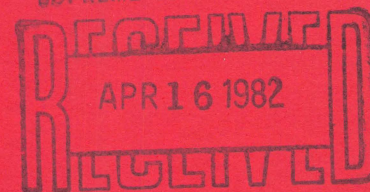


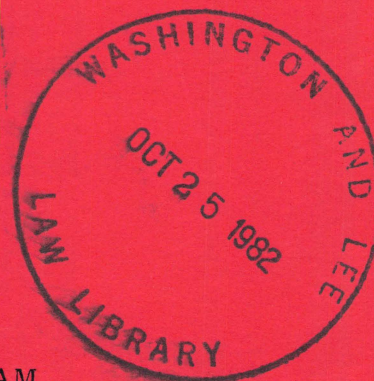
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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 812007



COUNTY OF ROCKINGHAM

Appellant

v.

CITY OF HARRISONBURG

Appellee

JOINT APPENDIX
Volume I

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PETITION FOR ANNEXATION OF A PORTION OF
ROCKINGHAM COUNTY TO THE CITY OF HARRI-
SONBURG

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF ROCKINGHAM COUNTY:

The petitioner, City of Harrisonburg, respectfully represents:

(1) That on the 13th day of May, 1975, Council of the City of Harrisonburg adopted an ordinance wherein the Council declared that the City of Harrisonburg desires to annex, pursuant to the provisions of Article 1, Chapter 25 of Title 15.1 of the Code of Virginia, as amended, certain territory in the County of Rockingham, which territory is adjacent to the City of Harrisonburg.

(2) That a copy of the aforesaid ordinance, duly certified by the City Clerk of the City of Harrisonburg, is filed with and prayed to be read as a part of this petition as if set out in full herein.

(3) That the necessity for and expediency of annexing portions of the territory of the County aforesaid to the City of

Harrisonburg, the metes, bounds and area of the territory sought and the terms and conditions upon which annexation of the areas is sought and provisions planned for the future management and improvement thereof are set forth in the ordinance, to which specific reference is hereby made.

(4) That information indicating generally subdivisions, industrial areas, farm areas, vacant areas, and other areas in the territory sought to be annexed is shown on a map attached to and made a part of the ordinance, to which specific reference is hereby made.

WHEREFORE, the City of Harrisonburg prays that all proceedings required by Article 1, Chapter 25 of Title 15.1 of the Code of Virginia, as amended, be had and that such territory in Rockingham County be annexed to the City of Harrisonburg in accordance with the said provisions.

CITY OF HARRISONBURG

By *William B. Moore*
City Manager

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AN ORDINANCE

To provide for the extension of the corporate limits of the City of Harrisonburg, Virginia, pursuant to the provisions of Article I, Chapter 25, Title 15.1 of the Code of Virginia by annexation of certain territory in Rockingham County; to declare the policy with respect thereto; to set forth the necessity and expediency thereof; to define the metes and bounds and area of the territory sought to be annexed; to show in maps annexed to this Ordinance, information indicating generally existing subdivisions, industrial areas, farm areas, vacant areas and other land uses; to set forth the effect thereof on said County and its ability adequately to support the County governments and public schools; and to prescribe the general terms and conditions upon which annexation is sought and provisions planned for future management and improvement of the annexed territory.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
HARRISONBURG:

Section 1. That the Council of the City of Harrisonburg, a municipal corporation of the Commonwealth of Virginia, hereby declares that the City of Harrisonburg desires to annex certain territory in Rockingham County adjacent to the corporate limits of the City in order to preserve and promote

the general welfare of the metropolitan area of which the City of Harrisonburg and the said County are a part, and the safety, health, peace, prosperity, good order, comfort and convenience of the inhabitants thereof, pursuant to the provisions of Article I, Chapter 25, Title 15.1 of the Code of Virginia.

NECESSITY AND EXPEDIENCY OF ANNEXATION

Section 2. That the Council hereby decrees that it is both necessary and expedient to annex the territory hereinafter described for the following reasons:

I.

Population and Area

By act of the Virginia General Assembly in 1780, Harrisonburg was formed as a town, consisting of fifty acres of land laid out in streets and lots by Thomas Harrison. In 1797, the charter was extended to include 23.5 acres of land laid out by sons of Thomas Harrison. In 1849, Harrisonburg was incorporated and in 1916 Harrisonburg became an independent city of the second class under the Virginia law. The city of Harrisonburg has a land area of 5.981 square miles, or 3,827.5 acres, and its population, according to the United States Census of 1970, was 14,605.

Rockingham County was created by the General Assembly in 1777 and presently has a land area of 865.25 square miles.

The County, of which Harrisonburg is the county seat and main commercial, industrial, and population center, has a population of 47,890 according to the U. S. Census of 1970.

II.

Necessity for Expansion

The City boundaries resulting from previous annexations include the following area:

Old City area.....	2.737 square miles
1962 Annexation area.....	3.010 square miles
1965 & 1970 Annexation areas.....	<u>0.234</u> square miles
Total Area.....	5.981 square miles

There now exists very little unoccupied space within the corporate limits of Harrisonburg for residential, commercial or industrial development.

United States Census figures for the decennial periods beginning in 1920 show Harrisonburg's population to have been as follows:

1920	---	5,875
1930	---	7,232
1940	---	8,768
1950	---	10,810
1960	---	11,916
1970	---	14,605

The concentration of population in the City and the lack of space within its boundaries for residential and

industrial development, and the advantages of transportation and commercial facilities, have combined to contribute to the settlement of people and the establishment of industrial and commercial enterprises in more spacious, less crowded sites outside its borders in the territory sought to be annexed, largely made possible by the water supplied to the area by the City, and in some cases made possible by the sewer lines and electric power supplied to the area by the City.

Harrisonburg must expand into the County or eventually decline through its inability to provide facilities and services for the population in the metropolitan area and for the industries essential to the economic life of the whole community. The demands for municipal facilities and services increase with the population and industrial growth of the metropolitan area. Continued growth in population will occur in the County. The location and relocation of industry in the metropolitan area will depend upon the facilities and services provided in large areas of the County ideally suited for industrial development. Unless the urban and urbanizing areas in the County are properly planned and coordinated for residential, industrial and commercial use and provision is made for facilities and services required for such uses, not only Harrisonburg but the entire metropolitan area will decline and thus result in economic stagnation of the whole community.

III.

Community of Interest

People living within the boundaries of the City of Harrisonburg and those portions of the County of Rockingham which are sought to be annexed are together largely a single, homogeneous, populated urban and urbanizing community of which Harrisonburg is the vital source and center, and without which much of the urbanized area in the County would not have developed.

A large proportion of the people living in the areas sought for annexation are entirely dependent for their livelihood upon employment in the industries, business and commercial establishments and professions conducted in the City and for marketing products they produce through enterprises and facilities conducted in the City.

Harrisonburg is the wholesale and retail shopping center for the people in the area sought for annexation, and is the principal source of supply for merchandise and articles sold and distributed through establishments in the County. People living in the County are dependent upon these wholesale and retail outlets for the necessities of life.

Postal facilities for the City and much of the area proposed for annexation are centered in the City, as are telephone and telegraph facilities and services.

IV.

County and City Government

The territory in the County sought to be annexed subsists under a form of government designed chiefly to meet the needs of a rural population. The policy-making body of the County Government is the Board of Supervisors. The Board consists of five members, one from each election district. The term of office for each Supervisor is four years. The Board selects one of the five Supervisors to serve as chairman. Many of the administrative functions of the County are performed by Board-appointed positions and commissions. The residents of the County together with the residents of the City of Harrisonburg jointly elect three constitutional officers. These are the Clerk of the Circuit Court, the Commonwealth's Attorney, and the Sheriff.

The City of Harrisonburg adopted the City Manager form of government on April 8, 1952. The City Manager operates under the direction of a Council of five members elected for four-year terms, the elections being staggered so that three councilmen are elected at the end of two years and two at the end of the next two years. The City Council is presided over by a Mayor who is elected by the Council from its members for a two-year term. The City's charter is fully adequate for its needs and to meet the needs of the territory

sought for annexation. Its functions of government and its administrative and managerial agencies can be readily extended to meet the needs of the territory sought to be annexed, to provide the facilities, improvements and services essential for an urban and urbanizing community, and to coordinate and plan the development of rural undeveloped and agricultural lands in the County for inevitable residential and industrial use.

The consolidation of the territory sought to be annexed with the City, and the coordination and integration of its resources with those of the City will enable the metropolitan area to function as a unit under a form of government designed to meet the needs of a growing industrial and residential center.

V.

Services, Facilities and Improvements

The territory sought for annexation needs to be incorporated in and coordinated and integrated with programs of governmental services, facilities and improvements to promote the general welfare of the area and the safety, health, peace, good order, comfort and convenience of the inhabitants of the area. Unless the territory sought to be annexed and the inhabitants thereof are brought under a single municipal government, the coordination and integration of most services,

facilities and improvements are not economically or politically feasible. Attempts to provide such services, facilities and improvements for the territory sought to be annexed by separate units of government would involve ineffective and wasteful duplication of resources and effort. Harrisonburg and the territory sought to be annexed can meet the principal needs and requirements of the metropolitan area only by consolidation through annexation.

Electric Power: The City of Harrisonburg owns and operates its own electric distribution system. The system is operated by The Harrisonburg Electric Commission, a separate entity of city government. Presently, the Commission is serving 6,384 customers located within the City limits and surrounding areas.

The distribution system is modern and up to date and a new 69,000 volt tie with VEPCO has just been completed. With this new system in operation, the Commission has the capacity to serve several times the existing load.

Most of the new construction and all of the operation and maintenance of the system is performed by Commission personnel. All customer accounting is performed by Commission personnel using the City's data processing center. Collections are made at a centrally located office with the convenience of a drive-in window.

The Commission has service area agreements with Shenandoah Valley Electric Co-op. and the Virginia Electric and Power Company. These agreements provide for orderly

transfer of customers in annexed areas either by the purchase of their facilities or by the removal and installation of new facilities by The Harrisonburg Electric Commission.

Electric service is an essential public service, and The Harrisonburg Electric Commission is providing to its customers, a high quality of service through local ownership. The Commission is able to provide this quality of service to its customers, in most cases, at rates either equal to or below those charged by other area utilities.

Water: Harrisonburg owns its water system supplied by Dry River and Skidmore at Rawley Springs, North River at Bridgewater and Silver Lake at Dayton. The water is filtered and chlorinated and piped to the City. The City affords the only complete public supply of water in the proposed annex area and serves many of the residential, industrial and commercial establishments in the area sought to be annexed. The supply is ample and can be quickly expanded.

The City of Harrisonburg operates and maintains sufficient storage facilities and distribution systems through which water is sold and delivered to the inhabitants, commercial enterprises and industries in the City and in the outlying areas served by the City. There are also sufficient storage facilities and distribution systems for fire fighting when needed throughout the City. The territory sought to be

annexed has no public water supply of its own; instead, much of the territory obtains water from Harrisonburg at twice the City rate. Harrisonburg's facilities, resources and programs are such that it can plan, finance, and construct extensions of its storage and distribution facilities to promote and encourage the location and establishment of residences, commercial enterprises and industries in the territory sought to be annexed.

Sanitary Sewage Disposal: Harrisonburg maintains and operates extensive systems for the disposal of sanitary sewage. These systems are available to every part of the City requiring sanitary sewage disposal service. The territory sought to be annexed has no public sewer system of its own; instead much of the territory is entirely dependent on the City system for sewage disposal. It is important to extend these services into the areas proposed for annexation because of the unsanitary condition of many septic tanks in much of the area.

Premises for which such service is not now available will be afforded the service as extensions of the systems are justified and completed. Sanitary sewage collected in the drainage area of Blacks Run, Cooks Creek and Pleasant Run systems will be given complete treatment in the regional authority sewage treatment plant, the capacity of which is adequate to meet the needs of the territory sought to be annexed.

The City is presently financing over 80% of the local cost of the regional sewage facilities, including the main major interceptors that will serve the existing plants located in Harrisonburg, Dayton and Bridgewater. Over \$12,000,000.00 has been spent for regional facilities and the City has pledged its full faith and credit, with signed contracts dating from January, 1972, in order for the Authority to have proper construction and excellent permanent financing. The County, does not have a signed agreement for sewage treatment nor has it incurred any financial obligation for sewage treatment. The sale of Authority bonds is dependent upon the full faith and credit of the City.

Garbage and Trash Collection and Disposal: Harrisonburg maintains and operates collection and disposal facilities for collection and disposal of garbage and trash using modern packer bodies and experienced collection crews. Residential collections are made semi-weekly. Daily pick up is available to commercial establishments Monday through Friday, if needed. Bulk refuse and brush trimmings are picked up weekly from residential areas. This operation is partially financed by a \$2.00 per month charge for each residential unit while business and industry pay according to amounts picked up by the City. A State approved landfill method of disposal is used and most normal garbage and trash is accepted from City residents and

business places. Equipment and manpower would be added and equal service will be extended to the area proposed for annexation.

Fire Fighting: Harrisonburg maintains coordinated and integrated facilities for fighting fire, consisting of two engine houses owned by the City and manned by full time paid fire fighters. The equipment and personnel are located strategically so as to reach the scene of fires quickly. The fire equipment is modern and consist of five pumpers, one 85 foot aerial ladder and 11 full time paid fire fighters. The City responds to alarms and combats fire quickly and efficiently in all parts of the City. No part of the City is without adequate water supply for fire fighting purposes. From time to time the City supplies its equipment to the County of Rockingham and surrounding counties upon request.

Fire Prevention: Harrisonburg maintains under the direction of a full time fire chief, a program for the administration and enforcement of regulations adopted to prevent fire and its containment once it starts, the investigation of fires of suspicious origin, the inspection of residential, business and industrial properties, hotels, theatres and schools and educational buildings and other places where numbers of people congregate and the education of school children and hospital employees in fire preventive measures.

These policies and programs are essential for the safety of people and property in urban communities. Harrisonburg has also adopted a Fire Prevention Code.

Rescue Squad: The City has volunteer rescue service around the clock with seven pieces of rescue equipment which service is available to residents of the City and County. The City furnishes modern quarters located within one of its fire stations.

