

REPORT
ON THE
TOWN OF KENBRIDGE - COUNTY OF LUNENBURG
AGREEMENT DEFINING ANNEXATION RIGHTS



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

OCTOBER, 1981

TABLE OF CONTENTS

	<u>Page</u>
Nature of the Agreement	2
Proceedings of the Commission	4
Evaluation of the Agreement	5
Recommendations	25
Concluding Comment	32
Appendices	34

REPORT
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COMMISSION ON LOCAL GOVERNMENT
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ANNEXATION AGREEMENT

In May, 1981 the Council of the Town of Kenbridge and the Board of Supervisors of Lunenburg County approved the submission of an annexation agreement to this Commission for review in accordance with the provisions of Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia.¹ On July 21, 1981 the Board of Supervisors moved to rescind a provision in its May motion by which it agreed to the immediate adoption of the annexation agreement, but the Board's July 21 action did not withdraw its support for the Commission's formal consideration of the proposed agreement.² Accordingly, the Commission has reviewed the agreement in the manner prescribed by law and hereby submits the following report.

1 The proposed Town of Kenbridge-Lunenburg County annexation agreement and Article 1.1, Chapter 25 of Title 15.1 of the Code of Virginia are set forth in Appendices A and B respectively.

2 The July 21, 1981 motion of the Board of Supervisors stated that the Board would "take no action until after the public hearing advertised to be held at the Kenbridge Elementary School in Kenbridge, Virginia, ... and after the report of the Commission has been filed."

Nature of the Agreement

The proposed Town of Kenbridge-Lunenburg County annexation agreement is the first such document to be developed and referred to the Commission since the laws of the Commonwealth were amended in 1979 to authorize such. The annexation procedure and concepts embodied in the new statutory provisions are without precedent in the State's history. The new provisions of law authorize towns which conclude such agreements with their counties to annex, in areas covered by the agreement, merely by the adoption of an ordinance. Thus, for annexations pursued under these agreements the State's general annexation process by which annexation issues are decided by the courts, subsequent to Commission review, is supplanted by the simple and expedient process of annexation by ordinance. In return for such authority, the town is required to relinquish in perpetuity its legal right to seek city status. While these town-county annexation agreements are to be developed locally and fashioned to meet the peculiar needs of each community, the law does require that certain principles be embodied in them. These principles are set forth in Section 15.1-1058.1 of the Code as follows:

The Board's action on July 21, 1981 is consistent with Section 15.1-1058.3 of the Code of Virginia, which provides that formal adoption of an annexation agreement, if such is ultimately deemed appropriate by the local governing bodies, should follow submission of the Commission's report.

Any such agreement shall provide for the regular and orderly growth of the town in conjunction with the county and for an equitable sharing of resources and liabilities. It shall also provide that the town may annex at regular intervals by the adoption of an ordinance.

Thus, these agreements require (1) a permanent renunciation by the town of its authority to seek city status and (2) the inclusion of provisions authorizing the town to annex at regular intervals by the adoption of ordinances in a manner and to an extent which enables it to share equitably in the "resources and liabilities" of the community at large.

The Commission is cognizant of the fact that town-county annexation agreements are significant documents embodying major grants and concessions of legal authority. These agreements constitute expressions of mutual concern, respect, and confidence on the part of the local governments which are party to them. The Commission commends the officials of the Town of Kenbridge and Lunenburg County for the leadership which they have displayed in developing and submitting for review the first town-county annexation agreement in the history of the Commonwealth.³

³ It should be noted that Section 15.1-1058.4 of the Code gives a town the authority to request unilaterally the Commission to develop an annexation agreement to apply to it and the county. However, the Council of the Town of Kenbridge and the Board of Supervisors of Lunenburg County have jointly developed this agreement for submission to this Commission for review.

Proceedings of the Commission

The Commission is charged by Section 15.1-1058.2 of the Code of Virginia with reviewing proposed town-county annexation agreements and submitting reports thereon to the affected local governing bodies. In its analysis of an agreement the Commission is directed to determine:

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

Whatever the findings and recommendations of this Commission, the local governing bodies are free to adopt or reject a proposed agreement as they see fit. If, however, the Commission's review of an agreement is "unfavorable," the local governing bodies may not adopt the agreement until after they have jointly held an advertised public hearing on the issue.⁵

Following its receipt of this proposed agreement for review, the Commission toured the Town of Kenbridge and the areas of the County covered by the agreement, analyzed data and exhibits submitted by the Town in support of the document, received oral testimony from local officials, and conducted a public hearing for purposes of receiving citizen comment. The public hearing, which

4 Section 15.1-1058.2, Code of Virginia.

5 Section 15.1-1058.3, Code of Virginia.

was advertised in accordance with the provisions of Section 15.1-1058.2 of the Code of Virginia, produced testimony from twenty-six citizens. Further, the Commission received additional written statements, petitions, and data which were submitted for its consideration prior to the closing of the official record on July 31, 1981. The Commission is appreciative of the materials and perspectives which were presented to it with respect to the proposed agreement. This report is based, in large measure, upon those materials and presentations.

Evaluation of the Agreement

In brief, the principal provisions of the agreement submitted for review by the Town of Kenbridge and Lunenburg County would:

1. require the Town to renounce permanently its authority to seek city status;
2. authorize the Town to annex by ordinance certain areas in the County (identified as Phase 1 areas) immediately upon adoption of the agreement;
3. authorize the Town to annex by ordinance within additional areas of the County (identified as Phase 2 areas) in 1995 or thereafter;
4. require the Town to compensate partially the County for the loss of revenue resulting from annexations authorized by the agreement for specified periods of time;
5. require the Town to take measures to protect agricultural properties which might be annexed under the agreement;
6. require the Town to extend water and sewerage services to annexed areas when "it becomes reasonably necessary or desired by the residents to be served and it is economically feasible to do so"; and
7. require the Town to extend other municipal services to annexed areas immediately upon the effective date of annexation at the level and quality such services are available within the Town generally.

