred east of the existing corporate limits and three major industrial operations located adjacent to Berryville's current boundary. Furthermore, incorporation of this area into the Town will provide Berryville with approximately 144 acres of vacant land for future development.¹⁸ Finally, the proposed agreement affords the Town of Berryville the opportunity, subject to certain conditions, to annex property in Area B. That area embraces 1.4 square miles of territory (880 acres), containing, as of 1986, approximately 766 acres of undeveloped land.¹⁹ Thus, Areas A and B collectively offer substantial land for future growth by the Town.

With respect to Area B, however, the Commission notes that the proposed agreement places certain constraints on the Town's ability to annex property in that area which could restrict the orderly and regular growth of Berryville. The proposed agreement requires that, prior to the annexation by Berryville of any property in Area B, the Town must receive written consent to the annexation of such property from Clarke County. This written consent will, under the terms of the agreement, be granted only if the proposed development (including rezoning or final

¹⁷Town Exhibits, p. 29.

¹⁸Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, Exh. 1. Approximately 80 acres of the vacant land in Area A is part of the Rosemont Estate. (Testimony of Dr. Raleigh H. Watson, Jr., Member, Clarke County, Board of Supervisors, Transcript, July 25, 1988, p. 125.)

¹⁹Town Exhibits, pp. 26, 27, 29. In 1987 Area B had a population of 80 persons and approximately \$10.2 million in total assessed property values subject to local taxation.

site plans) have been approved by the County.²⁰ Once such approval has been obtained from Clarke County, the Town would be free to annex such property simply by the adoption of a Town ordinance.

While the proposed agreement permits Berryville to annex Area A immediately, thereby providing the Town with additional local tax resources and limited land for future development, the Commission finds that the restrictions contained in the agreement on the Town's future ability to annex territory within Area B could, in application, impede the ability of the Town to share in the orderly and regular growth occurring in the County.

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 commensurate with the contribution each locality makes to the social and economic viability of that area. The following paragraphs consider these factors.

Resources

As indicated in the previous section of this report, the Town of Berryville, contrary to the demographic trend of the County, has experienced a population decline in recent years. Further, while the total property values subject to local taxation in the Town have increased between FY1981-82 and FY1986-87 by 55.1%, the revenues

²⁰See Agreement, Sec. 3. The Town is also required to "agree" to extend water and/or sewer service to any development in the area before it may be annexed.

generated by those tax sources have grown by only 35.8%.²¹ Although the Town relies on additional sources of revenue to support its municipal services and functions, local property taxes represent the largest component of revenue available to fund its general governmental activities. Furthermore, the evidence indicates that in recent years the Town of Berryville's general fund revenues have been insufficient to cover its expenses. Town officials have reported that revenue from the operation of its public utility systems routinely have been used to subsidize general governmental services.²² In addition, the Town has been required to draw on its reserve balances for the past two fiscal years in order to eliminate deficits in its general fund.²³

With respect to the issue of an equitable sharing of resources and liabilities, it is significant to note that the Town has contributed substantially to the economic development of its general area through the extension of public utility services to businesses and residents beyond its boundaries. In this regard, data indicate that Area A contains two major industries, employing collectively approximately 500 persons (51.1% of the County's total 1987 manufacturing employment),

²¹E. Scott Smalley, William A. Johnston, and Robert C. Fitzgerald, Special Counsel, Kectoctin Land Company, Petition of Kectoctin Land Company for the Annexation of Area in Clarke County to the Town of Berryville Pursuant to Section 15.1-1034, Code of Virginia, Oct. 15, 1988, Exh. K; and Town Exhibits, Exh. 8. Between FY1981-82 and FY1986-87 the Town's total general fund revenues increased by 41.2%. During that same period the County's property tax receipts increased by 57.3%, and its total general fund revenues increased by 70.5%. (Petition of Kectoctin Land Company for the Annexation of Area in Clarke County to the Town of Berryville Pursuant to Section 15.1-1034, Code of Virginia, Exh. J-1; and County of Clarke, Financial Report, Year Ended June 30, 1987, Oct. 30, 1987, Schedule 3.)

²²Testimony of Hogan, Transcript, July 25, 1988, p. 42.

²³Town Exhibits, p. 31. For the fiscal year ending June 30, 1987, the Town of Berryville had a deficit in its general fund of approximately \$99,000. (Ibid., Exh. 7.)

which are served by Town water and sewerage services.²⁴ Moreover, as the succeeding sections of this report will indicate, Town utility services are found extensively in the remainder of Area A. Thus, under the terms of the proposed agreement, Berryville would be permitted to annex territory whose existing development has been facilitated by Town services.

The proposed agreement would permit the Town of Berryville to annex immediately an area possessing local assessed property values sufficient to yield, based on current Town tax rates, approximately \$143,000 of additional revenues.²⁵ Thus, by means of such annexation, the Town's property tax receipts would be increased by approximately 66%. Further, Area A provides Berryville with a modest amount of vacant land for development which should result in further increases in the fiscal resources available to the Town. Thus, the annexation of Area A, as well as the prospective annexation of property in Area B, will promote an equitable sharing of the resources of the general community.

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 rolls. Thus, Clarke County's major tax sources will be unaffected by annexations by the Town of Berryville. To be sure, town annexations do constrict some of a county's more modest local tax sources (e. g., automobile license taxes, consumer utility taxes, and sales taxes), but no significant loss of revenue to Clarke County is anticipated as a result of annexations authorized by the proposed agreement.²⁶ Moreover,

²⁴Virginia Employment Commission, Special Area Listing for Quarter 1-87--Clarke County.

²⁵Town Exhibits, p. 32. In addition, the Town would receive approximately \$28,000 in nonproperty tax revenues and an undetermined amount of revenue from business, professional, and occupational license taxes from Area A.

²⁶Estimates indicate that the County would experience a reduction of \$28,484 in local revenue as a result of the annexation of Area A by Berryville. (Ibid.)

any development facilitated by the extension of Berryville's services to annexed areas will redound to the fiscal benefit of Clarke County. On the basis of these considerations, the Commission concludes that timely annexations under the proposed agreement can provide the Town of Berryville and Clarke County with an equitable sharing of the area's resources.