Police Protection: Harrisonburg maintains a coordinated, well organized and disciplined Police Department composed of highly trained personnel, modern equipment and facilities necessary to provide for the safety of the inhabitants and the protection of property through the preservation of law and order, criminal detection and traffic control on a continuous basis.

The present force consist of a Chief, 4 Lieutenants, 3 Detectives, 4 Sergeants, 16 Patrolmen and 4 Dispatchers who operate from a large modern City owned Police Station which is equipped with a modern multi-channel communication center, computer teletype and other up-to-date law enforcement and administrative equipment. The Police Station also enjoys room for future expansion and growth.

The residents and commercial and business establishments in the area sought will benefit from the police protection the City is capable of providing. As the urban, commercial and industrial development expand, the need for urban type police protection and services will greatly increase.

Public Safety, Inspection and Zoning Administration:

Code enforcement as related to the public health, safety and welfare, and zoning enforcement to implement the orderly conduct of growth patterns and land use have been active arms of local government in Harrisonburg for a considerable number of years. A planning commission for the City of Harrisonburg was approved by City Council in March of 1938, and by May of 1939 the planning commission presented to Council the first zoning ordinance. Although a simple set of regulations at the start, the City nevertheless began a system of planning and zoning administration early enough to guide and strengthen the course of growth of this community. A board of zoning appeals was also established in 1939 under provisions of the State Charter.

Building permits were also being issued in 1939 in order to assure safe construction and fire prevention measures, as well as assisting the Commissioner of Revenue in the valuation of new work. Then as now, the approval of a building permit served to assure zoning compliance, and building and zoning administration has become a separate departmental function from that of the planning commission.

In addition to enforcement work, the inspection department determines whether those persons who engage in the businesses and trades of installing plumbing, appliances and

equipment, water supply and sewage disposal systems in buildings and structures are qualified to engage in such activities. Persons who are unable to meet predetermined qualifications as set forth by the department do not receive permits to work within the City limits. Plans submitted for building permits are reviewed for compliance with both the building code and provisions of the Virginia Fire Safety Regulations. On-site inspections are made with the assistance of the City Fire Chief to promote adequate fire prevention conditions.

The City Council adopted the new Virginia Uniform Statewide Building Code, effective July 1, 1973, to replace the Southern Standard Building Code as first adopted in 1952. This was done in advance of any mandatory direction by the State. In addition, the City has also prepared and adopted a Minimum Standards Housing Code, adopted June of 1959 and amended in July of 1965, and a Subdivision Control Ordinance adopted May of 1966. The recent Virginia Erosion and Sediment Control Law is in the process of adoption and will be enforced by the building and zoning personnel.

Regulations, standards and services are essential in urban and urbanizing communities to protect and promote the safety, health and welfare of the inhabitants thereof. The County does not provide such services on a scale required for its urban and urbanizing communities.

Streets and Highways: Harrisonburg has an excellent street system maintained by its own work force. All streets within Harrisonburg are paved and 90% of the streets have curb and gutter. The Street Department does the street construction and re-construction on all streets within the City except our arterial streets, which are constructed by the Urban Division of the Virginia Department of Highways and Transportation. Harrisonburg has a street cleaning and beautification program. Street cleaning is a daily program with all City streets being cleaned at least once a month and more frequently when needed. Beautification is a yearly project carried out by Garden Clubs and the Street Department. Harrisonburg has management and equipment capable of projecting their present services into the proposed annexed area.

The Street Department is responsible for snow removal. Harrisonburg has modern equipment for snow removal and ice control and this service could be extended into the proposed annexed area with additional equipment.

Harrisonburg has a Subdivision Control Ordinance which requires orderly development on all new streets. The subdivider or developer is required to grade, base and put in curb and gutter on all new proposed streets that are platted and recorded in the Clerk's Office. The County relies on the Department of Highways and Transportation to control their

proposed streets and their Ordinance does not require certain types of development to build streets to any standard.

Harrisonburg has a good system for street lighting on all streets and public parking lots within the City. This provides for a safe and relaxed atmosphere for people walking within the City. Rockingham County does not provide street lighting in any of its urbanized areas around the City.

Traffic Engineering is conducted within the City on a continuing basis with help from outside consultants on special occasions. Rockingham County relies on the Virginia Department of Highways and Transportation to do their traffic engineering.

Harrisonburg maintains a coordinated and integrated system of streets, highways and alleys, some of which are connected directly with those in the County. New streets, highways and alleys in the City are opened and improved, and existing streets, highways and alleys in the City are widened and improved as their use and needs of the urban community require. Land for such purposes is acquired by the City, and the work of improvement is largely financed with City funds except in the cases of subdivisions. All streets, highways and public alleys are likewise maintained and kept in repair by the City.

The control of streets, highways and alleys in the orderly arrangements therein of underground and overhead facilities which provide public services is essential for the proper and orderly growth of a metropolitan area.

Harrisonburg also maintains a coordinated and integrated system of street lights for its principal thoroughfares and streets and highways that are intensely used. Street lighting for other streets and highways and alleys is also provided according to a program based upon need and safety in their use. As the need arises and safety of the public and neighborhoods require, the street lighting system is extended or improved to provide reasonable illumination.

The City provides for the maintenance of thousands of traffic regulatory signs, traffic signals, street name signs and highway route markers and the installation and maintenance of parking meters for regulating the use of streets and highways for parking vehicles.

Harrisonburg also maintains and operates a coordinated and integrated program of periodic cleaning of its streets, highways and alleys and the removal of snow and ice from its principal thoroughfares and intensely used streets and highways.

The necessity for providing, maintaining, widening and improving and keeping in repair many City streets and highways, the lighting and cleaning thereof and removal of snow and ice therefrom, is in great measure dictated by the daily use made of such streets and highways by many people in the County.

The County makes no provision for opening and improving new streets, highways and alleys and for widening and

improving those existing when required by the needs of its urban and urbanizing community. They rely chiefly upon others to provide such public means of transportation.

The County does not provide street lighting for streets and highways in the urban and urbanizing areas sought to be annexed.

Many areas in the proposed annexation area are in need of such services and the need will increase as further urban, commercial and industrial development in the metropolitan areas take place; yet, the County, except in acutely congested places, makes no provision for meeting the needs of the safe use of streets and highways in the County, but relies upon agencies of the State for protection. Artificial, political boundaries hamper the institution and enforcement of traffic control measures which should be effected in the urban and urbanizing areas in the County to efficiently promote and protect public safety.

Public Education: The Harrisonburg City Public Schools offer well-rounded and coordinated programs of instruction in both the academic and vocational education areas. All the schools are fully accredited by the Southern Association of Colleges and Schools; elementary, junior, and senior high schools. The Rockingham County Schools have only one high school accredited by the Southern Association. All Harrisonburg

City Public Schools are fully accredited by the State Board of Education and have met all the criteria set forth by the Standards of Quality.

The Harrisonburg City Public Schools offer regional classes for hearing-impaired and multiple-handicapped children. This program is utilized by pupils from Rockingham County. The Harrisonburg City Schools have historically served as the summer school center of the area.

The Harrisonburg City Schools have a full-time vocal music person in each elementary school, junior and senior high school; in addition, it has both male and female physical education teachers in all elementary schools and junior and senior high school.

Should annexation be decreed, the City will make available to the children in the annexed area every educational advantage it now affords children in the City. The City presently operates three elementary schools, one junior high school and one high school. Each of these schools has excess capacities to accomodate students from the annexed area. Should additional space be required this will be accomplished by adding to existing City facilities, construction of new facilities and acquisition of surplus County facilities in the annexation area.

Public Library: The City and Rockingham County jointly operate the Rockingham Public Library. The City and County

share equally in the costs of operation and Page County, also a partner, pays a lesser amount. This is a regional facility with full public library services and employs a full-time Librarian and Assistant Librarian. There are books for all ages and a variety of other services are offered. In 1974 there were 20,000 borrowers of 78,462 volumes. The library is located in downtown Harrisonburg.

Municipal Buildings: The administration of the City government with its many departments is directed from a newly remodeled, centrally-located building owned and maintained by the City. Adjacent to this building is the School Administration Building, Recreation Building, and also new modern Harrisonburg Electric Commission Building. These buildings are functionably modern in every respect and will meet the needs of the City and the proposed annexation area for many years in the future.

The City of Harrisonburg owns 87 buildings and structures which does not include buildings operated by the Harrisonburg Board of Education.

Recreation: The Department of Parks and Recreation of the City of Harrisonburg offers recreational activities and programs for all ages beginning with pre-schoolers through Senior Citizens on a year-round basis.

Recreation facilities owned and operated by the City include tennis courts, swimming pools, large parks, small parks and playground areas, ball diamonds, a National Guard Armory, the Senior Citizens Center, a lake for fishing and ice skating and the Recreation Building which includes offices, craft rooms, meeting rooms and game rooms. The Department offers a diverse year-round variety of programs for citizens of all ages.

The Department of Parks and Recreation, City of Harrisonburg, provides facilities, programs and supervision on a full-time basis for all its citizens. Harrisonburg has six parks covering 216 acres which are developed and provides shelters, grills, comfort stations, lighted athletic area, asphalt play areas, walking trails and playgrounds.

The department is fully staffed with professional personnel and a full-time maintenance division to care for all its facilities.

Economic Growth and Development: Consolidation by annexation of the territory sought to be annexed with the City will accelerate the economic growth of the metropolitan area. Harrisonburg's opportunities for economic growth are restricted by the lack of industrial sites of any consequence. The economic growth of the proposed annexed area is restricted by the inadequacy of services and facilities for residential, commercial and industrial development offered by the County.

It is the public policy of the Commonwealth to encourage the location of new industries in the State and expansion of

existing industries. The General Assembly had created agencies of the State government and appropriated funds to advertise and disseminate information to attract the location of industry and to aid in the organization and operation of corporations created under the Virginia Industrial Development Act. It is the function of these agencies to make available information regarding industrial sites and other factors of interest and concern to industries, and to formulate and advance programs encouraging the location of new industries and expansion of others. The City participates financially for the operation and maintenance of an active and aggressive Chamber of Commerce.

Selected industry is attracted by an assured, low-cost municipally owned electric power, safe and plentiful water supply, systems for the disposal of sanitary sewage, and adequate storm water drainage, streets, highways, airports and all forms of transportation, fire protection, educational, cultural and recreational facilities and progressive local government.

Joining of the territory sought to be annexed with the City will facilitate provision and extension of those services, facilities and improvements which will attract and are necessary for industrial development, and will enhance the metropolitan area's commercial and industrial advantages. Harrisonburg's form of government and the administration

and management of its affairs is of the character and quality that can and will provide the services, facilities and improvements for the economic development of the metropolitan area.

Planning for Development of Metropolitan Area: Consolidation with the City of Harrisonburg of the territory sought to be annexed is necessary for orderly planning of the uses of land and the provision of municipal services, facilities and improvements necessary for its orderly development before it is fully urbanized and occupied. Land which logically should be used for residential development should not be developed to other uses and land which logically should be used for commercial and/or industrial use should be guided toward this kind of urban use.

No comprehensive land use plan can be an effective guide for the metropolitan area without some form of central authority responsible for the land use planning process. Unrestricted and unguided urban development must be avoided. The responsibility to plan must be accompanied by the responsibility to enforce and take action with respect to its application and execution in order that there be stability and permanence in its effects. The City of Harrisonburg has a master plan for the orderly development and use of land within the City.

Substantial land, now vacant, rural, undeveloped or devoted to agricultural purposes in the territory sought to be annexed should be planned for and devoted to residential use. Substantial other land in the territory, now vacant, rural, undeveloped or devoted to agricultural purposes, particularly land lying in the vicinity of railroads passing through the City and major highways should be planned for and devoted to industrial use and development.

Consolidation with the City by annexation of the territory sought to be annexed will enable a centralized authority to develop a comprehensive, stable, and permanent plan for the residential and industrial development of the metropolitan area, and will permit economical extension of streets, services, facilities and improvements for such development and use.

The County has not provided the services, facilities and improvements necessary for residential and industrial development so as to further the economic growth of the metropolitan area.

