The City-County Revenue Sharing Agreement

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Overview of the Revenue Sharing Agreement

- The Agreement was entered into in 1982
- The City cannot initiate proceedings to annex lands in the County
- The County "shares" revenue with the City
- The statewide moratorium on annexations imposed in 19
- 87 has been extended multiple times and is currently extended to 2024
- To date, the County has transferred $311,803,547 to the City

Annexations

Annexations through the Mid-20th Century

- Cities were urban
- Counties were rural
- Cities annexed county land to provide urban services to the annexed land
- Courts considered the “necessity” and “expediency” of proposed annexations
- Underlying rationale for annexations was placing urban areas under city government and rural areas under county government

(Roberts, 2009)

Annexations after the Mid-20th Century

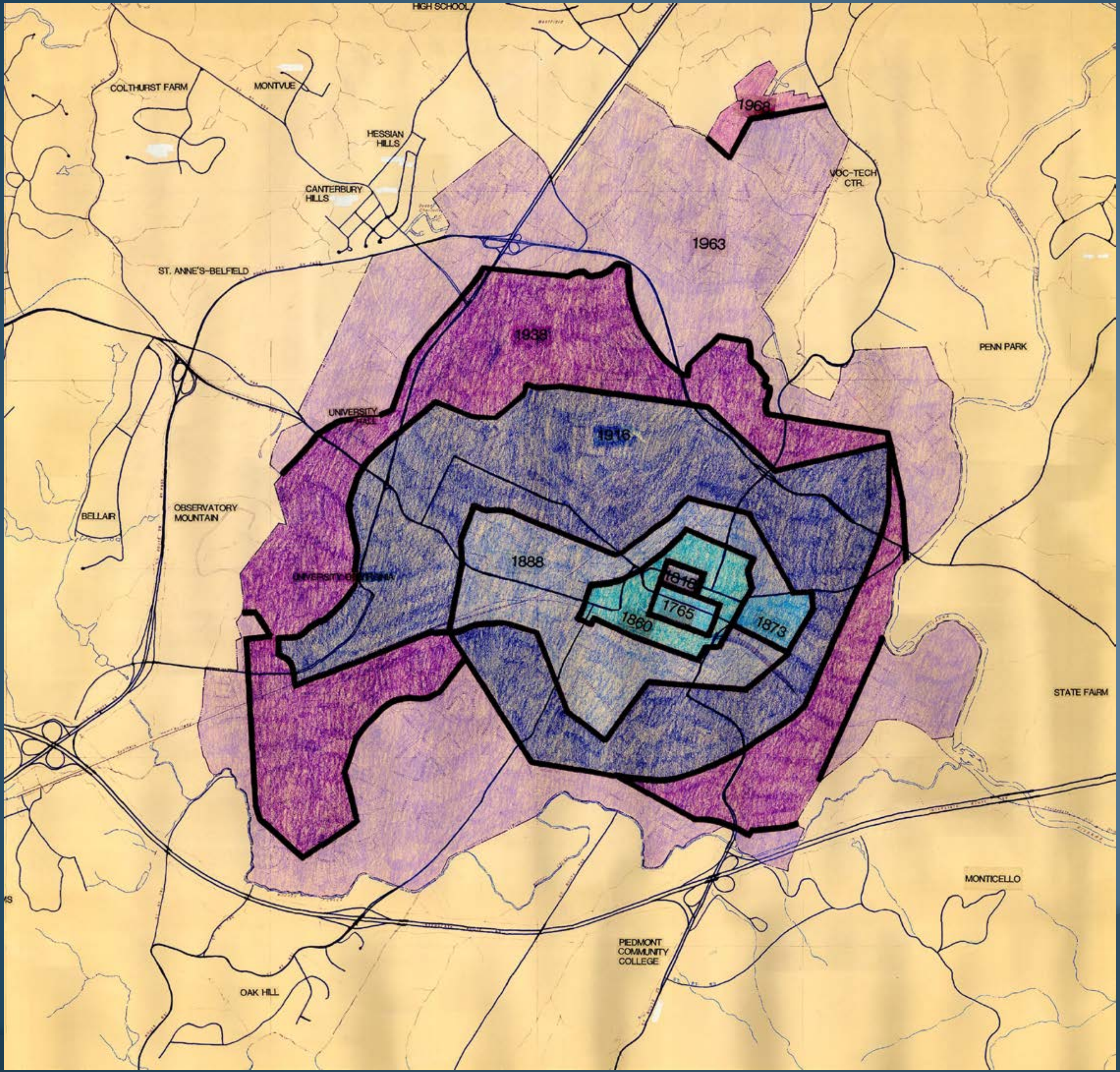
- Around the middle of the 20th Century, counties began to urbanize
  - Increased mobility because highways expanded and more people owned cars
- Urban and suburban development occurring in areas of counties that did not abut cities
- Delivering city services to these outlying areas became more difficult; cities had to annex undeveloped lands to reach the developed parts of counties
- Urbanizing counties began to deliver some services historically provided by cities