Liabilities for Services

The Town of Berryville plays a significant role in the provision of public services in Clarke County. The Town not only offers its residents a significant array of urban services, it also extends utility services to commercial firms and residents beyond its boundaries. Annexation by the Town under the terms of the proposed agreement will, however, place additional service responsibilities upon Berryville. While this expanded responsibility for urban services constitutes a liability to be borne by the Town, the extension of such services to areas of need represents, at the same time, a consequence of the agreement which is in the general interest of the community at large. The following sections of this report will consider the Town's capacity to meet the service needs of the areas subject to annexation under the proposed agreement.

Water. The Town of Berryville owns and operates a public water system which serves the Town and substantially all of Area A. The Town's water treatment plant, according to its rated capacity, can receive and treat 0.86 million gallons per day (MGD) of raw water from the Shenandoah River. Since the Town's present water distribution system requires approximately 0.49 MGD, the system current retains an unused reserve of 0.37 MGD.²⁷ In terms of storage capacity, Berryville

²⁷Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, p. 12. The Town's water treatment plant was constructed in 1984.

has two storage tanks which collectively hold 3.25 million gallons of treated water, or in excess of six days' demand.²⁸

With respect to the Town's capacity to serve the areas covered by the proposed agreement, we note that Berryville's water system currently serves approximately 1,000 connections, with more than 400 being located in Area A.²⁹ In view of the extent of water service already provided that area by the Town and the excess capacity in the municipal system, we believe that Berryville is capable of meeting the needs of the general area for the foreseeable future. Moreover, it is important to observe that, at the present time, the Town is the only source of treated water available to serve residents and businesses in the Berryville area.³⁰

Sewage Treatment. The Town's sewage treatment plant, which has a rated capacity of 0.43 MGD, was constructed in 1958 and is presently being upgraded. The plant currently treats an average daily flow of 0.38 MGD, leaving an excess capacity of approximately 0.05 MGD.³¹ Although the improvements currently being made to the plant will enhance its treatment process, those improvements will have the effect of

²⁸Ibid., p. 13

²⁹According to evidence presented by the Town, all of the residents of Area A are connected to Berryville's public water system. The Town also serves one water connection in Area B, as well as a number of connections located west of the Town outside the areas covered by the agreement. These latter connections primarily serve public facilities such as the County's high school and park. (Ibid., p. 14; and testimony of Hogan, Transcript, July 25, 1988, pp. 46, 55.)

³⁰The Clarke County Sanitary Authority operates a small water system, located approximately five miles south of Berryville, serving the Town of Boyce and the unincorporated village of Millwood. This system serves approximately 160 connections. (County of Clarke, Comprehensive Plan of Clarke County, Vol. I, Mar. 15, 1988, p. 32.)

³¹Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, p. 10.

reducing its rated capacity to 0.41 MGD and, thus, reducing the excess capacity in that plant to approximately 0.03 MGD.³²

Concurrent with improvements to the treatment plant, the Town is also upgrading its sewage collection system in order to reduce the infiltration of groundwater and the inflow of stormwater into the lines.³³ Town officials have indicated that the improvements to the collection lines currently being made should make the treatment system more efficient and provide additional capacity at the sewage treatment plant, thereby offsetting the reduction in rated capacity. The amount of additional capacity which would be gained through the reduction of extraneous water entering the collection lines, however, cannot be determined until portions of the reconstructed system are fully operational.

The Town's present collection system serves approximately 570 connections within the Town's corporate limits, as well as approximately 380 connections in Area A.³⁴ The latter connections serve approximately 90% of the population in Area A. While this Commission recognizes that the Town's sewage treatment plant currently has only a modest capacity

³²The U. S. Environmental Protection Agency and the Virginia Water Control Board have provided 55% of the \$580,000 cost of the upgrading of the wastewater treatment facility, with the balance of the cost coming from a Town bond issue. (Hogan, communication with staff of Commission on Local Government, Oct. 17, 1988.) Improvements to that facility are expected to be completed by mid-November 1988.

³³In conjunction with the upgrade of the sewage treatment plant, the Town is also undertaking a \$1.2 million project to improve its sewage collection system. That project is being financed by a \$550,000 grant from the U. S. Environmental Protection Agency and the Virginia Water Control Board, with the remaining \$650,000 being derived from Town bond proceeds. (Hogan, communication with staff of Commission on Local Government, Oct. 17, 1988.) The improvements include an additional pumping station, construction of new interceptor lines, enlargement of existing lines, and manhole repairs and replacement. (Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, pp. 10-11.)

³⁴Ibid., p. 12.

to treat additional effluent, Berryville's responsibility for sewage treatment will be limited under the proposed agreement to its ability to handle such. Under the proposed agreement Berryville cannot annex property in Area B until it agrees to extend sewerage service to such property. Thus, the agreement regulates Berryville's responsibility for such service commensurate with its treatment capacity. By the timely development of its system, Berryville, which operates the only central sewerage system serving the general community, can and should serve the areas covered by the proposed agreement.³⁵

Solid Waste. The Town of Berryville provides solid waste collection services to its residents on a weekly basis and to commercial establishments twice a week through contract with a private collector.³⁶ The cost of this service is borne by the Town's general fund and is not supported by user charges. Berryville does not provide any solid waste collection service to its industrial firms, but these businesses may contract directly with private contractors for such service. In terms of disposal of refuse, the Town uses the regional landfill facility which is jointly operated by Clarke and Frederick Counties and the City of Winchester.³⁷

Clarke County, like many of the Commonwealth's counties, does not provide any solid waste collection services to individual residences or business establishments. The County does offer a bulk container

³⁵The Commission observes that the provision of the proposed agreement requiring the Town to agree to extend sewerage to property in Area B prior to their annexation and the limited excess capacity in its sewage treatment plant could restrict the Town's future ability to annex territory in that area.

³⁶Ibid., pp. 14-15.