AREA PROPOSED TO BE ANNEXED AND SIZE THEREOF

Section 3. The metes and bounds of the area proposed to be annexed are as follows:

SIG. MAP at a point on the southwest corporate limits of the City of Harrisonburg, Virginia northwest of U. S. Route 11, with said point further described as being Point "T" as shown on a plat of the City entitled "City of Harrisonburg, Harrisonburg, Virginia", as prepared by W. P. Whitmore, Certified Land Surveyor, and dated March 7, 1961, with said point further described as being located N 34° 02' 10" W, 180'± and N 28° 02' 05" E, 307.52' from the centerline of U. S. Route 11, thence around the existing City limits of the City of Harrisonburg in a counterclockwise direction to a point, said point being the intersection of said City limits and a line parallel to and 250 feet north of the centerline of State Route 718 (Furnace Rd.); thence leaving said City limits and proceeding clockwise in a northeasterly direction first along said line parallel to the centerline of State Route 718 (Furnace Road) and then along the projection of said line for a total distance of 4,250± feet, crossing the centerline of Dry Fork Creek at 2,850± feet, and crossing the centerline of State Route 720 at 4,000± feet, to a point, said point being the intersection of said line parallel to the centerline of State Route 718 (Furnace Road) and a line parallel to and 250 feet east of the centerline of State Route 720; thence in a southerly direction first along said line parallel to and 250 feet east of the centerline of State Route 720, and then along the projection of said line for a total distance of 11,350± feet, crossing the centerline between the northbound and southbound lanes of Interstate 81 at 725± feet, and crossing the centerline of State Route 718 at 1,625± feet, and crossing the centerline of the tracks of the Chesapeake Western Railway Company at 4,425± feet and crossing the centerline of State Route 925 (Keezletown Road) at 11,100± feet to a point, said point being the intersection of the projection of said line parallel to and 250 feet east of State Route 720 with a line parallel to and 250 feet south of the centerline of State Route 925 (Keezletown Road); thence in a westerly direction along said line parallel to and 250 feet south of the centerline of State Route 925 (Keezletown Road) for a distance of 350± feet to a point; thence S 22° 01' W, 2,646.66 feet to a point, said point being the intersection of a line on said bearing with a line parallel to and 350 feet north of the centerline of State Route 704; thence continuing in an easterly direction

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along said line parallel to and 350 feet north of the centerline of State Route 704 a distance of 1,200± feet to a point, said point being the intersection of said line parallel to State Route 704 with a line parallel to and 50 feet north of the centerline of Virginia Electric and Power Company (VEPCO) 115 KV transmission line No. 50, Harrisonburg to Endless Caverns and with said line generally being the northern right-of-way line of said VEPCO transmission line; thence S 70° 11' W, 1,300± feet along said line parallel to and 50 feet north of the centerline of said VEPCO 115 KV transmission line, crossing the centerline of State Route 704 at 500± feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-4, Sheet 3 of 16, Revised 10-23-52; thence S 70° 37' W, 6,170± feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline between the northbound and southbound lanes of U. S. Route 33 at 1,900± feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-4, Sheet 3 of 16, Revised 10-23-52 and 1-50-1-3, Sheet 2 of 16, revised 1-15-54; thence N 70° 03' W, 2,175± feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline of State Route 710 (Ridge Road) at 1,370± feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-3, Sheet 2 of 16, Revised 1-15-54; thence S 47° 23' W, 1,435± feet to a point in said line parallel to and 50 feet north of the centerline of said transmission line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence S 87° 18' W, 3,850± feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline of State Route 659 (John Wayland Highway) at 955± feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence S 82° 24' W, 1,850± feet along said parallel line, crossing the centerline of State Route 726 at 500± feet, to a point in the eastern property line of the VEPCO Harrisonburg Substation, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence continuing in a northerly direction along the property line of the Harrisonburg Substation, 135± feet to the corner of said property; thence in a westerly direction along said property line of Harrisonburg Substation 560± feet to the corner of said property; thence in a southerly direction along the western property line of said property 550± feet to a point, said point being the intersection of said property line with a line parallel to and 50 feet west of the centerline of the VEPCO 110 KV transmission line No. 43, Staunton to Harrisonburg, and with said parallel line generally being the

western VEPCO right-of-way line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54, and VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65; thence S 21° 37' E, 265± feet along said line parallel to and 50 feet west of the VEPCO 110 KV transmission line, No. 43, Staunton to Harrisonburg to a point, reference VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65; thence continuing along the line parallel to and 50 feet west of the centerline of said transmission line S 9° 24' W a total distance of 2,640± feet, crossing the centerline of State Route 710 at 2,390± feet, to a point, said point being the intersection of said line parallel to and 50 feet west of said transmission line with a line parallel to and 250 feet south of the centerline of State Route 710, reference VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65, and drawing 1-43-1-19, Sheet 18 of 19, dated 10-18-57; thence continuing in a westerly direction along said line parallel to and 250 feet south of the centerline of State Route 710 for a distance of 1,275± feet to a point, said point being the intersection of said line parallel to the centerline of State Route 710 with a line parallel to and 2,000 feet east of the centerline of the Chesapeake Western Railway Company tracks; thence in a southerly direction along said line parallel to and 2,000 feet east of the centerline of the Chesapeake Western Railway Company tracks for a distance of 4,500± feet to a point; thence in a westerly direction N 85° 24' 49" W, 3,663.55 feet, crossing the centerline of the Chesapeake Western Railway Company tracks at 2,000 feet, and crossing the centerline of State Route 679 at 2,900± feet, to a point, said point being the intersection of said line with a bearing of N 85° 24' 49" W and the centerline of Blacks Run Interceptor sewer with said point further described as being at Manhole Station 134 + 48.80; thence along the centerline of Blacks Run Interceptor sewer the following bearings and distances:

N 64° 33' 42" W, 946.71 feet,
 S 57° 02' 20" W, 1,960.38 feet,
 N 83° 02' 58" W, 913.86 feet, crossing under

State Route 988 and Interstate Route 81 to a point, said point being the intersection of the centerline of Blacks Run Interceptor Sewer and the Western right-of-way line of Interstate 81, said point also being an offset of Station 305 + 61 as shown on Virginia Department of Highways and Transportation drawings for Project Number 0081-082-103, PE-101; thence continuing in a northerly direction along the western right-of-way line of Interstate 81 for a distance of 250± feet to a point, said point being the intersection of the western right-of-way line of

Interstate 81 with a line parallel to and 250 feet south of the centerline of State Route 701; thence in a northwesterly direction first along said line parallel to the centerline of State Route 701 and then along the projection of said line for a distance of 1,550± feet, crossing the centerline of U. S. Route 11 at 1,300± feet, to a point, said point being the intersection of the projection in a northwesterly direction of said line parallel to and 250 feet south of the centerline of State Route 701 and a line parallel to and 250 feet northwest of the centerline of the southbound lane of U. S. Route 11; thence in a northeasterly direction along said parallel line 200± feet to a point, said point being the intersection of said line parallel to the centerline of the southbound lane of U. S. Route 11 and a line parallel to and 250 feet southwest of the centerline of State Route 701; thence in a northwesterly direction along said line parallel to the centerline of State Route 701 for a total distance of 9,100± feet, crossing the centerline of State Route 756 at 300± feet, and crossing the centerline of State Route 712 at 7,500± feet, to a point, said point being in the eastern property line of Shenandoah Valley Electric Cooperative substation property; thence along the eastern property line of said Electric Cooperative N 22° 32' E, 87 feet to an iron pin; thence along the northern property line of said Electric Cooperative N 67° 28' W, 660.85 feet to a corner post; thence N 20° 15' E, 106 feet to a corner post in the southern right-of-way line of State Route 701; thence along the southern right-of-way line of State Route 701 N 73° W, 414.5± feet to a point in the eastern corporate limits of Dayton, Virginia, said corporate limits being further described in Deed Book 73, page 197, Rockingham County Circuit Court; thence along the Dayton corporate limits the following bearings and distances:

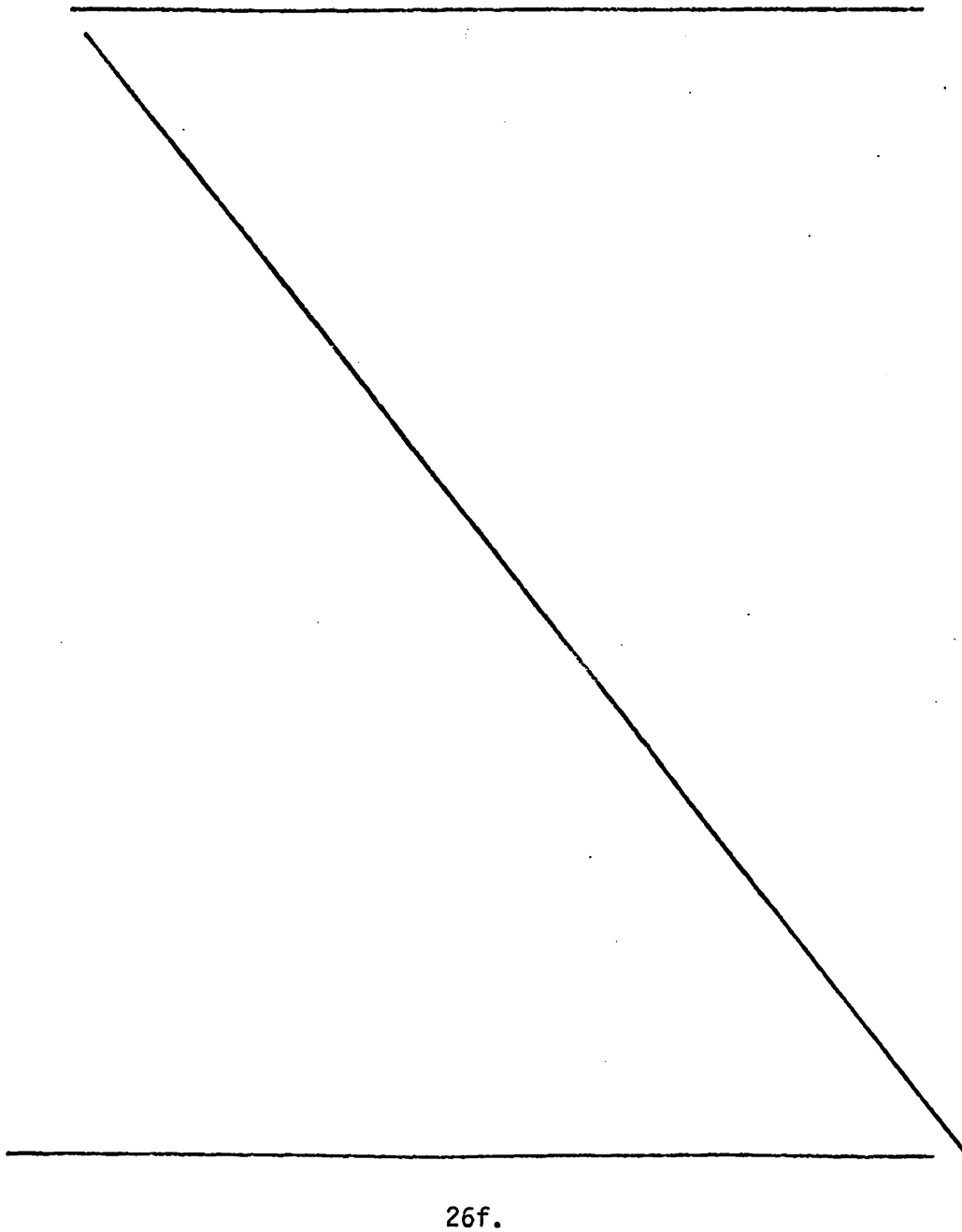
N 26° 30' E, 1,352.5± feet,
 N 49° W, 489.5 feet,
 N 44° 15' W, 1,084.5± feet to a point,

said point being the intersection of said Corporate Limits with a line parallel to and 1,000 feet west of the centerline of U. S. Route 42, (Dayton Pike); thence in a northeasterly direction along said line parallel to and 1,000 feet west of the centerline of U. S. Route 42 (Dayton Pike) for a total distance of 6,000± feet to a point, said point being the intersection of said line parallel to and 1,000 feet west of the centerline of U. S. Route 42 (Dayton Pike) with a line parallel to and 1,000 feet west of the centerline of State Route 853;

thence along said line parallel to State Route 853 1,100± feet to a point, said point being the intersection of said line parallel to State Route 853 and a line parallel to and 1,000 feet northwest of the centerline of State Route 910; thence in a northeasterly direction first along said line parallel to and 1,000 feet west of State Route 910 and then along the projection in a northeasterly direction of said line for a total distance of 11,400± feet, crossing the centerline of State Route 726 at 2,650± feet, and crossing the centerline of U. S. Route 33 (Rawley Pike) at 10,325± feet, to a point, said point being the intersection of the projection of said line parallel to State Route 910 with a line parallel to and 1,000 feet north of the centerline of U. S. Route 33, (Rawley Pike); thence in an easterly direction along said line parallel to and 1,000 feet north of the centerline of U. S. Route 33 (Rawley Pike) for a total distance of 3,500± feet, crossing the centerline of State Route 910 at 1,050± feet, to a point, said point being the intersection of said line parallel to and 1,000 feet north of the centerline of U. S. Route 33 (Rawley Pike) with the projection in a southwesterly direction of the western boundary line of Park View Sanitary District, with said Sanitary District Boundary being further described in an order of the Circuit Court of Rockingham County entered in Court Order Book 26, page 200, 1965 file, April Term, in the Circuit Court of Rockingham County; thence along said projection N 16° 36' E, 2,277.6 feet to a point, said point being the southwest corner of lot 13, Block 7 of the "Perry Martin Addition to Park View" as recorded in Deed Book 235, page 202, Rockingham County Circuit Court; thence in a northeasterly direction along the western boundary of Park View Sanitary District a total distance of 6,600± feet to a point, said point being the northwestern corner of Park View Sanitary District boundary, and further described as the northwest corner of lot 3, Block D, Section 2 of the E. Clayton Shank Subdivision; thence in an easterly direction along the northern boundary of said Park View Sanitary District S 59° 38' E, 1,838.35 feet to a point, said point being the intersection of said northern Sanitary District boundary with a line parallel to and 250 feet west of the centerline of U. S. Route 42; thence in a northerly direction along the line parallel to and 250 feet west of the centerline of U. S. Route 42 for a distance of 940± feet to a point, said point being S 79° 25' 24" E, 96.70 feet from a concrete monument; thence S 79° 25' 24" E, 4,441.01 feet, crossing the centerline of U. S. Route 42 at 250± feet, and crossing the centerline of the Southern Railway Company tracks at 1,275± feet, to a point; thence S 24° 40' 06" E, 5,188.70 feet, crossing the centerline of State Route 753 (Kratzer Road) at 300± feet, to a point; thence S 28° 02' 05" W,

344.77 feet to the point of beginning, the aforesaid described parcel containing 14.14 square miles by planimeter measurement.

The territory within the present corporate limits of the City of Harrisonburg contains 5.981 square miles, more or less, giving a total area of the proposed enlarged City of 20.121 square miles, more or less.



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EFFECTS OF ANNEXATION

Section 4. The County will be relieved of the expenses of providing for the area sought to be annexed the necessary water, sewer, capital improvements and overall development of an urban area. Its government will be relieved of problems of urban growth and development for which it is not designed. There will remain in the County approximately 851.11 square miles of territory including its towns and the County will be left with resources sufficient in area, population and sources of revenue adequately to support the County government and public schools without unreasonably affecting its present tax policy and structure or its present standards of service.

GENERAL TERMS AND CONDITIONS UPON WHICH ANNEXATION IS SOUGHT AND PROVISIONS PLANNED FOR FUTURE MANAGEMENT OF THE TERRITORY

Section 5. The City hereby sets forth the terms and conditions upon which it desires to annex the territory in the County and the provisions for the future management and improvement thereof as follows:

A. The territory sought to be annexed will be assimilated within the City's governmental and administrative organization upon the effective date of annexation. The City will provide the same public utility, public safety,

recreational, educational, health and welfare and other urban services for the area sought to be annexed as are provided for the present City within the framework of the City's Charter and the general law and in accordance with ordinances and regulations adopted and in force at that time.