(Roberts, 2009)

Annexations after the Mid-20th Century

- These changes affected the traditional purpose for city annexations – providing urban services to developed areas
- The suburbanization of counties and the migration of city residents to counties left cities older and poorer, reducing cities' tax bases
- As a result, the purpose of annexations changed from providing urban services into a tool for cities to maintain or increase their tax base
- Because of the economic interests at stake, annexations became bitterly fought battles in most cases
- The General Assembly periodically imposed moratoria on annexations

(Roberts, 2009)


HIGH SCHOOL
COLTHURST FARM
MONTVUE
HESSIAN HILLS
CANTERBURY HILLS
1968
VOC-TECH CTR.
1963
ST. ANNE'S-BELFIELD
1938
PENN PARK
UNIVERSITY HALL
1916
BELLAIR
OBSERVATORY MOUNTAIN
1888
1818
1765
1860
1873
STATE FARM
MONTICELLO
PIEDMONT COMMUNITY COLLEGE
OAK HILL

The Problem with Independent Cities

- Under Virginia's unique "independent cities" structure, cities and counties provide their own services
- The independent city structure "has caused strained relationships between [cities and counties] because annexation completely divests a county of all territory and tax resources granted to a city" *(Glass, 2016)*
- "How well local governments succeed in promoting the common weal depends in large part upon how they are organized and how they interact with their neighbors." *County of Rockingham v. City of Harrisonburg*, 224 Va. 62 (1982)

Annexation or Revenue Sharing?

The 1979 Legislation

- In 1979, there was a legislative response that:
  - Ended a several-year moratorium on annexations and established a new annexation procedure effective July 1, 1980
  - Enabled cities and counties to enter into revenue sharing agreements in exchange for surrendering the right to initiate annexation proceedings
  - Enabled qualifying urbanized counties to obtain immunity from annexation from the court, including one immunity for counties having a population of at least 50,000 persons and a population density of at least 140 persons per square mile
- Neither annexations nor the acrimony ended

The City's Annexation Threat

- The City threatened to annex approximately 10 square miles of the County's "urban ring" to the City
- Simulations conducted while the City and County were negotiating the Agreement determined that the annexation would require the County to increase its tax rate from approximately 63 cents to 90 cents per $100 *(Lindstrom, 1992)*

The City's Proposal to Share Revenue

- The City also proposed for the County and the City to "share" the sales tax revenues of the City and 32 square miles of the County's urban ring
- Redistribution under the proposal would have resulted in $789,000 in sales tax revenue being transferred from the County to the City in the first year
- The proposal also required:
  - Creating a joint City-County planning commission
  - Developing a jointly planned program to increase public housing and public assistance in the County
  - The County increasing its contribution for public transportation
- City would forego annexations for 20 years


32 Square Mile Area (approx.)
10 Square Mile Area (approx.)
1963
1916
1888
1765
1873
NORTHFIELDS
PENN PARK
FARMINGTON
MONTICELLO
SHERWOOD FARMS
OAK HILL
PIEDMONT COMMUNITY COLLEGE
FOUR SEASONS
KEY WEST
STATE FARM

Negotiations on the Revenue Sharing Agreement

- Negotiations continued through 1981 and into early 1982
- An agreement was reached in late January 1982
- A referendum on the Agreement was approved by 63% of County voters in May 1982
  - A referendum was required under the Constitution of Virginia because the Agreement was contracted debt

Was the County under "duress" to reach Agreement?

- A contract may be unenforceable against a party if it was entered into under "duress"
- The question is whether the City's threat of litigation to annex 10 square miles of County land was "duress"
- Duress may be a threat of restraint, personal injury, or any wrongful act that prevents a party from exercising its free will, thereby coercing the party's consent
- The threat of litigation to annex land, which the City had a legal right to, was not "duress"

VOTE FOR REVENUE SHARING

MAY 18

* Saves county taxpayers money - The agreement will cost only one-half or less of any annexation and maintains considerably lower county taxes

* Stops once and for all any annexation of Albemarle County land by Charlottesville

* Guarantees that the county will never have to pay more than ten cents of its tax rate to the city - ten cents is an absolute ceiling forever - remember - annexation is forever and there is no ceiling to the loss

* Protects county citizens who could be annexed from paying the almost double city taxes

* Insures that no county children will be required to go to city schools and maintains the stability of county neighborhoods and school districts

* Guarantees that the county can never again be affected by city policies or city spending

* Prevents leap-frog development into the county that would disrupt or destroy county environmental protection and preservation policies of recent years