³⁷The Town is not a party to the tripartite agreement. The solid waste disposal contractor serving Berryville is charged a tonnage fee for use of the landfill. (Hogan, communication with staff of Commission on Local Government, Oct. 17, 1988.)

service, with "green boxes" being situated throughout the County for solid waste disposal. None of these "green boxes," however, are presently located in Areas A or B. County residents also can contract on an individual basis with private operators for refuse collection services.³⁸

The developed areas adjacent to Berryville will benefit, in our judgment, from the solid waste collection services provided by the Town. The extension of the Town's services to the areas annexed will result not only in the elimination of monthly contractor charges for the annexed residents, it should also promote increased utilization of regular refuse collection services within those areas. Since Area A is estimated to contain approximately 380 residential and business customers, the aggregate benefit to that area from the extension of this Town service should be substantial.³⁹ Clearly, the Town can and should bear responsibility for the provision of this public service in the areas covered by the agreement.

Law Enforcement. Law enforcement services in the Town of Berryville are provided by the Town's police department, which is staffed by four full-time officers.⁴⁰ Each of these officers is assigned patrol responsibility, with the duty shifts of the police department structured so that the Town is regularly patrolled during

³⁸Hogan, letter to staff of Commission on Local Government, Sep. 6, 1988, p. 16. The private solid waste collection firm which serves the residents of the Town of Berryville by contract also provides collection services to residents in the areas proposed for annexation on an individual basis.

³⁹Hogan, communication with staff of Commission on Local Government, Oct. 17, 1988.

⁴⁰Hogan, letter to staff of Commission on Local Government, Oct. 17, 1988.

most of the day.⁴¹ 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 Clarke County Sheriff's Department.⁴²

The size of Berryville's police department is sufficient to provide that municipality with one sworn officer for each 438 Town residents. The data indicate that during 1988 each patrol officer was responsible for an average of approximately 80 "calls for service," reflecting only a modest requirement for law enforcement services.⁴³ The Commission notes, however, that 1987 data (the most recent available) disclose that Berryville had an incidence of major crime nearly twice that of the unincorporated portion of the County.⁴⁴ This differential in the incidence of major crime is due, it is reasonable to conclude, to the concentration of development and commercial activity in Berryville. The further development of the areas adjacent to the Town can be expected to result in a need for more intensive law enforcement services which can, in our judgment, be met by the Town.

⁴¹Ibid. Although the Town police do not patrol on a regular basis between the hours of 2:00 a.m. and 8:00 a.m., an officer is on call during that period. The patrolling strategy of the Town's police department has resulted in an average response time of two minutes for emergency calls and five minutes for nonemergency calls.

⁴²Ibid.

⁴³Ibid., p. 18. The term "calls for service" in the law enforcement context includes everything from response to major crimes, which constitute a small portion of the total demands on law enforcement agencies, to noncriminal requests for assistance. "Calls for service" more adequately measures the total activity of a locality's law enforcement efforts than do published crime rates which only reflect incidents of major crime. The category "major crime" consists of murder, non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. (Virginia Department of State Police, Crime in Virginia, 1987.)

⁴⁴Crime in Virginia, 1987, p. 46. In 1987 the Town of Berryville experienced an incidence of major crime equivalent to 22.5 incidents per thousand residents, while the comparable statistic for the unincorporated portion of Clarke County was only 12.4.

It is significant to note that the Berryville police department has established an organized crime prevention program and has assigned its police sergeant, on a part-time basis, to direct its activities. This crime prevention program consists primarily of instructional classes focusing on home security and child safety.⁴⁵ As stated in previous reports, the Commission considers crime prevention to be an important component of a community's law enforcement services.

While the Commission has no knowledge of any major law enforcement problems in the areas to be annexed under the terms of the proposed agreement, the addition of these areas to the Town will add to the responsibilities placed upon Berryville's police department. In order to address these additional responsibilities, the Town of Berryville proposes to hire and equip one additional law enforcement officer following the annexation of Area A.⁴⁶ The extension of the Town's law enforcement and prevention services to the areas annexed should be of benefit to its residents and businesses.

Streetlighting. Another urban service provided by the Town of Berryville is the installation, operation, and maintenance of streetlights. Within the Town's present corporate limits there are currently 226 publicly funded streetlights.⁴⁷ The Town accepts requests for additional streetlights from its citizens, and if such are deemed appropriate and necessary for public safety and welfare, the lights are installed and operated at public expense.

⁴⁵Ibid., pp. 18-19. In recent years the Town's police department has attempted to initiate neighborhood watch programs and security surveys, but these efforts have not generated sufficient public interest to support their continuance.

⁴⁶Hogan, letter to staff of the Commission on Local Government, Sep. 6, 1988, p. 20.

⁴⁷Ibid., p. 24.

Although Clarke County does fund the operation of streetlights at public schools and some other public facilities, there is no policy for the provision of streetlights in densely developed areas or the County generally. Within the areas eligible for annexation under the terms of the proposed agreement there are only privately operated streetlights. The Town proposes to assume operational cost of those streetlights upon annexation.⁴⁸ Further, the extension of the Town's policies regarding the installation and operation of streetlights should benefit the residents of the annexed areas, and such benefit should increase with the future development of those areas.

Summary

The annexation of Area A will provide the Town of Berryville with an immediate infusion of additional revenues and a modest amount of vacant land for future development. Since the Town presently provides water and sewerage service to virtually all of Area A, the annexation of that area will not present Berryville with major additional public utility service liabilities. Thus, the annexation of Area A should permit the Town to improve its fiscal condition by rectifying the present imbalance in its revenues and public commitments.

While the proposed agreement authorizes the Town to annex additional property in Area B which would enable Berryville to continue to share in the growth of its area, conditions established in the agreement could restrict that opportunity.

INTEREST OF THE COMMUNITY AT LARGE

In reviewing a proposed agreement defining a town's annexation rights, the Commission is also directed by the Code of Virginia to consider whether such an agreement is in "the best interest of the

⁴⁸Ibid., p. 25.

community at large."⁴⁹ In the preceding sections of this report the Commission has considered whether the proposed agreement provides for the orderly and regular growth of the Town and County and whether it promotes an equitable sharing of resources and liabilities. Affirmative responses to those questions are clearly prerequisites to a determination that the proposed agreement is in "the best interest of the community at large." There are, however, additional aspects of the agreement which are relative to this criterion and which merit comment in this report.