B. The City will assume and become obligated for a just proportion of the indebtedness of the County and will undertake the performance of all valid contracts the County has entered into with others applicable to or in the territory sought to be annexed.

C. The City will reimburse the County for the value at the time of annexation of its public improvements in the territory of the County sought to be annexed as provided for in accordance with Sections 15.1-1042 and 15.1-1043 of the Code of Virginia.

D. The City, upon the effective date of annexation, will provide the territory sought to be annexed with the same qualitative municipal services and facilities presently provided by the City for its inhabitants which are described above in this Ordinance.

E. The City will incorporate in its five-year programs for capital public improvements such projects for extending public utilities, public safety, schools and other municipal services into the territory sought to be annexed

as are necessary to provide for the needs of the area.

F. The City, upon the effective date of annexation, will discontinue any charges required to be paid by residents of the territory to be annexed for using facilities provided by the City and will equalize and make rates charged for utility services uniform throughout the City and the territory sought to be annexed.

G. The City will give preferred and intensive attention to the preparation and adoption of a master plan for the development of the territory sought to be annexed, particularly the vacant, rural and undeveloped lands for the orderly, practical and economic use of the land area for residential, commercial and industrial purposes and the preparation and adoption of a comprehensive zoning ordinance regulating such uses of the land; and will plan and extend its programs and municipal services and facilities for capital public improvement to encourage urbanization and residential, commercial and industrial development in the County area sought to be annexed.

PROCEEDINGS FOR ANNEXATION

Section 6. That the City Manager and City Attorney are authorized and directed to institute and prosecute, as

soon as practicable in the name of the City of Harrisonburg, any and all legal proceedings necessary to consolidate the territory sought to be annexed with the City of Harrisonburg by annexation by proper decree of judgment of a court of competent jurisdiction upon the terms and conditions set out in this Ordinance. The City Manager and City Attorney are hereby authorized to employ such special legal, technical, expert and other assistance, as, in their discretion, are necessary to perform the duties enjoined upon them.

ATTACHED MAP

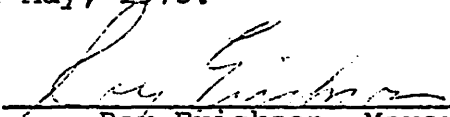
Annexed hereto and expressly made a part hereof, is a certain map prepared by Wiley & Wilson, consultants of Lynchburg, Virginia and Richmond, Virginia, dated April, 1975 bearing the title "City of Harrisonburg and Vicinity" indicating generally present subdivisions as shown by street layouts, residential areas, industrial areas, farm areas, vacant areas, commercial areas, public or semi-public areas, and other present land uses in the area proposed for annexation.

EFFECTIVE DATE OF ORDINANCE

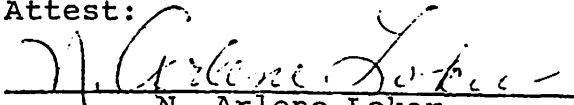
Section 7. The Ordinance shall be in force and effect May 13, 1975.

Approved this 13th day of May, 1975.

(SEAL)


Roy Erickson, Mayor,
City of Harrisonburg

Attest:


N. Arlene Loker
Clerk of the Council,
City of Harrisonburg

OPINION

DOCKET NUMBER 5550

This case was filed by the City of Harrisonburg on May 14, 1975. A three-judge court was appointed to hear the case but the case did not proceed until 1980 because of a moratorium upon annexation proceedings imposed by the General Assembly at its 1975 session. Upon expiration of the moratorium, the General Assembly amended the annexation law, establishing the Commission on Local Government and necessitating the dissolution of the original annexation court and the appointment of another court pursuant to Va. Code Ann. § 15.1-1038. Thereafter, this three-judge court convened for the first time in Harrisonburg at the Circuit Court of Rockingham County on July 30, 1980. On motion of the County and over the objection of the City the Court ordered that the case be referred to the Commission on Local Government for such action as is provided in Va. Code Ann. § 15.1-1170. The Commission conducted hearings and reported its findings to the Court in a report dated February 20, 1981. The case proceeded to trial on April 7, 1981, and was concluded on April 23, 1981. Before the City had completed its evidence, a petition was filed on behalf of certain intervenors seeking to have additional property annexed by the City. Over the County's objection, the petition was ordered filed and the intervenors introduced their evidence before the County proceeded with its case.

The Court, having considered the evidence, argument of counsel and the law applicable to the proceedings, now files its opinion.

THE LAW

The law governing this case is set forth in Va. Code Ann. § 15.1-1041 in paragraphs (b) and (b1) which state as follows:

* * *

"(b) The Court shall determine the necessity for and expediency of annexation, considering the best interests of the people of the county and the city or town, services to be rendered and needs of the people of the area proposed to be annexed, the best interests of the people in the remaining portion of the county and the best interests of the State in promoting strong and viable units of government.

"(b1) In considering the best interests, as set out in (b) hereof, the court shall consider to the extent relevant:

"(i) The need for urban services in the area proposed for annexation, the level of services provided in the county, city or town, and the ability of such county, city or town to provide services in the area sought to be annexed, including, but not limited to:

- "(a) Sewerage treatment,
- "(b) Water,
- "(c) Solid waste collection and disposal,
- "(d) Public planning,
- "(e) Subdivision regulation and zoning,
- "(f) Crime prevention and detection,
- "(g) Fire prevention and protection,
- "(h) Public recreational facilities,
- "(i) Library facilities,
- "(j) Curbs, gutters, sidewalks, storm drains,
- "(k) Street lighting,
- "(l) Snow removal,
- "(m) Street maintenance;

"(ii) The current relative level of services provided by the county and the city or town;

"(iii) The efforts by the county and the city or town to comply with applicable State policies with respect to environmental protection, public planning, education, public transportation, housing, or other State service policies promulgated by the General Assembly;

"(iv) The community of interest which may exist between the petitioner, the territory sought to be annexed and its citizens as well as the community of interest that exists between such area and its citizens and the county. The term 'community of interest' may include, but not be limited to, the consideration of natural neighborhoods, natural and man-made boundaries, the similarity of needs of the people of the annexing area and the area sought to be annexed;

"(v) Any arbitrary prior refusal by the governing body of the petitioner or the county whose territory is sought to be annexed to enter into cooperative agreements providing for joint activities which would have benefited citizens of both political subdivisions; however, the court shall draw no adverse inference from joint activities undertaken the implemented pursuant to cooperative agreements of the parties. It is the purpose of this subsection to encourage adjoining political subdivisions to enter into such cooperative agreements voluntarily, and without apprehension of prejudice;

"(vi) The need for the city or town seeking to annex to expand its tax resources, including its real estate and personal property tax base;

"(vii) The need for the city or town seeking to annex to obtain land for industrial or commercial use, together with the adverse effect on a county of the loss of areas suitable and developable for industrial or commercial uses; and

"(viii) The adverse effect of the loss of tax resources and public facilities on the ability of the county to provide service to the people in the remaining portion of the county."

NECESSITY AND EXPEDIENCY

Harrisonburg is a city of 19,713 persons in an area containing 5.98 square miles. Rockingham County has a population of 56,348 persons in an area of 865 square miles. The proposed

area for annexation has a population of 5,165 persons and contains 14.14 square miles. The annexation area contains 14.11 percent of the County's 1980 total property values subject to local taxation and is the source of 65.46 percent of the County's local option 1 percent sales tax receipts. A more detailed statement of factual data relative to the City, County and annexation area is found in the Commission's report which is filed as an exhibit in the case.

The City of Harrisonburg is the major urban center in Rockingham County. Harrisonburg is dedicated to urban development. It has been in the forefront with regard to the attraction of industry to its area. It has, in cooperation with the County, extended its urban services into the County to attract industry and business to the County. On two occasions it was necessary that large tracts contiguous to the City be annexed through "friendly" annexation proceedings in order that commercial and industrial development take place. The last contested annexation was in 1962 when 3.01 square miles were taken into the City. The City has complied with that order.

Since 1975 when this suit was filed, the County has attempted to provide urban services to the area of the proposed annexation. The City and County have been competing with one another in this regard. In some instances there has been a wasteful duplication of service. For example, in 1980 the County drilled a well and is developing a south county water system which duplicates city water lines already in place in the Pleasant Valley-Walker Plant area. An abundant city water supply is and for years has been available for expansion in the south U.S. Route 11

corridor. Such waste of local resources is not in the best interests of the area or of the state.

Additionally, it appears that the County's spurt of activity is at least partially inspired by the threat of this annexation. This conclusion is based upon the activity of the County in the annexation area since the suit was filed and also upon the fact that no similar activity is going on where there are no annexation proceedings. The County seems primarily and properly concerned about promoting its agricultural development in those areas.

A number of witnesses called by the County expressed hostility toward future industrial development. We do not assume that the County's official position is hostile toward industrial development, but clearly there is a dichotomy of opinion on this point. Such lack of enthusiasm will tend to slow the extension of urban services to the area when the pressure of annexation is removed.

NEED FOR URBAN SERVICES

Urban areas and areas that are becoming urbanized will be in need of urban services. The area in question surrounds the City of Harrisonburg. Industry and business from Harrisonburg have moved into the annexation area. The County's Land Use Plan acknowledges that the entire area will be urban within twenty years. The cordon line established by the Department of Transportation and Highways shows that the area will be urbanized by the year 1995.

There are 293 commercial and industrial firms employing 4,262 persons in the annexation area. It has a population density

of 365 persons per square mile as compared to the County's overall density of 65 persons per square mile and the City's 3,289 per square mile, The area contains residential subdivisions, a major shopping mall, a large industrial park and numerous other commercial and industrial enterprises. The area included in the proposed annexation has experienced the most rapid urban growth within the County in the past decade. There remains a considerable amount of farm land in the area, particularly in the southwest area designated in the case as Study Area #3.

A salient fact as to the inevitable commercialization and industrialization of the area is the current value of land within the proposed annexation area. Much of the farm land has a commercial or industrial value of two to ten times its agricultural value. It is nearly certain that economic pressures will force the development of the land for industrial and commercial purposes. Witnesses for the County repeatedly testified as to the difficulty farmers are having in making a profit. There are of course examples where land values have not forced the farmers to cease farming, but the prospect is generally inescapable.

An interstate highway, I-81, with three major interchanges and arterial highways, U.S. 33, U.S. 11 and SR 42, traverse the annexation area. With water and sewer being available from both the City and County, the area will undoubtedly experience significant growth within the next ten to twenty years.

The testimony is replete with illustrations of how development of both industry and commerce in the area have depended upon the availability of water and sewer service. The increased future development will put considerable pressure on the govern-

ment responsible for providing such services to extend them. Furthermore, the need for additional services to the annexation area has been clearly demonstrated by the evidence. The only question is what government can best provide those services.

(a) Sewerage treatment

Sewerage treatment is available to some portions of the annexation area from the Harrisonburg-Rockingham Regional Sewer Authority. The parties have the right under their contract with the Authority to use an agreed portion of the capacity of the Authority. After such portion of capacity has been reached by the locality, if that locality needs additional capacity, it will have to expend such sums necessary to increase the capacity of the facility. The City has a longer history of providing such services and would, in the Court's opinion, more readily lend its credit and resources to the task.

(b) Water

The City of Harrisonburg virtually has an unlimited supply of water available to serve the area. In contrast, the County has attempted to drill wells in the last five years and to increase its storage capacity in order to provide water to the area. The indisputable fact is that the City controls a supply of water adequate to serve the needs of the entire urban area for many years to come. The County's only water plan for the next five years is in the south of the annexation area. The County is primarily dependent upon the City to sell it water in bulk, which it resells to customers. The Court is of the opinion that the City of Harrisonburg would be in the better position to provide water services to the developing area during the next twenty years.

(c) Solid waste collection and disposal

Solid waste collection and disposal is a service currently provided to the citizens of the City by the City. County residents use private collectors. The County is in the process of providing regional dumping areas to which citizens may take their solid waste. The City will have to expand its landfill within a few years but is presently in the process of establishing a plant in which to burn its solid waste. The plant will produce steam from the process that will be sold to James Madison University. The Court is of the opinion that the City would provide solid waste collection service more satisfactory for an urban area.

(d) Public planning

Public planning has long been an interest of the City of Harrisonburg. The County has likewise shown an interest in planning. The County first hired a planner in 1974 and now has a full-time planner with a good staff. The capacity for planning for both the City and County is, in the opinion of the Court, equal. The Court believes that the orderly development of the urban area calls for planning under a single government. The entire area of the City and annexation area requires coordinated planning. The County's plan could be in conflict with the City's and vice versa. The core of the urban area is centered in the City of Harrisonburg and must be considered when the plan for the surrounding area is developed. Only if one government controls planning will this likely be accomplished.

For this reason and the fact that the County cannot annex part of the City, the Court believes the City to be the logical governing body to provide overall planning for the entire urban area.

If annexation is granted, the City and the annexation area will be better served as to public planning.

(e) Subdivision regulation and zoning

Both the City and County are equally capable of providing zoning and subdivision regulation; however, the City does provide a more realistic zoning ordinance for an urban area. The City's zoning ordinance has more building zone classifications than does the County's. A property owner in the City can better anticipate the probabilities of developing his property without being thwarted by government action or inaction. The County has a substantial portion of the area in question zoned agricultural, with property being developed for certain nonagricultural uses by the issuance of special use permits. This is a significant problem to developers. The history of the granting of special use permits demonstrates no particular pattern within the County. The orderly development of the annexation area, if left in the County, will depend largely upon the attitude of a majority of the supervisors at the time.

For the reason that the City has a more complete zoning ordinance and appears more inclined toward realistic zoning, the annexation area would be better served by the City with regard to zoning and subdivision regulation.

(f) Crime prevention and detection

With regard to crime prevention and detection, the County and City have good sheriff's and police departments. The evidence shows that the City could provide more frequent patrols and quicker response time in the annexation area.

(g) Fire protection

The City and the County have good fire departments. The City has a well-staffed, professional fire department whereas

the County relies heavily upon volunteer service and two full-time paid firemen stationed in one of the City fire stations. If annexation takes place and the proposed fire station is constructed, the response time to a fire would be lessened. The annexed residents should receive a reduction in fire insurance premiums. It appears that the annexation area would receive better fire protection if it were within the City.