As indicated previously, the Commission is required by law to evaluate the proposed agreement on the basis of three general criteria. The Commission is directed to determine whether the agreement (1) provides for the orderly and regular growth of the Town and County together, (2) permits an equitable sharing of the area's resources and liabilities, and (3) is in furtherance of the best interest of the community at large. With respect to the application of these criteria to the proposed Town of Kenbridge-Lunenburg County annexation agreement, the Commission offers the following comment.⁶

Orderly and Regular Growth of Town and County

The data indicate that between 1950 and 1980 the County's total population decreased from 14,111 to 12,124, or by 14.1%. During the same span of years the Town of Kenbridge grew in population from 1,176 to 1,352, or by nearly 15%.⁷ While in absolute numbers the growth in Kenbridge since mid-Century has been modest, the Town has experienced an increase in population each decade and is one of the growing communities in the County.

Employment data suggest the importance of the Kenbridge area to the economy of Lunenburg County. The data reveal that between 1950 and 1979 non-agricultural wage and salary employment in the

6 Appendix C provides a statistical profile of the Town, County and Phase 1 and Phase 2 areas. See Appendix D for a map of the areas of the County subject to the agreement.

7 Town of Kenbridge, Town of Kenbridge Annexation: Submittal to the Commission on Local Government (hereinafter cited as Kenbridge Exhibits), June, 1981, Exh. 4.

County decreased from 4,574 positions to 3,473, or by nearly 24%. As of the latter year, 1,993 of these positions were in manufacturing employment.⁸ Of the County's total manufacturing employment in 1979, over 55% (approximately 1,100 positions) was located in Kenbridge or in areas adjacent to the Town and served by Town utilities.⁹ Thus, the Town of Kenbridge and its utility services presently support over half the County's manufacturing employment.

In terms of fiscal resources, the data indicate that between 1976 and 1980 the total assessed value of real estate, public service corporation, and personal property subject to local taxation increased by 5.7% in Lunenburg County, but by only 3.6% within the Town of Kenbridge.¹⁰ A more significant disparity in the growth of these assessables, however, appeared during the latter part of that period. Between 1978 and 1980 the value of these assessables in Lunenburg County increased by \$519 thousand, or by 3.7%, while those within

8 Virginia Employment Commission, Population and Labor Force Data 1950, 1960, 1970 and 1979.

9 Dewberry, Nealon and Davis, Inc., Evaluation of Five Sites for Industrial Development for Lunenburg County and the Towns of Kenbridge and Victoria, Virginia (Danville, Va., 1980), Table 7.

10 Kenbridge Exhibits, Exh. 6; and data provided by E. G. Bagley, Jr., Commissioner of Revenue, Lunenburg County, letter to staff of the Commission on Local Government, October 1, 1981. Total County property assessables, including Machinery and Tools and Merchants Capital, rose from \$21.7 million to \$23.7 million between 1976 and 1980, an increase of 9.4%. "Assessed values" are locally determined values assigned to property for the purposes of taxation. Such "assessed values" can, and generally do, differ from the true or market value of the property. The assessed value of real estate and personal property in Lunenburg County, including that within the Town of Kenbridge, is established by the County's Commissioner of Revenue. The assessed value of public service corporation property is established by the State Corporation Commission.

the Town of Kenbridge increased by less than \$2 thousand, or by .06%.¹¹ Thus, while Kenbridge has been one of the County's principal growth areas since mid-Century with decennial growth rates constantly surpassing those of the County, and while its services have facilitated the economic growth of its general area, the Town is now confronted with a stagnating tax base.

The prospects for further economic growth within the present boundaries of the Town of Kenbridge appear to be quite limited. While 154 acres in the Town are presently classified as vacant (approximately 29% of the Town's total area), evidence submitted to the Commission indicates that most of this land is unsuited for commercial and industrial development because of soil problems, topographical concerns, or adjacent development.¹² Further, it is significant to note that a recent survey of desirable industrial sites in Lunenburg County identified only one such site which is partially located within the boundaries of the Town of Kenbridge.¹³

The proposed agreement, if ultimately adopted by the parties, would permit the Town to annex immediately areas (Phase 1) comprising 1.25 square miles and containing 357 persons and \$991,600 in real estate, public service corporation, and personal property assessed values.¹⁴ If the Town exercised its option under the proposed agreement to annex all of Phase 1 immediately, the property

11 Ibid.

12 Ibid., Exh. 8 and 9.

13 Evaluation of Five Sites for Industrial Development for Lunenburg County and the Towns of Kenbridge and Victoria, Virginia. Three of the proposed sites are located in the vicinity of the Town of Victoria and a fourth site is located within the Phase 1 area.

14 Kenbridge Exhibits, Exh. 2 and 30.

assessables subject to Town taxation would be increased by approximately 48.5%. Of less immediate significance, the agreement authorizes the Town to annex additional areas (Phase 2) in 1995, or thereafter, which total 1.52 square miles and presently contain 141 persons and \$264,000 in real estate, public service corporation, and personal property assessed values.¹⁵

It is the judgment of this Commission that the proposed agreement facilitates the orderly and regular growth of the Town and County together. The agreement would permit the Town to benefit from an immediate infusion of fiscal resources, would assure it of land for future development, and would promote its continued viability. Moreover, the viability of the Town and its expanded fiscal resources will facilitate the economic development of the Kenbridge area which will redound to the benefit of the citizens of Lunenburg County generally. Finally, the Commission notes that Section 19 of the agreement permits the Town and County to modify and extend the agreement by joint consent if such is deemed appropriate. This provision provides an appropriate means for the adaptation of the agreement to meet future circumstances and needs which cannot now be foreseen.

Equitable Sharing of Resources and Liabilities

An equitable sharing of resources and liabilities requires that the Town be permitted to benefit from the economic growth in

15 Ibid., Exh. 2.

its area and meet appropriately the service needs of its community. In the Commission's judgment, the proposed agreement promotes an equitable sharing of the area's public resources and liabilities.

Resources. As indicated previously, between 1976 and 1980 the Town of Kenbridge experienced a modest increase in its real estate, public service corporation, and personal property assessed values of 3.6%. The revenues generated by these tax sources, however, grew, due to increased tax rates, during the same span of years by 22.4%.¹⁶ Despite the increase in property tax rates, in three of the preceding five fiscal years the Town's General Fund revenues have been insufficient to cover expenses. The deficit in fiscal year 1980 amounted to over \$16,000, and more than consumed the Town's reserve balance.¹⁷

The proposed agreement would permit the Town to annex immediately an area possessing real estate, public service corporation, and personal property values sufficient to yield, based on current Town tax rates, approximately \$28,000 of additional revenues.¹⁸

16 Ibid., Exh. 5. The County's revenues from real estate, public service corporations, and personal property increased by 58.6% during the same years. (Ibid., Exh. 6.)