Relinquishment of Authority to Seek City Status

A significant element of the proposed agreement is the provision which calls for the Town of Berryville to relinquish in perpetuity its authority to seek city status. To be sure, the Town does not at this time have the requisite population (5,000) to be eligible to seek city status, nor will any annexation presently foreseeable under the terms of the proposed agreement result in Berryville's reaching such a population threshold. Future economic and demographic conditions, however, might significantly alter that situation. If the Town were to exercise its present statutory prerogative to seek city status at some future date, it would remove totally its population and tax resources from County authority, with the consequences that the remaining residents of Clarke County would be confronted with bearing 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 Clarke County and supporting with its residents and resources the needs of the County generally. Unless a variance of political values and service needs creates irreconcilable differences, the best interest of the community at large is served, from our perspective, by the Town of Berryville remaining a part of Clarke County.

⁴⁹Sec. 15.1-1058.2, Code of Va.

Simplification of Annexation Process

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

Economic Development of the Berryville Area

The proposed agreement can facilitate the growth of the Town of Berryville and provide that municipality with additional fiscal resources which can be used to improve and extend 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 the annexed areas will benefit both the Town and Clarke County. This ramification of the proposed agreement is clearly in the best interest of the general community.

Cooperative Planning Efforts

The proposed agreement contains provisions which commit the Town and County to a coordinated and cooperative planning and land use regulatory program for managing future growth in the areas adjacent to Berryville. This cooperative planning and regulatory effort, which was initiated prior to submission of the proposed agreement to this

Commission for review, is intended to result in the joint adoption of a future land use plan, zoning and subdivision regulations, and site plan review requirements for Areas A and B by the planning commissions and governing bodies of the two jurisdictions.⁵⁰ Further, under the terms of the proposed agreement, all future land use changes proposed for those portions of Area B which have not been annexed by the Town will be subject to a joint review by the Town and County planning commissions.⁵¹

Moreover, under the terms of the proposed agreement Clarke County will not approve any zoning or rezoning requests or development proposals affecting property in the unincorporated portion of Area B until the Town has advised the County of the impact of such action on the Town's utility systems and on the drainage problems within the municipality. These efforts on the part of the Town of Berryville and Clarke County to plan in a collaborative manner for managing future development of the areas adjacent to the Town of Berryville are clearly in the best interest of the community at large.

OBJECTIONS RAISED BY INTERVENORS

During the Commission's review of the proposed agreement two intervenors owning property in Area B, the Kectoctin Land Company (KLC)

⁵⁰See Agreement, Sec. 6.

⁵¹Under the terms of the proposed agreement any applications in Area B for rezoning, special or conditional use permits, site development plan approval, change or extension of nonconforming uses, or any other use situations not permitted by right pursuant to the County's zoning regulations shall be referred by the County Planning Administrator to the County Planning Commission and Berryville Planning Commission for joint review. [See Agreement, Sec. 6 (b).] Further, the County will not approve any zoning or rezoning requests or any proposals for development in Area B until the Town has provided the County Planning Commission with comments on the impact of such land development activity on the Town's stormwater drainage controls and public utilities. [See Agreement, Sec. 6 (c).] In order to enforce the jointly developed ordinances and to assist in the oversight of areas annexed, the Town has proposed to establish a planning department and hire a planner. (Testimony of Hogan, Transcript, July 25, 1988, pp. 47, 66-67.)

and Associated Investments Corporations (AIC), presented evidence contending that the proposed agreement failed to meet the statutory requirements for agreements defining annexation rights. Specifically, both intervenors asserted that the limitations placed by the agreement on the Town's ability to annex territory in Area B did not assure the orderly and regular growth of the Town and County together. Further, the KLC presented evidence to support the contention that the exclusion of its property from Area A (the area subject to immediate annexation by the Town) denied Berryville an equitable sharing of the area's resources and liabilities. Representatives of both the KLC and the AIC requested the Commission to recommend to the Town and County that the proposed agreement be amended to include their property within Area A and to remove restrictions imposed on Berryville's right to annex territory in Area B.

With respect to the concerns of the KLC, the Commission observes that the company owns approximately 207 acres of property located at the intersection of U. S. Highway 340 and State Route 7 Bypass, in Area B. The company has proposed, based on a revision to its original plan, to construct on its property a mixed use development which would include 379 single family and 186 multifamily dwelling units, approximately 225,000 square feet of professional office space, and a shopping center containing a grocery store and other retail establishments.⁵² Further, the KLC has proposed to make certain improvements to the Town's sewage collection system, construct a major collector street through its property, and provide for the on-site retention of the stormwater which might result from the proposed development.⁵³

⁵²Ketoctin Presentations, Exh. KP-2.

⁵³Alton C. Echols, Jr., President, Ketoctin Land Company, proffers submitted to Clarke County Planning Administrator in support of rezoning petition R-87-01, Apr. 8, 1988; and testimony of Charles T. Blackley, Jr., Consultant, Ketoctin Land Company, Transcript, July 25, 1988, pp. 271-272.

The KLC has had an application pending before the Clarke County Planning Commission since April 1987 to rezone its property for residential use which would allow dwelling units on lots with a minimum area of 10,000 square feet. The KLC subsequently announced revisions to its original development proposal, with the revisions to include a mixed use development. It has not, however, submitted this revised proposal to the County for zoning approval. In the intervening period, the County, as part of the joint Town-County planning effort which is cited in the proposed agreement, has adopted a new land use plan and revised zoning and subdivision ordinances for the area to be annexed. The revised plan and ordinances permit mixed residential and commercial uses on the KLC property, but not of the type and character sought by that firm.⁵⁴

The AIC, which owns a portion of a partially developed 17-acre tract located in Area A and an adjoining 20-acre vacant parcel in Area B, proposes to develop its property for residential uses similar to that of adjacent development located within the Town. Accordingly, the AIC proposal calls for a higher density development than that permitted by the County's recently revised zoning ordinance.⁵⁵ The AIC has been

⁵⁴Both the original and revised KLC proposals call for more intensive residential development on its property than permitted by the County's zoning ordinance. Further, the County's ordinance requires that the portion of the KLC property designated for commercial uses incorporate a motel as well as retail establishments. Neither KLC proposal includes the construction of a motel as part of their proposed development.