(h) Public recreational facilities

The City has an outstanding recreational program and excellent parks and facilities. The County program is adequate for a rural area. All of the City's facilities are in close proximity to the annexation area but the County's are not. Additionally, the City will build a park in the proposed annexed area. All annexation-area citizens would benefit from being able to use City facilities at no charge.

(i) Library facilities

The evidence shows that the library facilities which are now provided would remain the same for the City, the County and the annexation area whether annexation be allowed or disallowed.

(j) Curbs, gutters, sidewalks, storm drains

The City has a program of providing curbs, gutters and sidewalks upon the request of citizens seeking them. The landowner must pay part of the cost. The County has no similar plan. Thus for those citizens in the annexation area seeking to have these improvements, annexation would be to their advantage. The Court is of the opinion that curbs, gutters, sidewalks and storm drains would be beneficial and often necessary for the safety and well-being of the area. Annexation would provide these additional services to the area.

(k) Street lighting

Street lighting is provided throughout the City of Harrisonburg and would be available in the annexation area to most of the residents of the area. No street lighting is provided by the County. Street lighting is needed in certain areas, and annexation would benefit those areas.

(l) Snow removal

Snow removal from the streets is provided by the City. The state removes the snow from the County roads. There is conflicting evidence as to which currently provides the better service. The Court finds that annexed citizens will experience no appreciable change in service should annexation be granted.

(m) Street maintenance

Street maintenance is provided by the City. The state provides maintenance for the County roads. The City has hard-surfaced most of its streets, whereas an appreciable number of County roads remain without hard-surface. The County has no plan for use of its own funds for roads while the City budgets over \$600,000.00 of its own funds annually for its roads. The Court is of the opinion that the City would provide better maintenance of the roads and streets in the annexed area than is currently provided.

(n) Other considerations

The City and the County provide exceptionally good educational opportunities in their public schools. There are a number of students in the annexation area who take predominantly agricultural courses which are not available in the City. However,

both County and City schools allow students from the other locality to attend their schools at a nominal charge so this does not have to be a problem for anyone wishing to take the agricultural courses.

The City for twenty-five years has had a public housing authority and in 1980 provided 618 housing units for the elderly, handicapped, and low and moderate income families. The County has shown no particular concern in the area of public housing. It appears that the need for such housing is centered more in the urban area around Harrisonburg. A considerable number of persons applying for public housing within the City of Harrisonburg are County residents. The housing assistance programs within the County are basically private.

The City of Harrisonburg also provides a very good public transportation system that includes a bus system operating on a fixed route that transports up to 200 persons a day, a special van for elderly and handicapped and a taxi system which provides service throughout the region around Harrisonburg. The taxi service is available to all persons. The transportation system is supported through state, federal and city funds. It is apparent that the transportation system available to the City would be beneficial to the residents of the proposed annexation area. It would be in the best interests of both the City and the annexation area that the bus routes extend throughout the entire urban area.

In summary, the Court concludes that of the above-mentioned services, the City would provide by far better service to the annexation area than the County in almost every instance and in virtually no respect would the City service be appreciably less than the quality of the County service.

THE EFFORTS BY THE COUNTY AND THE CITY TO
COMPLY WITH APPLICABLE STATE POLICIES
WITH RESPECT TO ENVIRONMENTAL PROTECTION,
PUBLIC PLANNING, EDUCATION, PUBLIC TRANS-
PORTATION, HOUSING, OR OTHER STATE SERVICE
POLICIES PROMULGATED BY THE GENERAL ASSEMBLY

The Court is of the opinion that the City has in all respects sought to comply with the state policies with respect to environmental protection, public planning, education, public transportation, housing and other state service policies promulgated by the General Assembly. The County has also made a reasonable effort in this regard but the City has, particularly in the field of public transportation and housing, undertaken efforts in no way matched by the County. This is not to be critical of the County, but the County does not invest its resources in these efforts as does the City. It has already been mentioned that Harrisonburg's zoning ordinance and regulations are much more comprehensive than are those of the County and are more in conformity with the needs of a developing urban area.

COMMUNITY OF INTEREST

There is obviously a strong community of interest between the citizens of the City and those of the annexation area. The annexation area generally surrounds the City. Within the boundaries of the City are almost all of the state, county and federal governmental offices within the area. There are major banking institutions within the City which have branches within the annexation area. The hospital in the City serves a region far beyond the boundaries of Rockingham County. The County library is located in the City. The City is the major shopping

center for a good portion of the County. At the outskirts of the City is the Valley Mall, within the annexation area, where both the citizens of Harrisonburg and residents of the annexation area do a large part of their shopping. The major department stores in the area are now located at the mall. These include Leggett, Sears, and the J. C. Penney Company. Also included at the mall is Kroger, the largest supermarket in the area. Within the City is James Madison University with an enrollment of 8,817 students. It offers educational, cultural and athletic events of interest to persons in the entire area. Many of the employees and students of the University live within the proposed annexation area and the University is engaged in a major expansion program upon property that is within the annexation area.

Forty-nine percent of the total number of jobs in the combined Harrisonburg-Rockingham County area are located within the City. There are 4,183 Rockingham County residents working in the City according to the 1970 census. The evidence indicates that as of this time 43 percent of the County residents work in the City. The City is presently serving in the area proposed for annexation approximately 475 water connections and 954 electrical connections. A considerable number of County residents make use of recreational facilities and programs provided by the City. Some County businesses in the annexation area have their burglar and fire alarms wired to City police and fire facilities by electronic means. Others have theirs wired to the County Sheriff's Department within the City.

It should be noted that Rockingham County is a county of great agricultural interest. The City of Harrisonburg is the commercial, industrial and transportation hub of the County. Farmers within the proposed annexation area may be more closely allied in their farming interests with the remainder of the County than with the City; such persons would appreciate the County school system which provides agricultural courses. Nevertheless, the Court concludes that the greatest community of interest exists between the people of the proposed annexation area and those of Harrisonburg.

ANY ARBITRARY PRIOR REFUSAL OF THE GOVERNING
BODY OF THE CITY OR THE COUNTY TO
ENTER INTO COOPERATIVE AGREEMENTS

The Court finds that neither the County nor the City has arbitrarily refused to enter into cooperative agreements that would be beneficial to the citizens of both subdivisions. Certainly, the City has jealously guarded its control of the water of the area. There has been some bickering between the two as to the operation of the fire station, particularly when County firefighters were stationed there permanently. Nevertheless, the Court is of the opinion that many of these problems have been precipitated by the strains of this annexation proceeding and not by any arbitrary action of either party. Both parties, to the extent that there has been a refusal to negotiate or enter into an agreement, have been looking out for their own interests as they perceive them.

THE NEED FOR THE CITY TO ANNEX TO EXPAND
ITS TAX RESOURCES

The City of Harrisonburg needs to expand its tax resources. In recent years, since the opening of the mall, the City's average annual increase in taxable sales has been only 8.43 percent. The County's taxable sales during the same period of time have increased at an average annual rate of 18.24 percent. The average annual increase in taxable sales between 1975 and 1979 for the City was 5.29 percent while the comparable figure for the County was 16.05 percent. A review of the evidence concerning commercial and industrial development within the City reveals that a number of major commercial establishments in the City have migrated to the County mall. There has been virtually no industrial expansion within the City of any consequence since 1970. Only one industry has located within the City in twenty years. It is apparent that the more attractive business and industrial sites exist without the City limits and further expansion, renovation and location is more likely to take place outside the City. The figures available for the first three quarters of 1980 indicate that since the Valley Mall has been in operation the growth of sales in the County is up 16.98 percent and only 2.86 percent in the City. James Madison University is a strong, dynamic cultural and educational asset to the community. However, its nearly three hundred (300) acres of valuable land (one-half in the City and one-half in the annexation area) are not taxable and after July 1, 1981, the City will no longer be able to collect service charges.

NEED FOR THE CITY TO ANNEX TO OBTAIN LAND
FOR INDUSTRIAL AND COMMERCIAL USE

The City of Harrisonburg has a great need for additional land for commercial and industrial development. There are

approximately 1,005 acres of vacant land within the current boundaries of the City. Thirty-four percent of this land is subject to environment restrictions which limit the land's utility or increase the cost of its development. Much is made by the County of the fact that houses and businesses can be built on hills, This is true, but they are built at greater cost.

The most pressing problem for the City is to obtain industrial and commercial areas for development. The evidence indicates that commercial and industrial developers are looking for tracts of land much larger than are currently available in the City of Harrisonburg. Such areas are available within the annexed area. Further, the land in the annexation area that is available is vacant land and less expensive to develop than is land already containing improvements which would have to be removed before the land could be developed. The availability of railroad sidings within the City is not comparable to that without. Interstate 81 and the interchanges thereon are principally outside the City limits. They are the prime areas for business development. The fact that there has been virtually no industry to locate within the City within the last twenty years is indicative of the need of land for development. Such development as has occurred outside the City has been made possible through the efforts of the City. There were two so-called "friendly annexations" because the industries needed urban services but could not find satisfactory land within the City. There is no evidence that the Valley Mall, the Donnelley Company, or other industry did not want to locate in the City. It is unlikely that any of them would have settled within the area had they not had City services made available to them.

The granting of a substantial portion of the annexation area to the City of Harrisonburg would alleviate its need for land for expansion for the next 10 to 15 years.

The County would retain many prime industrial and commercial sites for development. These would be primarily along its rail sidings and along I-81 at its other interchanges within the County. Additionally, there are seven other incorporated towns which offer some varying urban services to which industry and commerce would be attracted.

THE ADVERSE EFFECT OF THE LOSS OF TAX
RESOURCES AND PUBLIC FACILITIES ON THE
ABILITY OF THE COUNTY TO PROVIDE SERVICE
TO THE PEOPLE IN THE REMAINING PORTION
OF THE COUNTY

The Court is of the opinion that there would definitely be a loss of tax resources to the County from the proposed annexation. However, the Court will order, as the law provides, that the County be compensated for its loss in tax revenue for a period of five years. The Court is of the opinion that during this period of time the County can reasonably expect to increase its tax revenues from increased industrial development. In fact, R. R. Donnelley Company is not currently assessed at its fair market value and when fully assessed would add over \$15 million to the County's taxable values. The County has near Elkton recently zoned an area of about 2,000 acres for industrial development. Although at the time of the trial there was no definite plan by an industry to build a facility there, the property was in the process of acquisition for industrial development. It should also be noted that much of the loss of tax revenue to

the County will be from business which did not exist in the County in 1975 when this suit was instituted. Much of the County's economic resources at this time is the result of overspill of City business expansion into the County. The City has helped to attract a great number of these resources to the area. The Court is of the opinion that the County, with adequate compensation and reasonably expected future development, within a reasonable time will recover from any adverse effect of this annexation.

TERRITORY TO BE ANNEXED

The Court finds that the area to be awarded to the City is that portion described by the annexation ordinance and generally referred to throughout these proceedings as "within the yellow line," with these exceptions:

1. Study Area #3 shall be deleted except that the City shall obtain control of both sides of Route 726, Route 827 and U.S. 11, South. The Court has viewed these roads on the ground and is of the opinion that the City should resurvey said line and establish metes and bounds and file a plat with the Court. The land surveyors and engineers are requested to make recommendations for the location of said lines which should parallel generally SR 726 and 827 about 500 feet to the south and U.S. 11 between 750 and 1,000 feet to the west, keeping in mind lot lines, present land use and zoning, natural terrain, easements, streets, roads and highways. The Court finds that both sides of these highways are primary areas of development and should receive urban services from only one jurisdiction which would be responsible for land use planning and control of access and traffic flow into the City. The remaining land in Study Area #3 is overwhelmingly vacant and

farm land and the City has not proved the requisite necessity and expediency nor community of interest with the City for inclusion of this area in the award. Furthermore, inclusion would unduly restrict municipal development and growth around the town of Dayton.

2. The Court finds that the intervenors, Triple H. Farms, Inc., et al., have proved that they have a community of interest with the City and the necessity and expediency for annexation of their land and, therefore, includes said land in this award.

The Court further finds that the necessity and expediency for annexation of the Donnelley plant has not been proved.

The evidence in the case is that the City of Harrisonburg financially is one of the soundest cities within the Commonwealth of Virginia. The evidence is that it has the second lowest tax rate of any city within the state and that even with the expense of annexation it still will remain a city with a very favorable tax rate. The City has demonstrated that it has a need for space for expansion for business and industry. It has a need to expand its tax base. It has a need to reacquire many of its leading citizens who have moved into the annexed area because of more desirable subdivision locations. It needs their leadership in order for there to be a viable government to provide the needs for the urban area.

To the credit of the citizen leadership in the County, a comprehensive Land Use Plan was presented to the Board of Supervisors in May of 1976. This study consisted of three volumes: Volume #1 - Existing Conditions; Volume #2 - Trends, Issues and Alternatives; Volume #3 - Recommended Policies. It was prepared by the Rockingham Citizens Advisory Planning Committee after an

in-depth study, broad citizen in-put and public hearings. It was an effort commenced a year or so before the annexation case was filed and completed one year afterwards. Even though the recommendations of the citizens were made under the guns of annexation, the issues were met head on and appear to have been dealt with fairly and objectively. This Court is impressed with the frankness of the findings, observations and recommendations which articulate the community of interest, need and expediency perhaps better than can this Court.

"In generalizations, it can be said that the county is in the school business, the towns in the water and sewer business, and the city in a complete urban services business." Vol. I, p. 23.

"Although this planning effort is primarily for Rockingham County, Harrisonburg cannot be excluded. The political boundary separating city from county is almost unvisable in physical, economic, and social considerations." Vol. II, p. 72.

"The Rockingham-Harrisonburg area is one community physically, economically and socially, but completely independent politically. The City is a business and employment center for the county-city area. It has a retail trade area of over 100,000 people but a political population of only 18,000. This gives the City a disproportionate revenue advantage from sales tax revenue. Manufacturing, education, and commercial enterprises in the City all depend on the larger city-county population. The business community generally ignores the artificial city-county political boundaries.