17 Ibid., Exh. 25.

18 Ibid., Exh. 30. Total revenues from the Phase 1 area would be approximately \$36,400. (Ibid., Exh. 31.)

Thus, by means of such annexation the Town's property tax receipts would be increased by nearly 49%. Further, the Town would obtain vacant land for development, and in 1995 would be eligible to annex additional territory if it determined such to be appropriate. From the perspective of this Commission, the proposed agreement does afford the Town an opportunity to share equitably in the economic growth of its area. Moreover, and equally significant to this Commission, the negative impact which the County will experience initially as a result of such annexations will be modest and will be more than offset by the Town's partial reimbursement, as provided in the agreement, and future development facilitated by the Town's growth.¹⁹

Liability for Services. The Town of Kenbridge plays a significant role in the provision of public services in eastern Lunenburg County. In terms of utilities, the Town has served not only the needs within its corporate limits, but also residential and commercial connections beyond its boundaries as well. It is the Commission's judgment that the Town can assume, given the added resources which will be accessible to it as a result of the proposed agreement, responsibility for the current and prospective service needs of its area. Assumption of such service responsibilities constitutes acceptance of an equitable share of the public

¹⁹ Calculations indicate that given present development and local tax structure, the total annexation of Phase 1 by the Town would result in the County's initial loss of approximately \$12,000 per year, or less than 1% of the County's total tax receipts for fiscal year 1980. (Ibid., Exh. 35.)

liabilities in Lunenburg County. The following sections of this report will consider the Town's capacity to meet the service needs of the Kenbridge area.

Water. The Town of Kenbridge is one of only two sources of treated water in Lunenburg County. Kenbridge's water system serves 514 connections within the Town and 116 beyond its corporate limits. Most businesses and industries located in Phase 1 areas are presently connected to the Town's water system.

The data indicate that the Town's system is adequate to meet the area's present and anticipated future water needs.²⁰ The current peak usage of Town water is estimated to be 395,000 gallons per day (GPD), or 53% of the Town's water treatment capacity (750,000 GPD). It is estimated that the water needs of Phase 1 and 2 areas collectively, given present population and development, would require an additional 92,000 GPD. Thus, the aggregate of the Town's present water needs (based upon the previous maximum flow) and the anticipated current needs of Phase 1 and Phase 2 areas would still leave the Town with an unused treatment capacity of 263,000 GPD, or 35% of the total.²¹ It is important to note that the Town's water system is not only a vital element in the development of the Kenbridge area, but an indispensable component of the community's

20 Ibid., Exh. 37 and 38.

21 Ibid.

fire protection system. The extension of water mains into the County permits the installation of hydrants for fire suppression activity. It is the Commission's view that the areas adjacent to Kenbridge are in need of the Town's water service and that the Town is fully capable of meeting such need.

Sewerage. The Town of Kenbridge also provides the only public sewage treatment system in eastern Lunenburg County. The Town's system presently serves 500 connections within the corporate boundaries of Kenbridge and an additional 60 in Phase 1 areas. As in the case of water, most of the industries in Phase 1 areas are presently connected to the Town's system. The Town's present sewage treatment plant has a design capacity of 225,000 GPD. The current average daily flow to the plant has been estimated at 103,500 GPD, or approximately 46% of capacity. It is estimated that the additional flow which would be generated by the extension of sewerage to Phase 1 and Phase 2 areas at this time would total approximately 49,000 GPD. Thus, combining present flow and anticipated additional flow from Phase 1 and Phase 2 areas would leave the Town's sewage treatment plan with 32% of its capacity unused.²² It is significant to note that the Town of Kenbridge is presently

22 Ibid.

pursuing the upgrading of its sewage treatment plant in a manner which will increase the plant's treatment capacity to 300,000 GPD.²³ The completion of the improvements will permit the Town's system to serve its present connections, the additional flow which would be generated by Phase 1 and 2 areas, while allowing the system to retain an unused treatment capacity of nearly 50%. The Town's sewage collection and treatment system offers a service to areas adjacent to Kenbridge which has been and continues to be vital to their development. This service assumes added significance when it is noted that soil surveys have indicated that major portions of those areas have soil characteristics which impose severe limitations on the use of septic tanks.²⁴

It is appropriate to note here that the Town has been responsive to residential, as well as commercial and industrial, sewerage needs beyond its boundaries. In April of 1977 the Town sought and subsequently received a grant in the amount of \$227,750 from the U. S. Department of Housing and Urban Development for purposes of extending water and sewerage service to a low income neighborhood beyond its corporate limits. As a result of the Town's effort a community of 33 dwelling units was given access to water

23 The improvements to the system, which are scheduled for completion in the fall of 1982, involve innovative technology which is being utilized in Virginia for the first time. The improvements are anticipated to cost \$800,000 of which 85% will be borne by the State and federal governments. [Technological Resources, Inc., Addendum to Step I Wastewater Facilities Plan for the Town of Kenbridge, Virginia (Camden, N.J., 1980).]

24 United States Department of Agriculture, Soil Conservation Service, Soil Survey of Lunenburg County, Virginia, January, 1981.

and sewerage services.²⁵ In the Commission's judgment, the Town has both the capability and willingness to meet its area's utility needs.

Solid Waste Collection. The Town of Kenbridge offers its residents and commercial concerns solid waste collection and disposal services. Residential collections are made once a week, while commercial establishments have their refuse collected twice weekly. The Town charges \$5.00 per month for residential service and \$7.50 per month for commercial collections to help defray the cost of this service.²⁶ The Town does not presently offer this service beyond its boundaries. While businesses in the County may contract with private concerns for the collection and disposal of their refuse, residential waste must be transported to County collection sites or disposed of on the premises. As the areas adjacent to Kenbridge grow in population and commercial activity, the need for public solid waste collection services will increase accordingly. The Town of Kenbridge should and can be expected to meet this need.

25 Application for Community Development Block Grant Funds, North Circle Boulevard Neighborhood, Town of Kenbridge, April, 1977.

26 The Town disposes its solid wastes at a landfill owned by Lunenburg County. The Town paid the County \$2,143 for the use of that facility during fiscal year 1980. (Creedle and Barbour, Certified Public Accountants, Town of Kenbridge, Virginia: Report on Examination, Year Ended August 31, 1980, Exhibit B-2.)