⁵⁵The portion of the AIC property located in Area A contains 41 lots, 13 of which have been sold for residential use. The remaining 28 lots have been platted but not developed. The balance of the AIC property, which is located in Area B, is vacant and has not received final subdivision plat approval from the County. Under the County's recently revised zoning ordinance, the portion of the firm's property located in Area A is zoned for a minimum of 10,000 square foot lots, or four units per net developable acre, while that portion of its property which is located in Area B is zoned for two units per net developable acre. When the property was purchased by the AIC in 1973, and until the most recent revision of the County's zoning ordinance, the entire parcel was zoned for a minimum of 10,000 square foot lots. (AIC Presentations,

attempting to develop its property since 1974, but deficiencies in the Town's water and sewer systems have delayed those plans, and, as a consequence, only a small portion of the property has been developed to date.⁵⁶

Within the context of this Commission's review, the relevant concerns of the KLC and AIC are those which assert that certain provisions of the agreement do not permit, contrary to statutory requirement, the Town to share in the orderly and regular growth of the area nor enable it to benefit from an equitable sharing of the public resources of that area. Based on these concerns and others specified below, the Commission recommends the following as modifications to the negotiated agreement.

FINDINGS AND RECOMMENDATIONS

BOUNDARIES OF AREA A

As noted previously, the AIC has requested the parties to include all of its property within the boundaries of Area A and, thus, subject

pp. 5-6.)

⁵⁶The AIC purchased the 37-acre tract in 1973, and obtained rezoning of its property to residential use from the County in 1974. The Town of Berryville, which at that time had extraterritorial subdivision authority over the property, did not grant the necessary connections to Town utility lines until 1977 and did not approve the final subdivision plat, which included the initial development of 41 lots in the subdivision, until 1979. Although the AIC had received permission to connect to the Town's water and sewer systems in 1977, Berryville did not have sufficient capacity in those systems to permit the completion of the initial phase of the development. In an attempt to alleviate the capacity problem in the Town's water system, the AIC drilled a well and deeded the well site to Berryville in order to connect to the municipal water system. However, due to certain deficiencies in the Town's sewage collection and treatment system, the AIC was still unable to complete the development of the first phase of the subdivision. (Testimony of Irvin F. Barb, President, Associated Investments Corporation, Transcript, July 26, 1988, pp. 106, 130-132; and AIC Presentations, pp. 1-5.)

it to immediate annexation by the Town of Berryville upon final adoption of the agreement. Data presented by representatives of the AIC reveal that the corporation has been dealing with both the Town and the County to secure the necessary approvals to develop its property since 1974. Further, it appears evident and fundamentally relevant that Berryville officials indicated to the AIC that upon completion of the improvements to the Town's water and sewer systems, its proposed development could proceed. This indication by the Town antedated the interlocal negotiations which resulted in the proposed agreement currently before this body. In our view, the inclusion of the AIC property within the boundaries of Area A would permit the Town to honor its agreement with the corporation in an expeditious manner without impairment to the fundamental purpose of the agreement. Accordingly, we recommend that the boundaries of Area A be modified to include the specified AIC property currently included in Area B.⁵⁷

With respect to the property of the KLC, the Commission was presented data by representatives of that firm indicating that the inclusion of its property in Area A would immediately afford the Town with a significant opportunity for growth and, accordingly, would offer additional tax resources that would alleviate the Town's present financial burdens. Regardless of the validity of those contentions, the exclusion of the KLC property from Area A does not, from our perspective, render the proposed agreement violative of statutory standards. The proposed agreement represents a commitment by both governing bodies to long-term collaboration in addressing the diverse public planning concerns of their area. In this instance, the Town and County have determined through a cooperative planning effort, which is a

⁵⁷The Commission notes that full development of the property owned by Associated Investments Corporation under the original County zoning for that tract (four lots per acre) would add approximately 60 lots to the existing 41 lots which had been previously platted, assuming that a portion of the undeveloped property would be utilized for street and utility rights-of-way and allowing for environmental restrictions. Under the current County zoning for the property (two lots per acre), the vacant portion of the property would contain 30 lots.

component of the proposed agreement, that the best interest of the general area is served by excluding the property of the Kectoctin Land Company from the area subject to immediate annexation by the Town. The Commission is unable to find a basis sufficient to recommend that the boundary line of Area A be modified to include the KLC property.

ANNEXATION OF PROPERTIES IN AREA B

Section 3 of the proposed agreement establishes conditions which govern the Town's annexation of properties in Area B. Those conditions could in future circumstances restrict the opportunity of the Town of Berryville to expand its boundaries in an orderly and regular manner and to share in the fiscal growth of the area. Under the terms of the proposed agreement, the Town cannot annex territory in Area B unless two conditions are met. First, Clarke County must approve the development proposed for any parcel in Area B prior to its eligibility for annexation by the Town.⁵⁸ Second, the Town must agree to extend public water and/or sewerage to any such property eligible for annexation prior to its incorporation into the Town. The first requirement could, in certain circumstances, constitute a bar to the ability of the Town of Berryville to expand its boundaries and to share in the growth of its area. The second requirement does not allow for the possibility that some parcel in Area B might, at some point in the future, be appropriate for annexation but not have a need for Town water or sewerage services. In such instances, the unqualified requirement in Section 3 for the Town's agreement to extend such services as a prerequisite for

⁵⁸Under the terms of the proposed agreement Clarke County would still have to approve Town annexations in Area B in instances where the property to be annexed does not require rezoning if the development proposed for that property requires site plan approval. The only type of development not subject to site plan review under the County's zoning ordinance is single family detached dwelling units located on lots capable of supporting individual septic tanks.

annexation is inappropriate.⁵⁹ We recommend that Section 3 be amended to address those concerns.

While it is evident to this Commission that the present governing bodies of the Town and County have, in good faith, committed themselves to joint planning in Area B for the mutual benefit of their jurisdictions, we recommend that Section 3 of the proposed agreement be amended to assure that future land use and zoning actions will not be a bar to the Town's development. To that end, we recommend that Section 3 be amended to assure the authority of the Town to annex all property in Area B under the land use plans and zoning regulations jointly approved for that area by the Town and County prior to the effective date of the agreement, or under such revised land use plans and zoning regulations as may be jointly approved subsequent to the adoption of the agreement. Such an amendment could avoid possible conflict over future County land use and zoning changes which might impede the Town's opportunity to share in the growth of its area.