"There can be no question that City and County are one ecologically. In a real sense we drink the same water, breathe the same air, and share the same ecological destiny and yet the environment of this part of the Valley is controlled by local government decisions and policies based on the independence of the City and County.

"Perhaps in the horse and buggy era, there was logic in political independence of smaller communities, but the gasoline engine, modern communication and increasing urbanization of the entire community are all part of the reason why this system no longer works." Vol. II, p. 89.

Thus, in Volume III, the Citizens Committee recommended the goals and policy objectives for a Comprehensive Land Use Plan which emphasized and stressed that population growth and related urban development should be guided in and around municipal growth centers under a single unit of local government.

The Court finds that the City of Harrisonburg has proved the necessity of and the expediency for annexation of the awarded area. Harrisonburg is the municipality and the annexation area is the growth area to accomplish the goals and objectives of the citizens, businesses and industries affected.

LOSS OF NET TAX REVENUE

Section 15.1-1042 of the Virginia Code requires that the County be compensated "in not more than five annual installments for prospective loss of net tax revenues during the next five years, to such extent as the Court in its discretion may determine, because of annexation of taxable values to the City." The City and the County use different methods for establishing the amount of compensation due under this provision of the statute. The City, on the one hand, proposes to compute the loss of net tax revenue for the most current fiscal year and multiply that figure by five to determine the total compensation due the County for the five-year period provided by law. Using this approach, the City arrives at

the figure of \$1,609,640.00 and multiplying that figure by five, concludes that the aggregate compensation due the County for the five-year period would be \$8,048,200.00. The County, on the other hand, proposes to project its revenues and expenditures for each year of the five-year period and add the five sums. Using this approach, the County arrives at a total loss of net tax revenues of \$14,435,079.00.

It is apparent, therefore, that a fundamental difference exists between the methodology used by the City and that used by the County in their attempts to determine the "prospective loss of net tax revenues . . . because of annexation of taxable values to the City." The City argues that the intent of the statute is to limit such compensation to that required to compensate the County for its loss of local tax sources because of annexation. The County, however, would estimate its annual losses by projecting revenues and expenditures into the next five years based upon past experience. Using this approach, the City would be required to compensate the County for reductions of state and federal aid as well as for the loss of local tax values.

The Court is of the opinion that the approach adopted by the City is the sounder of the two proposed methodologies. The plan proffered by the County must of necessity involve guess work and speculation in trying to divine what revenues and expenditures will be realized by it each year for the next five years. Furthermore, in including state and federal contributions within its projections the County runs afoul of the holdings of the Supreme Court of Virginia that a County is not entitled to reimbursement

for funds contributed by the federal and state governments. See, e.g., Henrico v. City of Richmond, 177 Va. 754, 798. (There the question was whether the County was entitled to be reimbursed for the value of roads annexed which had been built with state money, but the principle is the same.) In addition, the County's proposal would require that it be compensated by the City for the loss of state and federal aid programs during the five-year period even if such programs be reduced or terminated.

In its exhibit 39, the City estimates the County's loss of revenues and includes the following items: Local levies, local sales and use tax, recordation tax, vehicle license tax, County utility tax, hotel and motel room tax, trailer titling license tax, animal license tax, permits and other licenses, and fines and forfeitures. This appears to be a comprehensive listing of the revenue items to be considered by the court in arriving at the prospective loss of net tax revenues by the County. In said exhibit the City then proceeds to list certain estimated reductions in County expenditures by reason of annexation, namely, debt service, school operating expenses and general governmental operating expenses. The Court is of the opinion that some of the items of estimated reductions in County expenditures are illusory in that some of the expenses of the County operation are, and will continue to be, fixed, regardless of annexation. We hold that the total annual loss of net tax revenue is \$1,700,000.00. Multiplying that figure by five, we arrive at an aggregate compensation of \$8,500,000.00

due the County for the loss of net tax revenue for the five year period. This amount shall be paid by the City to the County in five equal, annual installments.

ASSUMPTION OF COUNTY DEBT

Va. Code Ann. § 15.1-1042(b) requires that the City assume a just proportion of any existing debt of the County.

The City claims the County net grand total of long-term indebtedness of which the City should assume a portion should be \$7,721,875 (Ex. 37 and 37A line e) as of December 31, 1981. The County says it will be \$8,823,000 (Ex. 110). The difference of \$1,101,125 is represented by two literary fund loans of \$705,500 and a portion of the 1971 series school bonds of \$395,625 for the County's share of Massanutten Vocational Technical School. It is the City's position that this is the subject of a separate contract between the City and the County (City Ex. 57) and should not be included as part of the City debt assumptions. The County says that the contract has nothing to do with annexation.

Section 15.1-1042(b) refers to "any existing debt." The Court must consider the Massanutten Vocational Technical School bonds and the literary fund loans in as much as they are a part of the County's "existing debt." The only discretion the Court has is in determining what "just proportion" the City must assume. This determination necessitates a consideration of all of the equities bearing upon the issue. The aforementioned contract is one such equity. The Court finds that the County's existing indebtedness is \$8,823,000 less \$65,000 which has not been drawn down on the literary fund loans, or \$8,758,000. The Court finds that the just proportion of the County's indebtedness to be paid by the City is \$1,100,000 together with appropriate interest and debt service.

COMPENSATION FOR PUBLIC IMPROVEMENTS

Pursuant to Va. Code Ann. § 15.1-1042(c), the City should be required on the effective date of annexation to compensate the County for the value of public improvements as follows:

1. Water systems as itemized in City Ex. 32a, \$650,000
2. Sewer systems as itemized in City Ex. 32a, \$200,000

The Court has been advised that the City and County have reached an "agreement" (Ex. 32a and Steadman T. 687) under which the City is to pay the County for its local revenue sharing costs of the HRRSA lines in the area annexed. The contract governing the authority (Paragraph 7, Defendant Ex. 126) provides:

"Title to all sewerage facilities in the County constructed or provided by the County or caused to be constructed or provided by the County under the provisions of this Agreement are vested in the County in fee simple."

The Court is of the opinion that all sewer lines in the annexed area owned by the County or by the HRRSA should be purchased by the City, and if the "agreement" referred to above does not accomplish this end, then the final order shall so provide.

It appearing that the City does not desire to purchase nor the County desire to sell the south county water system but that water service to the south U.S. Route 11 corridor will be subjected to duplicate service under City Proposal H-20, the Court is of the opinion that the City should purchase and control said water system and avoid duplication of services in this area and will so provide in the final order unless the parties, pursuant to Va. Code Ann. § 15.1-1042(e), can propose and consent to a more appropriate plan in lieu of compensation.

The Pleasant Valley Elementary School is in the annexation area. The parties agree that it shall remain the property of the County, and the final order shall so provide.

CAPITAL OUTLAYS AND SERVICES

Pursuant to Va. Code Ann. § 15.1-1042(f), the City shall be required to provide all services and capital outlays as proposed by the testimony and exhibits introduced by the City subject to reasonable amendments to be approved by the Court because of changes in the annexation lines.

The Court, however, is concerned with duplication of facilities for education and the proposed costs of expansion. We recognize the necessity for continuance of quality education at a reasonable cost and find that rather than hold the City to the letter of its proposal (City Ex. 26,d) the City and its School Board shall have the flexibility to do what is reasonably necessary to modify their capital expenditure program consistent with the standards of quality education maintained by the City and as established by the State Board of Education and the Commonwealth of Virginia.

The County shall continue to provide for the education of the students in the annexed area through the school year ending in June, 1982, and rising seniors shall have the option of completing their senior year in the County school system.

AGRICULTURAL, HORTICULTURAL, FORESTAL AND OPEN SPACE REAL ESTATE--POLICY AND LAND USE TAXATION

The Court recognizes it is the policy of the Commonwealth (Va. Code Ann. § 15.1-1507) to conserve, protect and encourage the development and improvement of its agricultural and forestal lands

as valued natural and ecological resources which provide essential open spaces for clean air sheds and aesthetic purposes. Furthermore, the General Assembly has provided for special assessments for taxation for agricultural, horticultural, forestal and open space real estate in an effort to accomplish these goals (Va. Code Ann. § 58-769.4, et seq.). The Court therefore directs that the order of annexation contain appropriate provisions for the City forthwith to adopt the necessary ordinances and land-use plan to provide for the classification, assessment and taxation of such lands in a manner that will promote its preservation ultimately for the public benefit as intended by Article 1.1 of Chapter 15, of the Code of Virginia, as amended (Va. Code Ann. § 58-769.4, et seq.).

MOBILE HOMES

The County permits some mobile home parks. The City does not. These parks serve as an alternative means of low-cost housing. The final order should provide for grandfathering of those parks now in the County to be annexed.

COSTS OF PROCEEDING

Pursuant to Va. Code Ann. § 15.1-1045, the City shall pay the costs of this proceeding.

EFFECTIVE DATE OF ORDER

The annexation shall become effective at midnight on December 31, 1981. ,

DATE: July 16, 1981

R. William Arthur, Judge.

Kenneth E. Trabue, Judge.

Norman K. Moon, Judge.

ADDENDUM
TO THE
OPINION OF THE COURT
DATED JULY 16, 1981

In its Memorandum-Opinion dated July 16, 1981, at page 21, under "Loss of Net Tax Revenue", the Court recited that it considered "local sales and use tax", among other things, in estimating the County's loss of tax revenue. This was not a complete statement in that the Court also considered the County's portion of the 1% state sales tax (County Exhibit 113, Sheet 7), as well as the fact that a substantial portion of Study Area 3 was denied the City for annexation and an inflation factor.

With reference to the Compensation for Public Improvements, page 23, the Court heretofore stated that it was of the opinion that the City should purchase and control the "south county water system". Upon further reflection and reconsideration the Court is of the opinion that inasmuch as the City does not desire to purchase or the County desire to sell this system, and in further consideration of the provisions set out in paragraph ii(b) of the Court order, the Court is of the opinion that the mandate for the sale and purchase of the "south county water system" should be, and is hereby, deleted.

With regard to "Compensation for Public Improvements," page 23 of the opinion, the Court upon reconsideration determines that the City should be required on the effective date of annexation to compensate the County as follows:

1. Water systems as itemized in City Exhibit 32a,
\$855,753.00.

2. Sewer systems as itemized in City Exhibit 32a,
\$1,254,300.00.

This change is because the Court in its previous opinion had allowed as a credit to the City certain portions of the costs of the improvements as shown on Exhibit 32a as contributed by federal and state agencies. It is now apparent that the funds in question were federal revenue sharing funds, which were not contributed by a federal agency specifically for this project, but rather were local funds merely having their origin with the federal government. Therefore the Court is of the opinion that such funds were not those contemplated in Section 15.1-1043(b), but rather were local county funds for which the City is not entitled to a credit.


R. WILLIAM ARTHUR, JUDGE


KENNETH E. TRABUE, JUDGE


NORMAN K. MOON, JUDGE

September 1, 1981

ORDER OF ANNEXATION

This proceeding was instituted by a petition of the City of Harrisonburg (the "City") for annexation of territory lying in the County of Rockingham (the "County"), as provided in a certain ordinance of the City adopted on May 13, 1975, and this day came on to be heard upon said petition and ordinance; upon the notice of the motion by the City to grant the annexation requested; upon the pretrial order heretofore entered; upon the petition to intervene by Triple H Farms, Inc., Carl Harman, and Sharon Harman requesting the inclusion of their respective properties within the annexation area; upon the report of the Commission on Local Government ordered to be filed herein pursuant to Section 15.1-1170 of the Virginia Code, as amended; upon the evidence as shown by the transcript thereof and the exhibits heretofore filed; upon the full and complete views by the Court of territory both within and beyond the present limits of the City, including the territory herein ordered to be annexed; and upon the arguments of counsel.

Being now fully advised in the premises and having matured its judgment and having reached a unanimous opinion dated July 16, 1981, which has been filed herein, the Court doth ADJUDGE, ORDER and DECREE as follows:

1. Jurisdiction

A. The Annexation Court, consisting of Judge Norman K. Moon of the Twenty-Fourth Judicial Circuit, the presiding judge, Judge R. William Arthur of the Twenty-Seventh Judicial Circuit, and Judge Kenneth E. Trabue of the Twenty-Third Judicial Circuit, was duly constituted and convened pursuant to Sections 15.1-1038 and 15.1-1168 of the Virginia Code, as amended. The Annexation Court originally consisted of Judge Joshua L. Robinson, Judge Robert T. Armistead, and Judge Langhorne Jones. Amendments to the annexation law by the 1979 Acts of The General Assembly, chapter 85, necessitated the dissolution of the original Annexation Court and the appointment of the present Court.

B. The City of Harrisonburg has duly adopted, in the manner required by law, an ordinance filed with its petition for annexation. Said ordinance and the map attached thereto comply in form and content with the requirements of the annexation statute. A copy of the notice of motion to grant the requested annexation and a copy of the ordinance have been duly served on each member of the governing body of the County and upon the Commonwealth's Attorney for the County, and said notice and ordinance have been published as required by law.

C. The Court is satisfied from all the evidence and finds that the City has substantially complied with the conditions of the 1962, 1965, and 1970 annexations, those being the three immediately preceding annexations.

D. All proper jurisdictional steps have been taken to bring this proceeding properly before the Court.

2. Necessity and Expediency

The Court is satisfied and hereby determines that the annexation herein ordered is both necessary and expedient, considering the best interests of the people of the County of Rockingham and the City of Harrisonburg, the services to be rendered and needs of the people of the area herein ordered to be annexed, the best interests of the people in the remaining portion of the County, and the best interests of the State in promoting strong and viable units of government, and considering the factors set forth in Section 15.1-1041(b1) of the Virginia Code, as amended.