Law Enforcement. In order to meet the law enforcement needs of its residents the Town of Kenbridge operates a police department which is served by four sworn officers.²⁷ The department is supported by new office facilities, three vehicles, and a modern communications system. The size of the Kenbridge police department is sufficient to provide one sworn law enforcement officer for each 338 Town residents and for each 0.22 square mile within the Town's corporate limits. The County's Sheriff's department is presently staffed to provide one law enforcement deputy for each 1,754 persons and for each 87.8 square miles (exclusive of the population and area of the County's towns).²⁸ The evidence suggests that the Town of Kenbridge requires the intensified law enforcement services provided by its police department. According to statistics for calendar year 1980, the Town's police department was responsible for 534 criminal arrests and for the issuance of 343 citations for traffic offenses (exclusive of the 528 citations for parking violations).²⁹ Moreover, data published by the Department of State Police

27 Kenbridge Exhibits, Exh. 13. The Town's full-time law enforcement staff is augmented by eight part-time officers who serve primarily on weekends. (Jesse C. Carter, Clerk, Town of Kenbridge, communication with staff of the Commission of Local Government, August 26, 1981).

28 Calculations based upon staff of five full-time law enforcement personnel serving in the Sheriff's Office of Lunenburg County. Letter of May 15, 1981 from George F. Barnes, Chairman of the State's Compensation Board, to the Board of Supervisors of Lunenburg County indicates that the Sheriff's Office is served by five full-time sworn law enforcement personnel.

29 Kenbridge Police Department, Annual Report to Council: 1980, p. 3.

indicate that during calendar year 1980 the Town of Kenbridge had an incidence of reported major crime more than three times that of Lunenburg County (exclusive of its towns).³⁰ In 1980 the Town of Kenbridge, with only 11% of Lunenburg County's total population, was responsible for 25% of its reported major crime. The point here is not that the Town of Kenbridge suffers from an inordinate law enforcement problem, but, rather, as areas become more densely populated and centers of commercial activity, their law enforcement needs increase. Hence, as the areas adjacent to Kenbridge develop, they will require, if general experience prevails, increased law enforcement services. With added resources and an enlarged law enforcement staff, the Town of Kenbridge can meet the law enforcement needs of its adjacent areas.

Street Lighting. Another service provided by the Town of Kenbridge which is important to urban communities is the installation, operation, and maintenance of street lights. Sites for the installation of street lights are selected by the Town's Council based upon need and requests from residents. Street lighting can be a factor in crime prevention, the reduction of

30 Department of State Police, Crime in Virginia, January-December 1980. Crime rates reflect the incidence of reported crime and are standardized on the basis of population. The crimes covered in the State Police report are murder/nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

traffic related accidents, and the enhancement of public areas. The Town's policy of providing this lighting at municipal expense constitutes a service which can benefit the developing areas adjacent to its boundaries.³¹

Fire and Rescue Services. Fire and emergency medical services are provided in Kenbridge and in Lunenburg County generally, as they are in many small and rural areas, by volunteer companies. These vital services have been supported, however, with public resources by both Lunenburg County and the Town of Kenbridge. In terms of municipal assistance for fire services, the Town donated the property on which the volunteer station has been constructed and, in addition, has expended nearly \$49,000 over the past five fiscal years to support this volunteer operation. These funds have been provided by the Town of Kenbridge for insurance on the volunteers and their equipment, gasoline and oil, repairs to equipment, utility service, and other purposes. With respect to municipal support for emergency medical services, the Town donated land for the construction of facilities for the rescue squad and has pro-

31 Kenbridge Exhibits, Exh. 18. The Town presently has 144 street lights operating at municipal expense. Street lights beyond the Town's corporate limits must be installed, maintained and operated at the expense of private parties.

vided nearly \$7,000 of financial support during the previous five fiscal years to assist its operations.³² In sum, the Town of Kenbridge through the expenditure of municipal resources has supported these volunteer programs which serve generally eastern Lunenburg County.

Best Interest of the Community at Large

The third criterion which the Commission is directed to consider in its evaluation of town-county annexation agreements is "the best interest of the community at large." It is the Commission's view that the preceding sections of this report have addressed in part this general criterion. The Commission has found that the agreement provides for the orderly and regular growth of the Town and County together and for an equitable sharing of the area's public resources and liabilities. These attributes of the proposed agreement are clearly qualities which are promotive of the best interest of the community at large. There are, however, additional considerations which are relevant to this criterion and which merit comment. On the basis of the

32 Data provided by Jesse C. Carter, Clerk/Engineer for the Town of Kenbridge, letter to staff of Commission on Local Government, August 21, 1981. Lunenburg County has contributed \$47,200 to the operation of the Kenbridge Volunteer Fire Department over the previous five fiscal years. (Daniel A. Robinson and Associates, County of Lunenburg, Virginia: Report on Examination, Years ending June 30, 1976-1980.)

beneficial aspects of the agreement previously cited and for the reasons presented below, the Commission finds that the proposed agreement is in the best interest of the total community.

Relinquishment of Authority to Seek City Status. A principal element of the proposed agreement calls for the Town of Kenbridge to relinquish in perpetuity its authority to seek city status. At present the Town does not have the requisite population (5,000) to seek city status, but time and development could remove that obstacle. If, at a future point, the Town successfully exercised its legal prerogative to seek city status, it would remove totally its population and tax resources from County authority, with the consequence that the remaining County residents may be confronted with a larger local tax burden. By the adoption of this agreement the Town commits itself to remaining permanently a part of Lunenburg County and supporting with its resources the needs of the County generally. Unless a variance in political values and service needs create irreconcilable differences, the general interest of the Community would be served by the Town of Kenbridge remaining a part of Lunenburg County.

Avoidance of Annexation Litigation. The proposed agreement permits the growth of the Town in a manner which avoids long and costly adversarial annexation proceedings. Experience has shown that traditional annexation proceedings in Virginia have often

been costly affairs in terms of legal and consultants' fees, administrative time, and other expenses incidental to litigation. In addition to such tangible costs, these judicial proceedings often result in strained interlocal relations which inhibit cooperative effort, collaboration on mutual problems, and long-range planning. The proposed agreement enables for several decades the growth of Kenbridge in a simple, non-adversarial manner with a minimum of attendant costs.³³ The Commission holds that the simplified annexation process can be in the general interest of the total community.