Further, we recommend that the proposed agreement be amended to commit the Town to the extension of public water and/or sewerage to properties in Area B as a condition of annexation only in instances where the jointly adopted land use plans or zoning regulations require

⁵⁹Town and County officials have testified that under the terms of the proposed agreement Berryville would be permitted to annex without prior County approval any territory in Area B zoned for single-family detached dwelling units located on lots of one acre or more which are capable of supporting individual septic tanks. The officials noted that such development does not require County site plan approval nor the extension of public water and sewerage. (Testimony of Hogan, Transcript, July 25, 1988, pp. 146, 170-171; and testimony of Lee, Transcript, July 25, 1988, pp. 191, 245.) The Commission observes, however, that the agreement explicitly requires the Town's agreement to extend water and/or sewer service to any property in Area B prior to its annexation. (See Agreement, Sec. 3.)

such.⁶⁰ While this Commission is aware of the fact that conditions in Area B indicate a pervasive need for public utilities, we do recommend that the Town's commitment for the extension of utilities into Area B be qualified in recognition of the fact that, however remote the possibility, some form of development not requiring utilities might be proposed for that area in future years.

In our view, amendments of Section 3 to incorporate the substantive changes proposed above are necessary to assure the Town an opportunity to expand its boundaries in a regular and orderly manner and to share equitably in the fiscal growth of the Berryville area.⁶¹

EFFECTIVE DATE OF INITIAL ANNEXATION

The Commission recommends that the agreement be modified, by appropriate amendment to Section 2 or Section 5, to establish a definite time for the annexation of Area A. We recommend that the agreement explicitly authorize the Town to annex Area A as early as January 1, 1989, or thereafter at the option of the Town.

⁶⁰With respect to the provisions in Section 3 governing the extension of utilities to property in Area B, we recommend the substitution of the word "commit" for "agree" and the insertion of the adjective "public" before the phrase "water and/or sewer services." We believe that the recommended changes in phraseology are desirable and consistent with the intent of the parties.

⁶¹The Commission notes that counsel and staff of the Town and County have expressed their intention to recommend to their respective governing bodies changes to Section 3 which will remove certain ambiguities in the draft of the agreement reviewed by this body. While those proposed changes are appropriate, they do not address the issue raised by the Commission in this section of the report. (See Proposed Findings of Fact and Conclusions of Law of the Town of Berryville and the County of Clarke, Virginia, pp. 5-6)

DEVELOPMENT CONTROLS

Section 6 of the proposed agreement addresses the development and application of land use controls in Area B. The second sentence of this section gives the Town of Berryville, with the approval of the County, extraterritorial subdivision jurisdiction in Area B.⁶² If the intent of this sentence is to ensure that the Town has exclusive review and approval of the subdivision of land in Area B, we recommend that Section 6 be amended to make such intent clear. Further, we recommend that Section 6 specify that the Town of Berryville shall assume the administration of all zoning and land use control ordinances for those portions of Area B which are annexed to the Town. While the proposed agreement could not, in our view, remove from the authority of the Town control over such basic land use instruments, Section 6 should be amended to avoid any possible ambiguity with respect to the intention of the parties.

STORMWATER MANAGEMENT

Section 7 of the proposed agreement states that the County shall contribute "no more than \$75,000" toward stormwater drainage improvements to that portion of Town Run situated outside the existing, preannexation corporate boundaries of Berryville, when development is initiated necessitating such improvements for stormwater control. The current wording of Section 7 does not commit the County to any expenditures to address the drainage problem. If it is the intent of this section that the County share in a portion of the expenses for the construction of stormwater management improvements required to alleviate

⁶²Although the Code of Virginia does not contain general law provisions authorizing municipalities to exercise extraterritorial subdivision regulation in unincorporated areas, special legislation permits towns in Giles, Clarke, Culpeper, Loudoun or Mecklenburg to regulate the subdivision of land with county permission within two miles of municipal boundaries. (See Chap. 47, Acts of the Assembly 1980.)

current drainage problems within the Town, we recommend that the section be amended to make this commitment clear.⁶³

UTILIZATION OF TRADITIONAL ANNEXATION PROCESS

Section 8 of the proposed agreement states that the Town of Berryville "in no way relinquishes [its] authority or power to use the traditional annexation process authorized by Article 1, Chapter 25, Title 15.1 of the Code of Virginia" as a consequence of the adoption of the agreement. The Commission notes, however, that under the provisions of Section 3 of the proposed agreement, the Town would be foreclosed from the annexation of any property in the County, including that beyond areas A and B, until such time as the Town has committed itself to the provision of water and/or sewerage to such property. This provision in Section 3 does constitute a restriction on the Town's future use of the traditional annexation process, which does not require a prior commitment for utility service as a condition of each annexation. Indeed, not all property suitable for annexation will need or require utility service. If it is the intention of the parties to agree to such a constriction of the Town's use of the traditional annexation process, we recommend that Section 8 be revised to recognize explicitly the constriction established in Section 3.

CITIZEN-PETITION ANNEXATIONS

Section 16 of the proposed agreement states that the adoption of the instrument shall not "deprive the citizens in Clarke County of exercising their right to petition the court for voluntary annexation to

⁶³The Commission observes that counsel and staff of the Town of Berryville and Clarke County have agreed to recommend to their respective governing bodies an amendment to the proposed agreement to clarify the County's commitment to fund a portion of the stormwater improvements to the subject waterway. (Proposed Findings of Fact and Conclusions of Law of the Town of Berryville and the County of Clarke, Virginia, pp. 5-6.)

the Town of Berryville" under the authority of Section 15.1-1034 of the Code of Virginia. As noted in the previous section, however, the current wording of Section 3 precludes the Town from annexing any property in Clarke County unless the Town has committed itself to the extension of water and/or sewerage service to such property. Such a prerequisite could be construed to require the Town's rejection of such annexations in instances where utility services were not desired and extended and, accordingly, would constitute a constriction of the utilization of the annexation process authorized by Section 15.1-1034. If it is the intention of the parties that the Section 15.1-1034 annexation process be so constricted, we recommend that Section 8 be revised to state such explicitly.