* Promotes cooperation between city and county instead of competition for business and industry

* Eliminates an annexation battle which would be costly, divisive, and bitter

* Is strongly recommended by the best-informed representatives whose only goal has been to secure for county taxpayers the most favorable deal possible

. . . DON'T GAMBLE

YOUR FUTURE TAX

DOLLARS ARE AT ST

VOTE YES

Paid for by Albemarle Taxpayers **FOR** Revenue Sharing

The Key Terms of the Agreement

Section II, Revenue Sharing

- The formula for determining the amount of revenue that will be “shared”
  - The formula balanced the City’s need for additional revenue as shown by its significantly higher tax rate with the County’s greater population and growth rate, which showed that its present and future revenue needs were greater *(Lindstrom, 1992)*
  - In every year the Agreement has been in place, the County has transferred revenue to the City
- Imposes a cap on the amount of revenue transferred so that it can never exceed 0.1% of the locally assessed value of taxable real estate
  - In 3/4 of the years the Agreement has been in place, the County’s transfer has been capped

Is the Agreement "taxation without representation"?

- Article I, § 6 of the Constitution of Virginia provides in part that people cannot be taxed without their own consent, or the consent of their duly elected representatives
- The question is whether the County sharing its revenue with the City is "taxation without representation"
- The Agreement does not raise a "taxation without representation" issue because:
  - The Agreement was approved by the voters; *i.e.*, the voters agreed to the approximately 10 cent increase in the tax rate to fund the Agreement
  - The Agreement was approved by the Board, the County residents' duly elected representatives
  - State law enables localities to "share" revenue

Why doesn’t County have a say in how funds will be used?

- The Agreement does not provide how the City is to use the funds transferred from the County
- The County understood at the time that it would not have a say in how the funds transferred from the County would be used
- Page B-9 of the City’s FY 18 adopted budget states that the “majority of this revenue [under the Agreement] is dedicated to projects and operations that benefit City and County residents alike, including replacement of transit infrastructure and transportation improvements, enhancements to parks and recreation facilities and programs, public safety enhancements, and road and infrastructure maintenance.”

Why are lower County real estate values stated in the budget?

- The question pertains to the difference in the lower real estate values stated in the County's budget as compared to the higher total assessed values used in the revenue sharing calculations under the Agreement
- The Agreement uses the term "total assessed values," which the County and the City have always interpreted to mean the fair market value of the land and the improvements; even for lands that are subject to land use valuation, the fair market value is used
- The budget uses the land use value for those lands subject to use valuation

Section III, Annexations Prohibited

- The City is prohibited from initiating any annexation proceedings against the County (with an exception for Pen Park, which was owned by the City)
- The City is required to oppose any petitions by County residents or property owners seeking to have territory annexed to the City
- The City and County acknowledged during negotiations that the General Assembly could re-establish a moratorium on annexations (which it did in 1987)

The statewide moratorium on annexations

- The “temporary” moratorium that began January 1, in 1987 was intended to give the General Assembly time to work out the structural problems of local governments
- Because of a preoccupation with State budgets, limited State revenues, other issues, and the limited impact that removing the moratorium would have on cities (about 12 cities would be able to annex), lifting the moratorium has not been a State priority *(Sorrell and Vlk, 2012)*

Did the moratorium cause a "failure of consideration"?

- A valid contract must have an offer, an acceptance, and valuable consideration
- The question is whether the moratorium, now in effect for 30 years, means that the Agreement is unenforceable because there is a failure of consideration
- Consideration does not have to be equal in value for the parties
- There is no failure of consideration because the County received something of value – a written promise from the City to never annex County lands
- Neither the County nor the City knew that the moratorium would continue for 30 years; the moratorium could have expired multiple times over the past 30 years, meaning that the County was always receiving the benefit of the Agreement

An example of "failure of consideration"

- Failure of consideration: I sign a contract to buy a horse for $10,000 in two $5,000 payments. Before the horse is delivered to me, it dies. The contract is unenforceable against me because I will not receive the consideration (the horse) I bargained for.
- No failure of consideration: I sign a contract to buy a horse for $10,000 in two $5,000 payments. The horse is delivered to me but one month after I take possession, it is struck by lightning and dies. The contract is enforceable against me because I received the consideration (the horse) I bargained for.

Did the moratorium “frustrate the purpose” of the Agreement?