Reimbursement to County for Lost Revenue. The Supreme Court of Virginia has held that towns cannot be required to compensate counties for their loss of revenue resulting from annexation.³⁴ Thus, if the Town of Kenbridge successfully pursued annexation through the traditional process, the County would not be eligible, under the Supreme Court's recent ruling, for compensation for lost revenue. While a county experiences no loss of major tax resources

33 The present language of the agreement precludes the Town from using the traditional annexation process under Section 15.1-1033, Code of Virginia until 1995. At that time the Town and County may choose to amend the agreement in a manner which would preclude the Town's use of the traditional annexation process for an additional period of time.

34 Town of Christianburg v. Montgomery County, 216 Va. 654 (1976). The Virginia Supreme Court stated that "... in the area of financial adjustments, the court upon ordering annexation may require a city to compensate a county for its prospective loss of net tax revenues; but where a town is the entity awarded annexation such compensation may be required only if later the town becomes a city within the prescribed period."

(e.g., real estate, public service corporation, or personal property assessables) from town annexations, the expansion of town boundaries can operate to reduce some lesser local revenue sources (e.g., automobile license sales) and intergovernmental aid (e.g., the distribution of Alcoholic Beverage Control profits and federal revenue sharing). Calculations indicate that if the Town of Kenbridge annexed all of Phase 1 in the immediate future, the loss to the County, based upon current data, would be approximately \$12,000.³⁵ Under the proposed agreement the Town would reimburse the County for certain lost revenues resulting from its annexations to the extent of 75% of its losses the first year following annexation, 50% the second, 25% the third, and none thereafter. Thus, while the County's prospective loss of tax revenues is modest, the Town has committed itself to compensating the County for a portion of such losses for a three year period following any annexation. In the Commission's judgment, this provision of the agreement can assist the County in making transitional arrangements, particularly during periods of fiscal difficulty, and is in the general interest of the community.

35 Kenbridge Exhibits, Exh. 35.

Protection of Agricultural Properties. The proposed agreement contains a provision by which the Town commits itself to protecting farm lands in areas annexed "through the use of zoning and land use procedures." The agreement states:

It is the intent of the Town to allow for the continued use of farm land for agricultural purposes and the Town does not propose to implement procedures which will place undue restrictions or hardships on lands used for agricultural purposes.³⁶

This provision is consistent with State policies for the preservation of farm lands and is in the best interest of the community at large.

Economic Development of the Kenbridge Area. The agreement facilitates the growth of the Town of Kenbridge and provides the Town with additional fiscal resources which can be used to meet its area's service needs. If Lunenburg County is to attract desirable industrial and commercial activity, it must have available the utilities and other services which such activity requires. The Town of Kenbridge presently has in operation capital facilities which are capable of extending services to additional areas beyond its boundaries. The utilization of such existing public facilities is an expedient and cost-effective means of promoting

36 Agreement Defining Annexation Rights, Town of Kenbridge-Lunenburg County, May, 1981, Section 15.

development. Thus, the agreement permits the growth and continued viability of the Town of Kenbridge, enables the Town to increase its tax base and expand services commensurate with its resources, and facilitates development which will be in the interest of the community at large.

Determination of the Commission

In the judgment of the Commission, the proposed annexation agreement provides concurrently for the orderly and regular growth of the Town of Kenbridge and Lunenburg County, enables an equitable sharing of the area's public resources and liabilities, and is in the best interest of the community at large.

The Commission has noted the significant expression of public opposition to the proposed agreement. Opposition to the agreement has focused on three principal concerns -- (1) the increased tax burden to be borne by persons and properties annexed, (2) the threat to agricultural lands posed by annexation, and (3) the contention that the municipal services to be provided will not be commensurate with the additional taxes to be imposed. The Commission recognizes and fully appreciates the general opposition to increased taxes, but, from its perspective, the proposed agreement offers the prospect of general community benefits and economic growth which will significantly contribute to the area's viability. Conversely, an inability of the Town to expand its

boundaries and maintain its viability will, in our view, inhibit the economic growth of the area with detrimental consequences for the general community. While the Commission has reviewed the proposed agreement and reports it "favorably," it offers in the following sections of this report recommendations which, in part, address some of the public concerns which have been raised and with which the Commission concurs.

Recommendations

1. Adoption of Annexation Ordinances under the Agreement

Section 3 of the proposed agreement requires the Town to hold an advertised public hearing prior to the adoption of an ordinance which effects an annexation. The Commission considers this procedural step appropriate and desirable and concurs with the requirement. The Commission recommends, however, that Section 3 be amended to state that formal notice of such a public hearing will be provided the Board of Supervisors. The Commission further recommends that Section 3 be amended such that the elements of any annexation ordinance adopted pursuant to the agreement will closely parallel the elements prescribed for traditional annexation ordinances by Section 15.1-1033 of the Code of Virginia. Thus, the Commission recommends that the section be amended to state

that any annexation ordinance adopted by the Town include:

- (a) a metes and bounds description of the area sought for annexation;
- (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 a detailed listing of provisions for the extension of utilities and for meeting the annexed area's other service needs.

These proposed amendments to the agreement will delineate the service improvements which will be made with each annexation and will provide the citizens subject to annexation a list of specific improvements which can be expected from the Town within specified periods of time.

In addition to the amendments proposed above, the Commission further recommends that the agreement be amended to provide that all annexations shall be made effective as of midnight on December 31 of the year specified and that certified copies of each adopted annexation ordinance shall be

filed with the Circuit Court of Lunenburg County, the Secretary of the Commonwealth, and other State and federal agencies which require knowledge of local government boundary changes. These amendments would conform the procedure for the adoption of ordinances under the agreement to those which apply to annexation ordinances generally.

2. Equitable Sharing of Tax Resources

The Commission recommends that the agreement be amended to include a provision stating that the Town will record the revenues derived from and expenses incurred on behalf of an annexed area and shall endeavor to provide an equitable allocation of Town resources to both the former Town and annexed areas. Such distinct calculations for an area should be continued until the services and facilities committed to an area in an annexation ordinance have been provided. The Commission considers such a statement of policy and principle a desirable element for inclusion in the agreement.