FISCAL MANAGEMENT

In addition to the recommended modifications of the proposed agreement presented above, the Commission is obliged to offer additional brief comment on the Town of Berryville's current fiscal procedures. During our review of the proposed agreement, the Commission was presented with data indicating that in recent years Berryville has experienced a deficit in its general fund which has been met by transfers from the Town's water and sewer enterprise funds and by use of its reserve fund balances. Such practices offer only interim solutions to a locality's fiscal concerns and delay essential adjustments in general fund revenues and expenditures. While this Commission recognizes that the annexation authorized by the proposed agreement will provide the Town with additional tax resources, Berryville will be concurrently confronted with additional public service responsibilities in the areas incorporated into the Town. We recommend that the Town institute as soon as possible a critical review of its general fund receipts and expenditures in order to avoid the necessity of reliance on transfers from its enterprise accounts and on reserve fund balances. Further, we recommend that the Town initiate the adoption and use of a capital improvements plan. In view of the proposed annexation and the

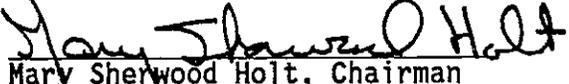
consequent increase in the Town's fiscal responsibilities, a capital improvements plan will grow in significance.

CONCLUDING COMMENT

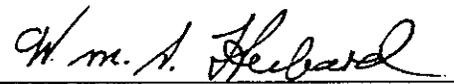
As this Commission has noted previously, agreements defining a town's annexation rights are significant documents containing major grants and concessions of legal authority by the two jurisdictions which are parties to them. Accordingly, the proposed Town of Berryville - Clarke County agreement has merited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

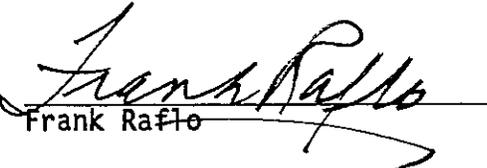
As a result of that review we have recommended several amendments to the proposed agreement and have encouraged the Town to address directly the current imbalance in its general fund operations. While the Commission urges the parties to consider carefully all the recommendations cited above, the recommendations with respect to Section 3 which would ensure the authority of the Town to annex property in Area B under zoning and land use conditions established prior to the adoption of the agreement, or under revised conditions jointly approved, are prerequisites for our determination that the agreement provides for the orderly and regular growth of the Town and County, promotes an equitable sharing of the area's public resources and liabilities, and is in the best interest of the community at large. Adoption of amendments to Section 3 based on our recommendations would, in our judgment, render the agreement consistent with statutory criteria.

Respectfully submitted,


Mary Sherwood Holt, Chairman


Harold S. Atkinson


William S. Hubbard


Frank Rafo

APPENDIX A

11/05/87

AGREEMENT DEFINING ANNEXATION RIGHTS

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

WHEREAS, the Town Council 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 developed a map (see Attachment A) outlining Areas "A" and "B" in which future annexation by the Town may take place; and

WHEREAS, the Town offers 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 urban growth of the Town consistent with the County and Town Comprehensive Plans,

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 §15.1-1058.1 of the Code of Virginia, 1950, as amended, does hereby permanently renounce its right to become a city effective upon the final review of the agreement by the Commission on Local Government in a form acceptable to the Town.

2. It is the intent of the Town to annex the area designated

as Area "A" in the proposed annexation map which is attached hereto as Attachment A and incorporated herein by reference as a part of this agreement. Such annexation shall be accomplished by enacting a Town Annexation Ordinance after the execution of this agreement by the parties.

3. Additional contiguous land within Area B may be annexed, at the discretion of the Town Council, when the Town agrees to provide water and/or sewer services to proposed development in the area and such development has been approved by the County, including final site plans. Agreement by the Town Council for extension of water and/or sewer service outside the corporate limits of the Town will require that the beneficiaries of such service acknowledge in writing to the Town and the County that such extension of service subjects the properties served to annexation at the discretion of the Town Council. Whenever the County approves the zoning, rezoning and/or proposed development of land in Area B, which zoning, rezoning and/or development proposal requires water and/or sewer service, such approval shall constitute the County's approval of annexation by the Town of the properties affected by such extension of service. At the time of such approval of zoning or development, the County shall provide the Town with written consent to annexation of that tract as further evidence of the annexation approval. With the exception of publicly-owned, tax-exempt properties which serve public educational, cultural or recreational purposes, the Town will not honor requests for extensions of water and/or sewer services outside the corporate limits of the Town absent written

of the Town Council to annex the subject properties, and written agreement by such beneficiaries to join in the Town's request for annexation (should the Town so desire). The Town will not annex land within Area B or any other area beyond its corporate boundaries until such time that the Town Council has agreed to extension of water and/or sewer service to such land in accordance with Town policies and the provisions set forth herein.

4. The annexation of property in Area B shall be effected by Town ordinance; provided, however, no such annexation ordinance shall be adopted by the Town unless prior formal notice has been given to the Board of Supervisors of the County announcing the intention of the Town to adopt such an ordinance, nor until a public hearing, advertised once a week for two successive weeks in a newspaper of general circulation in the County has been held on such proposed annexation. Any annexation ordinance adopted by the Town under the terms of this agreement shall include:

(a) a description of the area to be annexed, such description being of sufficient definiteness to enable location of the boundaries of the area to be annexed;

(b) information which can 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 relevant to the possible future uses of property within the area proposed for annexation; and

(c) a statement of the terms and conditions upon which the annexation will be effected, including provisions for the

extension of utilities and for meeting an annexed area's service needs.

5. All annexation shall be made effective as of midnight on December 31 of the year specified, and certified copies of each adopted annexation ordinance shall be filed with the Circuit Court of Clarke County, the Secretary of the Commonwealth, and other State and Federal agencies which require knowledge of local government boundary changes.