3. Territory Annexed

A. The territory which should be and is hereby ordered annexed to the City of Harrisonburg contains approximately 11.64 square miles, giving a total area for the enlarged City of approximately 17.62 square miles and leaving an area of approximately 853.42 square miles remaining in the County of Rockingham. The area hereby annexed, in which approximately 4702 persons reside, is described as follows:

BEGINNING at a point on the northeast corporate limits of the City of Harrisonburg, Virginia northwest of U. S. Route 11, with said point further described as being Point "T" as shown on a plat of the City entitled "City of Harrisonburg, Harrisonburg, Virginia", as prepared by W. P. Whitmore, Certified Land Surveyor, and dated March 7, 1961, with said point further described as being located N 34° 02' 10" W,

180'+ and N 28° 02' 05" E, 307.52' from the centerline of U. S. Route 11, thence around the existing City limits of the City of Harrisonburg in a counterclockwise direction to a point, said point being the intersection of said City limits and a line parallel to and 250 feet north of the centerline of State Route 718 (Furnace Road); thence leaving said City limits and proceeding clockwise in a northeasterly direction first along said line parallel to the centerline of State Route 718 (Furnace Road) and then along the projection of said line for a total distance of 4,250+ feet, crossing the centerline of Dry Fork Creek at 2,850+ feet, and crossing the centerline of State Route 720 at 4,000 + feet, to a point, said point being the intersection of said line parallel to the centerline of State Route 718 (Furnace Road) and a line parallel to and 250 feet east of the centerline of State Route 720; thence in a southerly direction first along said line parallel to and 250 feet east of the centerline of State Route 720, and then along the projection of said line for a total distance of 11,350+ feet, crossing the centerline between the northbound and southbound lanes of Interstate 81 at 725+ feet, and crossing the centerline of State Route 718 at 1,625+ feet, and crossing the centerline of the tracks of the Chesapeake Western Railway Company at 4,425+ feet and crossing the centerline of State Route 925 (Keezletown Road) at 11,100+ feet to a point, said point being the intersection of the projection of said line parallel to and 250 feet east of State Route 720 with a line parallel to and 250 feet south of the centerline of State Route 925 (Keezletown Road); thence in a westerly direction along said line parallel to and 250 feet south of the centerline of State Route 925 (Keezletown Road) for a distance of 350+ feet to a point; thence S 22° 01' W, 2,646.66 feet to a point, said point being the intersection of a line on said bearing with a line parallel to and 350 feet north of the centerline of State Route 704; thence continuing in an easterly direction along said line parallel to and 350 feet north of the centerline of State Route 704 a distance of 1,200+ feet to a point, said point being the intersection of said line parallel to State Route 704 with a line parallel to and 50 feet north of the centerline of Virginia Electric and Power

Company (VEPCO) 115 KV transmission line No. 50, Harrisonburg to Endless Caverns and with said line generally being the northern right-of-way line of said VEPCO transmission line; thence S 70° 11' W, 1,300+ feet along said line parallel to and 50 feet north of the centerline of said VEPCO 115 KV transmission line, crossing the centerline of State Route 704 at 500+ feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-4, Sheet 3 of 16, Revised 10-23-52; thence S 70° 37' W, 6,170+ feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline between the northbound and southbound lanes of U.S. Route 33 at 1,900+ feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-4, Sheet 3 of 16, Revised 10-23-52 and 1-50-1-3, Sheet 2 of 16, revised 1-15-54; thence N 70° 03' W, 2,175+ feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline of State Route 710 (Ridge Road) at 1,370+ feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-3, Sheet 2 of 16, Revised 1-15-54; thence S 47° 23' W, 1,435+ feet to a point in said line parallel to and 50 feet north of the centerline of said transmission line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence S 87° 18' W, 3,850+ feet along said line parallel to and 50 feet north of the centerline of said transmission line, crossing the centerline of State Route 659 (John Wayland Highway) at 955+ feet, to a point in said parallel line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence S 82° 24' W, 1,850+ feet along said parallel line, crossing the centerline of State Route 726 at 500+ feet, to a point in the eastern property line of the VEPCO Harrisonburg Substation, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54; thence continuing in a northerly direction along the property line of the Harrisonburg Substation, 135+ feet to the corner of said property; thence in a westerly direction along said property line of Harrisonburg Substation 560+ feet to the corner of said property; thence in a southerly direction along the western property line of said property 550+ feet to a point, said point being the intersection of said property line with a line parallel

to and 50 feet west of the centerline of the VEPCO 110 KV transmission line No. 43, Staunton to Harrisonburg, and with said parallel line generally being the western VEPCO right-of-way line, reference VEPCO drawing 1-50-1-2, Sheet 1 of 16, Revised 1-15-54, and VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65; thence S $21^{\circ} 37' E$, 265+ feet along said line parallel to and 50 feet west of the VEPCO 110 KV transmission line, No. 43, Staunton to Harrisonburg to a point, reference VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65; thence continuing along the line parallel to and 50 feet west of the centerline of said transmission line S $9^{\circ} 24' W$ a total distance of 2,640+ feet, crossing the centerline of State Route 710 at 2,390+ feet, to a point, said point being the intersection of said line parallel to and 50 feet west of said transmission line with a line parallel to and 250 feet south of the centerline of State Route 710, reference VEPCO drawing 1-43-1-20, Sheet 19 of 19, Revised 3-16-65, and drawing 1-43-1-19, Sheet 18 of 19, dated 10-18-57; thence continuing in a westerly direction along said line parallel to and 250 feet south of the centerline of State Route 710 for a distance of 1,275+ feet to a point, said point being the intersection of said line parallel to the centerline of State Route 710 with a line parallel to and 2,000 feet east of the centerline of the Chesapeake Western Railway Company tracks; thence in a southerly direction along said line parallel to and 2,000 feet east of the centerline of the Chesapeake Western Railway company tracks for a distance of 4,500+ feet to a point; thence in a westerly direction N $85^{\circ} 24' 49'' W$, 3,663.55 feet, crossing the centerline of the Chesapeake Western Railway Company tracks at 2,000 feet, and crossing the centerline of State Route 679 at 2,900+ feet, to a point, said point being the intersection of said line with a bearing of N $85^{\circ} 24' 49'' W$ and the centerline of Blacks Run Interceptor sewer with said point further described as being at Manhole Station 134 + 48.80; thence along the centerline of Blacks Run Interceptor Sewer the following bearings and distances:

N $64^{\circ} 33' 42'' W$, 946.71 feet,
S $57^{\circ} 02' 20'' W$, 1,960.38 feet,

N 83° 02' 58" W, 913.86 feet,

crossing under State Route 988 and Interstate Route 81 to a point, said point being the intersection of the centerline of Blacks Run Interceptor Sewer and the Western right-of-way line of Interstate 81, said point also being an offset of Station 305 + 61 as shown on Virginia Department of Highways and Transportation drawings for Project Number 0081-082-103, PE-101; thence continuing in a northerly direction along the western right-of-way line of Interstate 81 for a distance of 250+ feet to a point, said point being the intersection of the western right-of-way line of Interstate 81 with a line parallel to and 250 feet south of the centerline of State Route 701; thence in a northwesterly direction first along said line parallel to the centerline of State Route 701 and then along the projection of said line for a distance of 1,550+ feet, crossing the centerline of U.S. Route 11 at 1,300+ feet, to a point, said point being the intersection of the projection in a northwesterly direction of said line parallel to and 250 feet south of the centerline of State Route 701 and a line parallel to and 250 feet northwest of the centerline of the southbound lane of U. S. Route 11; thence in a northeasterly direction along said parallel line 200+ feet to a point, said point being the intersection of said line parallel to the centerline of the southbound lane of U. S. Route 11 and a line parallel to and 250+ feet southwest of the centerline of State Route 701; thence in a northwesterly direction, being the property line of Pike Mennonite Church, to the corner of said property; thence in a northerly direction with western line of Pike Mennonite Church to corner of said Church property being in the Southern line of State Route 756, thence crossing State Route 756 and with the western property line of Shirley E. Earman to a corner of said property in the southern line of State Route 701; thence with the southern line of State Route 701 in a westerly direction to a point opposite the corner of Vernon D. Summy and Cletus M. Sellers and Sellers Furniture Inc.; thence crossing State Route 701 and with the property line between Cletus M. Sellers and Sellers Furniture Inc. in a northeasterly direction to a point being a corner to

Cletus M. Sellers, Sellers Furniture Inc. and Ralph W. Cline; thence leaving said corner in a westerly direction with the property line between Cletus M. Sellers and Joseph W. Miller to a point being point 51 as shown on Exhibit 1000; thence in a northeasterly direction as shown by a red line on Exhibit 1000 through lands of Joseph W. Miller and Elmer B. Kaylor to point 52 as shown on Exhibit 1000; thence in a northeasterly direction through land of Kaylor to a point in the southern line of Galen G. Craun, being point 53 on Exhibit 1000; thence with line between Elmer B. Kaylor and Galen G. Craun in a westerly direction to a property corner of Kaylor and Craun, thence continuing along a common property line between Craun and Kaylor to a point; being the corner of Kaylor, Craun, and Garber; thence in a northeasterly direction with line of Craun and Garber to a point being a fence line of Isaac J. Garber in the westerly line of Craun; thence leaving said westerly line of Craun with said fence line through land of Garber to a point; thence in a northerly direction with said fence line in land of Garber to a point in the southern right-of-way line of State Route 712, said lines shown in red on Exhibit 1000; thence in a westerly direction along the southern right-of-way line of State Route 712 to a point opposite the corner of Cornelia G. Good and L. F. Landis; thence crossing State Route 712 to corner of Good and Landis and with the eastern line of Landis to a point being a corner of Howard H. Payne; thence with common line of Landis and Payne in a easterly direction to a point being the corner of Reba V. Crawford; thence in a northerly direction with line of Landis and Crawford to a point in the line of Cedar Hill Estates; thence with line of Cedar Hill Estates in a northeasterly direction to a point in the northwestern right-of-way line of State Route 827, thence with said right-of-way line of State Route 827 in a northeasterly direction to a point as shown in red on Exhibit 1000; thence leaving said line of St. Rt. 827 in a westerly direction to point 66 being a corner of John M. and Susan Wilfong Zucconi and Paul L. Kratz; thence in a westerly direction generally being parallel to State Route 827 to a nail and cap in the center line of Cheaspeake and Western Railway being point 67 on Exhibit

1000; thence in a northwesterly direction crossing State Route 42 and along the common property line between Dairymen Specialities and Dayton Farm Supply and through the land of Simmons to point 68 as shown on Exhibit 1001; thence leaving point 68 as shown on Exhibit 1001; through land of Daniel W. Brubaker to a point being a corner to Donald D. Largent, Daniel W. Brubaker and Potomac District Council of The Assembly of God; thence in a westerly direction with a common line between the church and Brubaker to a point, corner to Hubert D. Showalter and Potomac District Council of The Assembly of God; thence in a northwesterly direction to a point; thence in a northwesterly direction with the common line between Showalter and the church, a corner of Joyce Barnes; thence with a common line between Showalter and Barnes to a point in the eastern right-of-way line of State Route 910; thence crossing State Route 910 and through land of Charles W. Wampler being 300+ feet south of the southern right-of-way line of State Route 726 and being in the original proposed annexation boundary line being 1000 feet west of the western right-of-way line of State Route 910, thence in a northeasterly direction, 1000 feet west and parallel to State Route 910 a total distance of 9,050+ feet crossing the center line of State Route 726 at 300+ feet and crossing the center line of U. S. Route 33 (Rawley Pike) at 7,975+ feet to a point; said point being the intersection of said line with a line parallel to and 1,000 feet north of the center line of U.S. Route 33 (Rawley Pike); thence in an easterly direction along said line parallel to and 1,000 feet north of the centerline of U. S. Route 33 (Rawley Pike) for a total distance of 3,500+ feet, crossing the centerline of State Route 910 at 1,050+ feet, to a point, said point being the intersection of said line parallel to and 1,000 feet north of the centerline of U. S. Route 33 (Rawley Pike) with the projection in a southwesterly direction of the western boundary line of Park View Sanitary District, with said Sanitary District Boundary being further described in an order of the Circuit Court of Rockingham County entered in Court Order Book 26, page 200, 1965 file, April Term, in the Circuit Court of Rockingham County; thence along said projection N 16° 36' E, 2,277.6 feet to a point, said point being the southwest

corner of lot 13, Block 7 of the "Perry Martin Addition to Park View" as recorded in Deed Book 235, page 202, Rockingham County Circuit Court; thence in a northeasterly direction along the western boundary of Park View Sanitary District a total distance of 6,600+ feet to a point, said point being the northwestern corner of Park View Sanitary District boundary, and further described as the northwest corner of lot 3, Block D, Section 2 of the E. Clayton Shank Subdivision; said point being the southwestern corner of Carl and Sharon Harman; thence along the western line of said Harmon's N 22° 35' 29" E 150.00 feet to an iron pin, said pin being a common corner with D. M. Cragan; thence with the Cragan and Augsberger line N 22° 35' 29" E 996.79 feet to a point, said point being a corner with Triple H. Farms; thence with said line N 22° 59' 17" E 1,461.18 feet to a corner with Triple H; thence with said line N 23° 02' 47" E 586.41 feet to a corner with Smuckers; thence with said lines N 85° 11' 57" E 258.22 feet to a corner, thence N 18° 18' 54" W 219.48 feet to a corner; thence N 48° 41' 09" E 486.24 feet to a corner with Stoltzfus; thence with said Stoltzfus line N 49° 21' 31" E 315.57 feet to a corner in the western right-of-way line of State Route 42; thence in a southerly direction with said western right-of-way line of State Route 42, 3,526.74 feet to an iron rod; thence crossing State Route 42 and along the northern line of an unnamed 30 foot street (being a dedicated street in Harmony Hills subdivision, Section "A") S 65° 46' 51" E, 998.02 feet to a railroad spike in the center line of the Southern Railway Company tracks; thence leaving said railway and crossing through the land of Heatwole S 66° 00' 11" E, 3111.76 feet to an iron pin in the western edge of the pavement in State Route 753 (Kratzer Road); thence crossing Kratzer Road S 34° 30' 09" E, 4661.82 feet to an iron pin in the eastern edge of a private right-of-way; thence along the line of said right-of-way S 28° 02' 05" W 344.77 feet to the beginning, Point "T," the aforesaid described parcel containing 11.64 square miles by planimeter measurement.

B. It is ordered that the City forthwith cause to be surveyed those segments of the description aforesaid which omit course distance and direction and that said survey be appropriately monumented. Upon the completion of this directive the survey description of the entire annexation line and a map reflecting the same shall be filed in the Clerk's Office of the Circuit Court of Rockingham County to be recorded in the current plat book.