3. Annexation of Agricultural Properties

The Commission recommends that Section 15 of the agreement be amended to state that the Town shall not annex acreage which is principally and actively devoted to agricultural production, unless such acreage is largely embraced by property appropriate for annexation and cannot, in the judgment of the Town, reason-

ably be excluded therefrom. While the Commission recommends that the Town exclude active agricultural properties from annexations effected under the proposed agreement, it recognizes that occasions will arise where the inclusion of some agricultural acreage in an annexation may be required, and should be authorized, in order that annexed areas might be reasonably compact or for other appropriate purposes. The present provisions of Section 15 should be retained and made applicable to any active agricultural acreage which may be brought into the Town incidental to the annexation of other property.

The proposed amendment should be of assistance to the agricultural community adjacent to Kenbridge, while not adversely affecting the Town's viability. As agricultural properties are converted to other use, or as they are proffered for development, they become subject to annexation. Unlike the State's traditional annexation process which limits municipally-initiated annexations against a county to one per decade, the proposed agreement would permit the Town to annex (within areas covered by the agreement) more frequently. Thus, the Town is not forced to annex land sufficient to meet its ten-year needs at one time. The latitude and frequency of annexation permitted by this agreement facilitates, in our view, the exclusion of active agricultural properties from annexation. As such property is converted to non-agri-

cultural use, it may be readily annexed.

4. Size and Service Needs of Areas Annexed

The Commission recommends that the Town not annex any property encompassing at the time of the adoption of the annexation ordinance residences, commercial concerns, or industrial enterprises which cannot be provided water and sewerage services, if such are needed or desired, within five years following the effective date of annexation. Accordingly, the Commission recommends that the Town consider each prospective annexation on the basis of its overall economic feasibility and restrict each annexation to areas which can be fully served within a five year period. Thus, the Commission recommends that Section 14 of the agreement be amended to include a commitment for the provisions of water and sewer service to all residences, commercial concerns, and industrial enterprises (which are located in an annexed area at the time the applicable annexation ordinance was adopted by the Town) within five years of the date of annexation if such is needed or requested by property owners. This proposed amendment would provide assurance to all persons and entities annexed that they will have access to these municipal services within a reasonable period. This amendment should promote careful planning on the part of the Town, discourage premature annexations, and reduce grounds for citizen complaint.

5. Deletion of Section 17

The Commission recommends that Section 17 of the agreement be deleted. The statutes governing town-county annexation agreements clearly indicate that these documents are to have permanent effect. The law states, for example, that the adoption of a town-county annexation agreement requires the town's permanent renunciation of its authority to seek city status. The Commission believes that Section 17 creates legal ambiguities which can be avoided by its deletion.

6. Adoption by Town of Capital Improvement Program

The Commission recommends that the Town modify its planning and fiscal procedures to require the annual preparation and adoption of a capital improvement program. The development of such a program would promote appropriate planning for the phased implementation of annexation ordinances and would provide added opportunity for residents of annexed areas, and the Town generally, to comment on proposed capital improvements through participation in the public hearings and activities of the Town's planning commission. Capital improvement programs, as authorized by Section 15.1-464 of the Code of Virginia, may be developed to cover five year periods and, thus, would be appropriate instruments for planning and constructing improvements specified in annexation ordinances. Assistance in establishing such a program may be obtained from

the State or from the planning district commissions.

7. Subdivision Ordinance

The Commission recommends that the Town adopt a subdivision ordinance to promote the orderly growth of areas annexed. Such an ordinance can assist with the proper construction and coordination of thoroughfares, public utilities, and other community facilities and can constitute a vital component of a community's planning and development program. In the Commission's judgment, the adoption of the proposed annexation agreement will create a need for the Town's prompt adoption of a subdivision ordinance.

8. Law Enforcement Services

It is the Commission's judgment that the Town should consider the addition of sworn law enforcement personnel to its police department as a prerequisite for the annexation of Phase 1 areas. The records of Kenbridge's police department indicate that its four sworn officers worked a total of 1,995 hours of overtime during calendar year 1980. Nearly one-half of this overtime (946 hours) was recorded by the Chief of Police. Since the annexation of the entire Phase 1 will increase the Town's population by 26% and its area by 149%, it will significantly add to the Town's law enforcement needs and to the pressures on the Chief of Police. The Commission

recommends that the annexation of Phase 1 not be contemplated by the Town without recognition of its immediate need for additional law enforcement assistance.

Concluding Comment

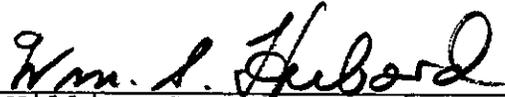
In this report the Commission on Local Government has reviewed and offered recommendations on the first town-county annexation agreement to be developed in the history of the Commonwealth. The proposed Town of Kenbridge-Lunenburg County agreement, which contains major grants and concessions of legal authority by the two local governing bodies which are party to it, has merited and received careful analysis by this Commission. On the basis of its analysis of current and prospective conditions, the Commission has concluded that the proposed agreement is promotive of the general interest of the Town of Kenbridge and Lunenburg County.

While the Commission has determined that the proposed agreement meets the statutorily prescribed standards for "favorable" review, it does hold that the recommendations previously proposed in this report constitute beneficial amendments to the agreement or appropriate implementation actions to be taken by the Town. The Commission is prepared to assist the parties in their consideration of these recommendations and in developing any amendatory provisions for the agreement which may be desired.

Respectfully submitted,



E. A. Beck, Chairman



William S. Hubbard, Vice Chairman



A. George Cook, III



Billy W. Frazier



Wendell D. Hensley

APPENDICES

APPENDIX A

AGREEMENT DEFINING ANNEXATION RIGHTS

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

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

WHEREAS, the said study presented by Nolen & Lemon, consulting Engineers, Lynchburg, Virginia, dated January, 1981, is entitled Kenbridge Annexation Feasibility Plan (herein called "the plan"). See attachment "A". This plan has defined two areas for future annexation by the Town and designated these areas as Phase 1 and Phase 2; and,

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

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

NOW THEREFORE WITNESSETH: That for and in consideration of the premises and in further consideration of the mutual

promises and covenants herein contained, the Town and County do mutually agree as follows:

1. The Town by the execution of this agreement as provided by §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 and recommendations concerning the agreement by the Commission on Local Government in a form acceptable to the Town.