6. a) The Town and County agree that in order to have coordinated and meaningful planning and land use regulation and administration in Area B, the County shall designate this area as the County's "Urban Services Area", in and for which Area the County and Town shall, jointly and formally, adopt specific future land use plans, and implementing zoning regulations by December 31, 1988, for each parcel therein. In order that subdivision regulations reflect Town standards for development, the Town shall have extraterritorial subdivision jurisdiction in all of the Area B - Urban Services Area. The Town and County agree that all zoning ordinances and regulations in the Area B -- Urban Services Area shall be County zoning ordinances and regulations, to be administered by the County through its appointed officials. The Town agrees to permit any land use approved by the County in Area B - Urban Services Area, subject to the performance by the landowner of any conditions or zoning proffers imposed by the County or granted by the applicant at the time of the land use approval, whether by rezoning, special permit, special exception, variance or waiver.

b) The County agrees that all applications in Area B for

rezoning, special (or conditional) use permits, site development plan approval, change or extension of non-conforming uses, or any other use situation not permitted by right pursuant to County zoning regulations shall be referred by the County Planning Administrator for a joint review by the County Planning Commission and Town Planning Commission. The respective commissions may meet jointly and shall make their recommendations jointly or severally, as each respective commission may so desire, to the County Board of Supervisors, as provided by law. The Town agrees that provided such referrals are made in a timely fashion so as to allow adequate time for review, the Town Planning Commission shall in turn make a timely recommendation, if any, so as not to delay formal action by the County within the statutory time limits for same. Any such referrals by the County to the Town Planning Commission should be made no less than five (5) days prior to any meeting of the Commission during which presentation by the County Planning Administrator and action thereon by the Commission is desired.

c) The County recognizes that portions of Area A and Area B drain into the Town, and that zoning and development in those areas without the Town's review will create an unfair burden on the Town. As a result, the County agrees not to approve any zoning or rezoning requests or any proposals for development in Area B - Urban Services Area until the Town has received and commented on the provision of storm water drainage control and the provision of Town public utilities.

7. The County agrees that it shall fund no more than \$75,000

toward necessary stormwater drainage improvements to that portion of Town Run situated outside the existing, preannexation corporate boundaries of the Town at such time that the Town institutes the project.

8. The County and Town agree that the Town, by entering into this agreement, in no way relinquishes authority or power to use the traditional annexation process authorized by Article I, Chapter 25, Title 15.1 of the Code of Virginia as now in existence or as may be amended in the future.

9. The Town shall pay all of its costs for development of the annexation agreement and studies relating thereto and the costs of the proceedings as well as its own attorney's fees for the proceeding.

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

11. Proper notification will be given the public by the Commission of Local Government as required by S 15.1-1058.2. See Attachment "B" (to be done).

12. All recommendations by the Commission on Local Government in its report dated _____ may be incorporated in this agreement by amendment hereto, and the agreement and any amendments have been adopted by each governing body as required by S15.1-1058.3, as shown by the attached attested copies of the minutes of the respective bodies and Attachments "C" and "D". (to be attached)

13. The Town has authorized the execution of the agreement as indicated by the attached attested copy of the minutes of the meeting of

attached)

14. The County has authorized the execution of the agreement as indicated by the attached attested copy of the minutes of its meeting of _____. See Attachment "D". (to be attached)

15. This agreement shall become void in the event no annexation ordinance is adopted by the Town within five (5) years of the date of the final approval of this agreement.

16. Nothing in this agreement shall deprive the citizens in Clarke County of exercising their right to petition the Court for voluntary annexation to the Town of Berryville under S15.1-1034 of the Code of Virginia of 1950, as amended. However, the Town shall reserve its right to reject such annexation by ordinance, as provided in S 15.1 - 1034 of the Code of Virginia, 1950, as amended.

17. The Town and County reserve the right to modify this agreement by joint consent. Review and modification of the Area B limits delineated in figure, 1, Attachment A, shall be considered in the event that major development is proposed outside the area, but is contingent on the provision of Town services. A request for review may be initiated by the Town or the County. If no such review is requested during the first thirty (30) years the agreement is in effect, one shall be scheduled during the thirtieth year jointly by the County and Town.

18. The Town agrees that upon the effective date of any annexation which is accomplished under the terms of this agreement, the Town shall extend its public safety and other

general governmental services to the areas annexed at the same level as there exists within the Town.

Witness the following signatures and seals:

TOWN OF BERRYVILLE

BY Joseph C. Williams (SEAL)
Mayor

DATE: 11/24/87

Attest:

Ray C. Polley

COUNTY OF CLARKE

BY John D. Huntley (SEAL)
Chairman

DATE: 11/24/87

Attest:

G. Huntley

APPENDIX B

STATISTICAL PROFILE OF THE TOWN OF BERRYVILLE, CLARKE COUNTY AND THE
AREAS COVERED UNDER THE AGREEMENT DEFINING ANNEXATION RIGHTS

	<u>Town of Berryville</u>	<u>County of Clarke</u>	<u>Area A</u>	<u>Area B</u>
Population (1986)	1,630	10,300	922	80
Land Area (Sq. Mi.)	0.77	171.2	0.55	1.37
Total Assessed Values (1987)	\$50,654,300	\$398,467,200	\$33,455,800	\$10,160,300
Real Estate Values	\$43,434,900	\$309,383,600	\$26,688,100	\$5,375,300
Personal Property Values	\$4,089,700	\$23,460,400	\$2,313,300	\$200,700
Machinery and Tools	\$879,900	\$1,319,400	\$806,500	\$162,400
Public Service Corporation Values	\$2,249,800	\$12,008,000	\$1,595,100	\$4,008,300
Land Use (Acres) ¹				
Residential	212	9,752	100	8
Commercial	23	110	5	0
Industrial	25	79	60	55
Public and Semi-Public	55	2,523	21	11
Streets or Rights-of-Way	50	952	20	40
Vacant, Wooded or Agriculture	49	95,145	144	766
Water	N/A	988	N/A	N/A

Notes:

¹Land use figures for Clarke County do not include the incorporated Town of Berryville and Boyce.

Source:

Town of Berryville, Documents, Exhibits and Materials Filed in Support of Agreement Defining
Annexation Rights, May 17, 1988.