- A contract may be unenforceable if its purpose was frustrated
- The question is whether the moratorium on annexations imposed in 1987 frustrated the purpose of the Agreement
- “Frustration of purpose” may excuse nonperformance if, at the time a contract is made, a party's performance under it is impracticable without its fault because of a fact of which it has no reason to know and the non-existence of which is a basic assumption on which the contract is made
- There is no frustration of purpose in this case because the City and the County were aware of and discussed the possibility of a change in annexation law and the re-imposition of a moratorium *(Lindstrom, 1992)*

Section IV, Discriminatory Taxes Prohibited

- Provides that neither the City nor the County will impose or increase "any tax that would affect residents of the other jurisdiction if the other jurisdiction is not legally empowered to enact that tax at the same rate and in the same manner."
  - Intended to prevent either the City or the County from enacting a commuter or payroll tax unless both localities are enabled to impose the tax
  - Does not apply to *ad valorem* property taxes, meals taxes, transient occupancy taxes, admissions taxes and "other general or selective sales or excise taxes"

Does the City's PILOT violate Section IV?

- The City imposes a "payment in lieu of taxes" on both City and County customers of natural gas; about 8% of a customer's gas bill
- When imposed on County customers, either the PILOT may violate Section IV if it is characterized as a discriminatory tax, but it may be most accurately classified as an unconstitutional extra-territorial tax on County residents because the revenue goes into the City's general fund
- Assuming for sake of argument the PILOT violates Section IV, the Agreement is not terminated
  - Have the PILOT received from County customers go into the utility's fund, rather than the City's general fund; or
  - Eliminate the PILOT from County customers but establish a new rate structure for County customers

Section VI, Duration of the Agreement

- The Agreement is in effect until:
  - The City and the County are consolidated or combined into a single political subdivision;
  - The concept of independent cities is changed by State law so that real property in the City becomes part of the County's tax base; or
  - The City and the County agree to cancel the Agreement
- The City and County acknowledged during negotiations that the Agreement could continue indefinitely

Section IX, Remedy for Breach

- If the Agreement is deemed to have been breached:
  - The party who believes a breach was committed must provide notice to the other party
  - The other party has 60 days to correct the breach
  - If the other party fails to timely correct the breach, the party claiming that a breach has occurred may seek a court order to compel performance according to the terms of the Agreement
- A breach does not terminate the Agreement

Why doesn’t the County ask the court to invalidate the Agreement?

- A lawsuit challenging the validity of the Agreement would be frivolous in the absence of any good faith argument that it is invalid
  - The County did not enter into the Agreement under “duress” (already addressed)
  - The County did not face a “failure of consideration” or a “frustration of purpose” (already addressed)
  - The terms of the Agreement are not “unconscionable” to the County (upcoming slides)
- Both the City and the County have a duty of good faith and fair dealing, which is part of every contract unless it is expressly excluded
  - Bad faith is a neglect or refusal to fulfill some duty or contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive

Why isn't the Agreement "unconscionable"?

- An agreement is "unconscionable" if it is "'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other'"
- If inadequacy of price or inequality in value are the only indicia of unconscionability, the case must be extreme to justify equitable relief
- Some benefits to the County arising from the Agreement are on the following slides

Some Benefits to the County Arising from the Agreement

The Agreement stabilized real estate tax rates

- The Agreement provided stability to the County that allowed it to plan its financial future and develop a diverse tax base in the County’s urban ring surrounding the City without the fear of losing that tax base to the City through annexation *(Edwards, 1992)*
- Simulations created while the Agreement was being negotiated estimated that the 10 square mile annexation being considered by the City at the time would have adversely impacted the County’s tax base so as to require a 27-cent increase in the tax rate, from approximately 63 cents to 90 cents *(Lindstrom, 1992)*

The Agreement helped stabilize the City’s financial health

- The revenue transferred from the County to the City under the Agreement helped stabilize the financial health of the City
- Although the City’s window to revert to town status is closing, if it had reverted to town status over the past 30 years, the County would have taken over significant City departments and services, including its department of social services and its school division

The Agreement stabilized how the County developed

- As a defense against annexation, counties often planned and developed in ways to insulate themselves from the adverse effects of annexation, and they did so by dispersing development beyond the physical reach of a neighboring city
- The Agreement provided stability in land use planning, enabling the County to concentrate its commercial and industrial uses, as well as its higher density residential uses, in the County's development areas, most of which is in the County's urban ring
  - This also allowed pubic infrastructure, public utilities, and County services to be provided more efficiently and economically

Regional cooperation can be beneficial

- The Urban Partnership and the Virginia Chamber of Commerce have strongly endorsed revenue sharing as a means of promoting cooperation among localities that will make regions within Virginia more competitive in the economic development field. *(West and Glass, 2000)*
- The Chamber of Commerce has noted that regions that work together are stronger and more successful. *(West and Glass, 2000)*
- Within the 10 square mile area the City wanted to annex in 1980, the County received approximately $64.1 million more in local tax revenue than what it paid to the City under the Agreement from 2001 to 2016. *(Free Enterprise Forum, 2017)*