2. It is the intent of the Town to immediately annex all of Phase 1 described in the plan in Plate I, however the Town shall have the right to annex such portion of the County as the Town shall deem expedient as is described in Phase 1 on Plate 1 of the attached plan. Such annexation may be accomplished by enacting a Town Ordinance at any time after the execution of this agreement by the parties and the review and recommendations concerning this agreement by the Commission on Local Government and the final adoption by the Town and County of such agreement with modifications, if any, subsequent to such review and recommendations by such Commission as provided in §§15.1-1058.2 and 15.1-1058.3 of the Code of Virginia, 1950 as amended.

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

4. No area in Phase 2 shall be annexed before the year 1995.

5. Losses of revenue to the County resulting from annexation are anticipated in the following categories:

Automobile license sales

Sales tax revenues

Share of profits from the Alcoholic Beverage Control Board

Federal revenue sharing

In the event any of the above stated revenue programs are discontinued or changed in such a way that the County would not have received revenues in any year during which reimbursement by the Town is provided for under the above formula, the County shall not be reimbursed by the Town during that year.

Losses shall be calculated and agreed upon by the Town and the County as of the date of the enactment of any ordinance annexing any portion of the County. Such losses shall be reimbursed to the County as follows:

- (a) 75% of the loss of revenue shall be reimbursed on January 1 of the year following annexation.
- (b) 50% of such loss of revenue shall be reimbursed on January 1 of the second year following annexation.
- (c) 25% of such loss of revenue shall be reimbursed on January 1 of the third year following annexation.

After January 1 of the third year following annexation, no further reimbursement shall be required of the Town.

All calculations of loss of revenue shall be based on the loss agreed to be sustained as of the date of the first enactment of each annexation Ordinance as agreed by the parties as provided in this Section.

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

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

8. The Town has authorized the execution of this agreement as indicated by the attached attested copy of the minutes of its meeting of _____, 1981. See Attachment "B".

9. The County has authorized execution of this agreement as indicated by the attached attested copy of the minutes of its meeting of _____, 1981. See Attachment "C".

10. Proper notification has been given the public by the Commission on Local Government as required by §15.1-1058.2. See Attachment "D". (To be attached.)

11. The Commission on Local Government has reviewed this agreement with modifications, if any, as indicated by Attachment "E". (To be attached.)

12. All modifications, if any, suggested by the Commission on Local Government have been acknowledge and approved by the Town and County and the agreement has been adopted by each body

as required by §15.1-1058.3 as shown by the attached attested copies of the minutes of the respective bodies and Attachments "F" and "G". (To be attached.)

13. This agreement shall become void in the event no annexation ordinance is adopted by the Town within 5 years of the date of the final approval of the annexation agreement by the Commission on Local Government.

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

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

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

17. This agreement shall remain in full force and effect until all of the land described in Phase 1 and Phase 2 in the map attached hereto and marked Exhibit A, has been annexed to the Town of Kenbridge.

18. No annexation proceeding for involuntary annexation under §15.1-1033 of the Code of Virginia, of 1950 as amended shall be instituted by the Town against the County, prior to January 1, 1995, however nothing in this agreement shall deprive the citizens in Lunenburg County of exercising their right to petition the Court for voluntary annexation to the Town of Kenbridge under §15.1-1034 of the Code of Virginia, of 1950 as amended.

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

WITNESS the following signatures and seals:

TOWN OF KENBRIDGE

By _____ (SEAL)
Mayor

Attest:

COUNTY OF LUNENBURG

By _____ (SEAL)
Chairman, Board of Supervisors

Attest:

APPENDIX B

Chapter 25

ARTICLE 1.1.

Agreements Defining Annexation Rights.

§ 15.1-1058.1. Agreements between towns and counties authorized; effect; provisions. — Towns in counties, or parts of counties, not immune from annexation may voluntarily enter into agreements with such counties for the purpose of defining the town's annexation rights in the future. Upon the execution of such an agreement by both the town and the county, the town shall permanently renounce its right to become a city. Any such agreement shall provide for the regular and orderly growth of the town in conjunction with the county and for an equitable sharing of resources and liabilities. It shall also provide that the town may annex at regular intervals by the adoption of an ordinance. (1979, c. 85.)

§ 15.1-1058.2. Hearing before Commission on Local Government required. — Once the town and county governing bodies have decided upon the terms of such agreement, the proposed agreement shall be presented to the Commission on Local Government. The Commission shall conduct a public hearing at some location in the town or the county and interested parties may appear and offer evidence or comments. The hearing shall be duly advertised in some newspaper having general circulation in the county and the town once a week for two successive weeks, stating the time and place of the hearing, and summarizing the terms of the proposed agreement. The second advertisement shall appear not less than six days nor more than twenty-one days prior to the hearing. The Commission shall then determine whether the proposed agreement provides for the orderly and regular growth of the town and county together, for an equitable sharing of the resources and liabilities of the town and the county, and whether the agreement is in the best interest of the community at large, and shall so advise the governing bodies in a written opinion. (1979, c. 85.)

§ 15.1-1058.3. Adoption of agreement. — After the Commission has advised the governing bodies of the two jurisdictions of its determination, and regardless of whether its determination is favorable, such bodies may adopt the agreement. If the Commission's determination is unfavorable, however, the governing bodies shall first conduct an additional joint public hearing advertised as provided in § 15.1-1058.2. Adoption of the agreement by both governing bodies will operate permanently to divest the town of its right to become a city. (1979, c. 85.)

§ 15.1-1058.4. Inability to agree; petition to Commission on Local Government. — In the event the governing bodies of the town and county cannot reach a voluntary agreement as to future annexation rights, the town may, by ordinance duly adopted by a majority vote of its governing body, petition the Commission on Local Government for an order establishing the rights of the town to annex territory by ordinance under specified agreed terms. A copy of such petition and ordinance shall be served on the Commonwealth's Attorney, or county attorney, if there be one and on the chairman of the board of supervisors of the county. The county shall file its response to such petition with the Commission within sixty days after receipt of service thereof.

After the time for filing of a response by the county has elapsed, the Commission shall establish a date, time and place for a hearing, to be conducted in the county or the town, at which the parties, and any resident or property owner of either the county or the town may appear and present evidence or comment on the rights petitioned for by the town. After receiving such evidence, and making such further investigation as it shall deem appropriate, and based upon the criteria set forth in § 15.1-1041, the Commission shall enter an order which grants such rights to the town, either upon the terms set forth in the petition or upon some modified basis. Such order shall in no event grant to the town the right to annex county territory by ordinance more frequently than once every five years. (1979, c. 85.)

§ 15.1-1058.5. Appeal. — Any order of the Commission regarding future annexation rights of a town shall become final unless either the town or the county or five per centum of the registered voters in either jurisdiction shall, within thirty days of its entry, petition the court to review such order. In the event of such a petition, the court shall review such decision and enter any order it deems appropriate. A final order of either the Commission or the court granting the town the right to future annexation through the periodic adoption of ordinances shall operate permanently to divest the town of its rights to become a city. (1979, c. 85.)

APPENDIX C

Statistical Profile of the Town of Kenbridge,
Lunenburg County and the Areas Covered Under
The Agreement Defining Annexation Rights.

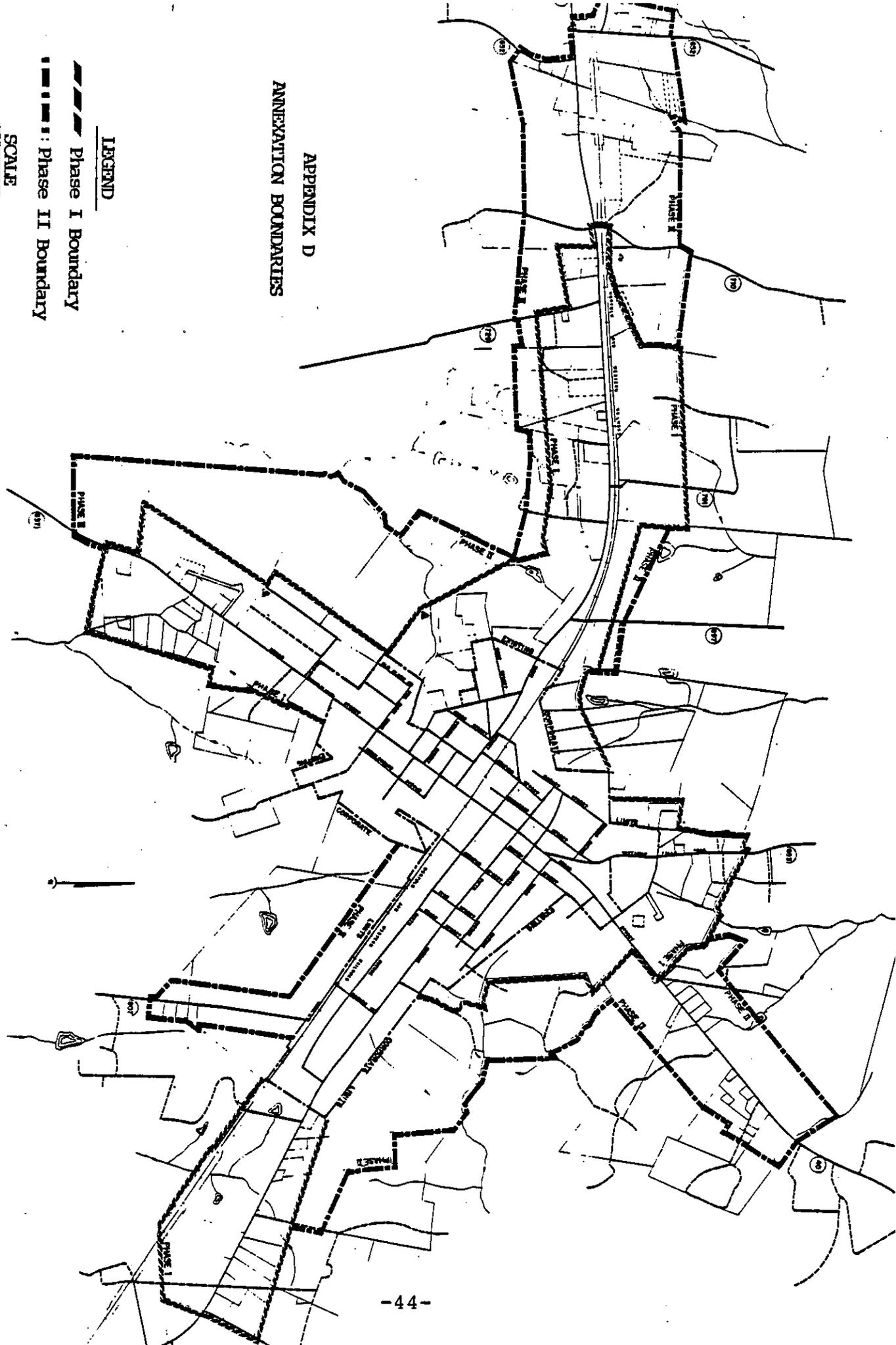
	Town of <u>Kenbridge</u>	County of <u>Lunenburg</u>	Phase 1 <u>Areas</u>	Phase 2 <u>Areas</u>
Population	1,352	12,124	357	141
Land Area (Sq. Mi.)	0.88	439.29	1.25	1.52
Total Assessed Values	\$2,459,256	\$23,741,145	\$991,600	\$263,900
Real Estate Values	\$1,885,810	\$15,206,240	\$801,400	\$141,400
Personal Property Values	\$ 400,405	\$ 4,073,575	\$113,500	\$ 44,800
Public Service Corporation Values	\$ 173,041	\$ 1,569,610	\$ 76,700	\$ 77,700
Total General Fund Revenues	\$ 165,771	\$ 1,781,695	N/A	N/A
Total General Fund Expenditures	\$ 183,973	\$ 1,866,395	N/A	N/A

Note: All figures are 1980 statistics or estimates
N/A = Not Available

Sources: Kenbridge Exhibits, Exh. 2, 6, 24 and 30; Kenbridge Annexation Feasibility Plan, Table VI; County of Lunenburg, Report on Examination of Financial Statements for the Year Ended June 30, 1980, Exh. C and D; and data provided by E. G. Bagley, Jr., Commissioner of Revenue, County of Lunenburg, letter to staff of Commission on Local Government, October 1, 1981.

LEGEND
 - - - - - Phase I Boundary
 - - - - - Phase II Boundary
SCALE
 1" = 600'

APPENDIX D
ANNEXATION BOUNDARIES



Source: Lemon and Guffey, P.C., Cambridge
 Annexation Feasibility Plan, Plate II,
 February, 1981.