C. The Court finds that the annexation area, when taken together with the present area of the City, forms a reasonably compact body of land and such area is adapted to City improvements and will be needed in the reasonably near future for development.

4. Terms and Conditions of Annexation

A. Public Debt.

The City shall, as of the effective date of annexation, assume and provide for the reimbursement of Rockingham County of 13.1 percent of the then existing net bonded indebtedness of Rockingham County which was incurred prior to April 23, 1981, which the Court determines to be a just proportion thereof. The Court determines that the debt of Rockingham County incurred prior to April 23, 1981, and projected as of December 31, 1981, totals \$8,758,000, as reflected on Attachment A hereto, and the City shall assume \$1,147,290 of that amount.

The City shall not by these proceedings incur any obligations to any creditor of the County with respect to such

assumptions of debt but shall pay to the Treasurer of the County, not less than ten days before the maturity date of the installment in respect to which payment is required, cash sums for its pro rata share as determined above toward the payment of installments of principal falling due after the effective date of annexation and interest which may accrue thereon after said date under the terms of the various bonds and loans which create such debt.

B. Loss of Net Tax Revenue.

The City shall compensate the County in five equal annual installments of \$1,700,000 each for the prospective loss of net tax revenues because of the annexation of taxable values to the City. The installments will be payable on or before each December 1 of the five successive years following annexation, making a total payment to the County of \$8,500,000.

C. Compensation for Public Improvements.

i. Sewer facilities.

(a) The City shall compensate the County on the effective date of annexation for the value of sewer collection and transmission facilities within the annexation area by payment in the amount of \$1,254,300. Upon such payment, title to all sewer facilities owned by the County (including those owned by the County through its Park View Sanitary District) within the area ordered to be annexed shall vest in the City, including but not limited to all gravity lines, force mains, pump stations, meters, easements, land and other appurtenances thereto used as part of said sewer facilities, as generally listed on City Exhibit 32a and

as generally shown on City Map Exhibit H-22. The County shall also upon payment deliver to the City a deed and bill of sale conveying said facilities to the City.

(b) The Court finds that the City and County each paid one-half of the local share costs required for the construction of certain sewer interceptors owned and maintained by the Harrisonburg-Rockingham Regional Sewer Authority (the "Authority") and known as Division F (which generally follows State Route 42 to the southwest of the present City corporate limits) and Division G (which generally follows Interstate Route 81 to the south of the present City corporate limits).

The Court further finds that the City and County have agreed to make, upon the completion of this annexation proceeding, certain adjustments with respect to the financial contributions by each toward the construction of these sewer interceptor lines. Accordingly, the City and County shall abide by the terms of this agreement as contained in the written contract dated October 14, 1976 by and between the Authority, the City, the County and the Town of Dayton, which provides for the construction and operation of certain interceptor lines by the Authority.

(c) It is the intention of the Court that the City shall serve all water and sewer customers within the enlarged boundaries of the City.

(d) The County and City shall have a continuing right to utilize the Belmont Estates gravity sewer line and the Ashby Heights sewer line that connects the Massanetta Springs sewer line to the Ashby Heights interceptor for the discharge of effluent from the County through said lines until the capacity of said lines be fully utilized by the City and the County.

ii. Water Facilities.

(a) The City shall compensate the County on the effective date of annexation for the value of water supply, storage, and distribution facilities within the annexation area by payment in the amount of \$855,753. Upon such payment, title to all water facilities owned by the County (including those owned by the County through its Park View Sanitary District) within the area ordered to be annexed, except as hereinafter provided, shall vest in the City, including but not limited to all lines, tanks, pump stations, hydrants, valves, meters, easements, land, and other appurtenances thereto, used as part of said water facilities, as generally listed on City Exhibit 32a and as generally shown on City Map Exhibit H-19. The County shall also upon payment deliver to the City a deed and bill of sale conveying said facilities to the City.

(b) The County in conjunction with the Town of Dayton (the "Town") has under construction a water supply, storage and transmission project, generally described as the "south county water system" and located to the south of the present City corporate limits as shown on City Map Exhibit H-19. While the City does not seek to acquire the system and the County does not desire to dispose of the system, the Court finds that this water facility will be in part duplicative of water lines in place and proposed to be built by the City in the area ordered to be annexed.

The City shall therefore purchase said facilities including but not limited to all lines, tanks, wells, hydrants, valves, meters, easements, land and other appurtenances to be used

as part of said project, and owned by the County, whether within or beyond the area ordered to be annexed, if within 90 days after the effective date of annexation (1) the County notifies the City that it consents to the sale of said facilities and to the distribution of water by the City to customers located within the service area which said facilities were designed to serve and (2) the Town of Dayton notifies the City that it consents to the assumption by the City of all rights and obligations of the County set forth in the written contract for the construction and operation of this project, dated September 24, 1979, by and between the County and the Town of Dayton. If either the County or the Town of Dayton refuses to consent to this acquisition, said facilities shall remain the property of the County. If both the County and the Town of Dayton consent to this acquisition, the City and County shall attempt to reach agreement on the amount of compensation for the facilities. If, however, the City and County are unable to agree on said amount within 90 days after the County and Town notify the City of their consent to the acquisition as described above, the Court will reconvene to determine a just amount. The City shall pay to the County the amount of compensation for said water facilities determined by the parties or by the court within 30 days after such determination but no sooner than the effective date of annexation. Upon payment of such sum, title to the facilities shall vest in the City. The County shall also upon payment deliver to the City a deed and bill of sale conveying said facilities to the City.

iii. Schools.

The Pleasant Valley Elementary School, which is located within the area ordered to be annexed, shall remain the property of the County.

iv. School Attendance.

(a) After the effective date of annexation, the City shall not charge tuition costs to any pupil living in the annexed area and attending public schools in the City.

(b) After the effective date of annexation and through the school session ending June, 1982, the County shall continue to furnish school accommodations, instruction and transportation to all pupils residing within the area annexed from the County attending County schools.

(c) The City shall reimburse the County for said accommodations, instruction and transportation of the pupils residing in the area ordered to be annexed. The City shall pay to the County of Rockingham an amount equal to the total per pupil costs to the County of Rockingham from local funds including all operating costs, including those costs for operating repairs and replacements, debt service (excluding any debt assumed by the City of Harrisonburg) and excluding any construction costs. The County of Rockingham shall be entitled to receive all state and federal funds paid for or attributed to such students for said period of time. Payment by the City shall be made monthly on the basis of the current budget and shall be adjusted at the close of the fiscal year to provide for the exact amount of reimbursement as set forth above.

(d) It is further ordered that those pupils residing in annexed areas who are rising seniors at the end of the

school session expiring June, 1982, shall have the option of attending City schools or of completing their high school education in the County schools. The County shall not be required to furnish transportation for such students. For those pupils who elect to attend County schools, the City shall continue to reimburse the County on the same basis set forth above, except that the City shall not be required to compensate the County for any share of the County's costs for transportation of pupils. From June, 1982 through June, 1983 the rising seniors in the area annexed who elect to attend County schools shall be considered as County students for the purpose of the County receiving State and Federal funds. Further, the County shall receive all Federal and State funds applicable to school age children of the area annexed as the number of said seniors attending County schools from the area annexed bears to the total number of seniors of the County including those from the area annexed.

D. Capital Improvements
Within the Annexation Area.

In order to meet the needs of the area herein ordered to be annexed and to bring such area up to a standard equal to that of the remainder of the City, the City shall, within the terms hereinafter prescribed, cause the capital improvements set forth below to be installed in accordance with the City's evidence.

i. Sewer Improvements.

(a) The City shall install the sewer interceptor and collector lines listed on Attachment B hereto and shown as

priority 1, 2 and 3 facilities on City Map Exhibit H-26.

Priority 1 facilities shall be installed by the end of the fourth year after the effective date of annexation. Priority 2 facilities shall be installed by the end of the seventh year following annexation. Priority 3 facilities shall be installed by the end of the tenth year following annexation.

(b) The City shall not be required to install those sewer interceptor or collector lines, shown on City Map Exhibit H-26, which are beyond the boundaries of the area ordered to be annexed.

ii. Water Improvements.

(a) The City shall install the water distribution lines, pump station, and fire hydrants listed on Attachment C hereto and shown as priority 1, 2 and 3 facilities on City Map Exhibit H-20. Priority 1 facilities shall be installed by the end of the fourth year after the effective date of annexation. Priority 2 facilities shall be installed by the end of the seventh year following annexation. Priority 3 facilities shall be installed by the end of the tenth year following annexation.

(b) The City shall not be required to install those water distribution lines or fire hydrants, shown on City Map Exhibit H-20, which are beyond the boundaries of the area ordered to be annexed.

(c) The City shall construct a water storage tank off State Route 827, in the general location shown on City Map Exhibit H-20, at such time and of such capacity as needed to serve that portion of the annexation area to the west of U.S. Route 11.

iii. Road and Street Improvements.

The City shall make improvements to those portions of the roads and streets within the annexation area as described on Attachment D, appended hereto and shown on City Map Exhibit H-27 so as to bring said roads and streets up to City standards. Priority 1 improvements shall be made by the end of the fourth year after the effective date of annexation. Priority 2 improvements shall be made by the end of the seventh year following annexation. Priority 3 improvements shall be made by the end of the tenth year following annexation. The City shall not be required to make improvements to that portion of State Route 910, shown on City Map Exhibit H-27, which is beyond the area ordered to be annexed.

iv. Street Lighting Improvements.

The City shall within the three years following annexation install or cause to be installed those street lighting improvements generally shown on City Map Exhibit H-17 within the area ordered to be annexed.

v. Fire Fighting Improvements.

(a) Within two years after the effective date of annexation, the City shall construct a fire station within the annexation area to be located in the vicinity of U.S. Route 33 to the east of the existing City limits.

(b) Within two years after the effective date of annexation, the City shall construct a fire station within the annexation area to be located in the vicinity of the areas adjacent to U.S. Route 11 and Interstate Route 81 to the south of the existing City limits.

vi. Parks.

(a) The City shall provide for an addition of approximately 52 acres to its Hillandale Park generally as shown on City Map Exhibit H-15, having comfort stations, park drives, parking lots, trails, picnic shelters, a nature museum and play-ground areas.

(b) The City shall provide for an addition of approximately 18 acres to its Westover Park, as generally shown on City Map Exhibit H-15, having trails and picnic sites.

(c) The City shall provide for an addition of approximately 15 acres to its Purcell Park.

(d) The City shall establish a park of approximately 60 acres to be located at the City's landfill area to the east of Interstate Route 81 and south of State Route 711, having athletic fields, lighting facilities, restrooms, a concession stand, press box, and fencing.

(d) The City shall establish a park of approximately 80 acres in the general vicinity of the intersection of Interstate Route 81 and State Route 720 as shown on City Map Exhibit H-15, having park roads, parking lots, comfort stations, playfields, tennis courts, picnic shelters, and fencing.

(f) Said park improvements shall be constructed in accordance with the timetable shown in City Exhibit 33.

vii. Schools.

The City shall construct or make other provisions for such additional school buildings and other school

facilities as are necessary to educate the additional pupils residing in the annexation area after the school session ending in June, 1982, consistent with the standards of quality education presently maintained by the City and required by the State Board of Education and the Commonwealth of Virginia. The City shall provide free bus transportation for school children beginning with the school session commencing on or about September 1, 1982.

E. Services, Personnel and
Equipment for the Annexation Area.

Upon the effective date of annexation, the City shall extend its municipal services to the annexation area at the same level as then being furnished within the present City. The City shall employ additional personnel and acquire equipment substantially in accordance with the testimony of City witnesses and the City exhibits 16, 17, 18, 19 and 27 filed herein for the extension of such municipal services.

F. Use Value Assessment and Taxation.

The City shall adopt an ordinance to provide for use value assessment and taxation of agricultural, horticultural, forestal, and open space real estate pursuant to Article 1.1, Chapter 15 of Title 58 of the Code of Virginia as amended (§ 58-769.4 et seq.) and to be effective simultaneously with the annexation ordered herein and for a period of not less than ten years thereafter.

G. Mobile Home Parks.

The City shall amend its zoning ordinance, as necessary, to provide that those mobile home parks presently developed

facilities as are necessary to educate the additional pupils residing in the annexation area after the school session ending in June, 1982, consistent with the standards of quality education presently maintained by the City and required by the State Board of Education and the Commonwealth of Virginia. The City shall provide free bus transportation for school children beginning with the school session commencing on or about September 1, 1982.

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G. Mobile Home Parks.

The City shall amend its zoning ordinance, as necessary, to provide that those mobile home parks presently developed

and in use within the area ordered to be annexed shall continue to be a permitted use upon and after the effective date of annexation.

H. Reproduction of Records.

In order to facilitate the orderly transfer of governmental functions for the area ordered herein to be annexed, the County shall, upon the City's request and at a reasonable time and place, make available the following documents or records, insofar as they relate to the annexation area, for reproduction or copying by the City at no cost to the County:

- (i) Detailed school census and pupil transportation routing records;
- (ii) All planning, construction, operation, maintenance, and administrative documents relating to existing water and sewer facilities acquired by the City;
- (iii) Records of the Park View Sanitary District;
- (iv) Records relating to special use permits; and
- (v) Tax records, including maps, property identification data and real estate cards.

5. Certification of Real Estate.

The Clerk of the Circuit Court of Rockingham County shall forthwith make from the land books and assessment maps and certify to the Commissioner of Revenue of the City of Harrisonburg a list of all real estate together with the related tax assessment maps showing the location of each parcel in the annexed territory in such form as may be correlated with the land book data within the annexed territory as it appears on such land books, embracing

every entry thereon in regard thereto, for which service he shall be paid by the City the fees allowed by law for similar services.

6. Copies of Decree.

The Clerk of this Court is ordered and directed to send a certified copy of this order to the Secretary of the Commonwealth, to the Auditor of Public Accounts of the Commonwealth of Virginia, to the Comptroller thereof, to the State Corporation Commission, to the Department of Taxation of the Commonwealth of Virginia, to the Department of Planning and Budget of the Commonwealth of Virginia, to the United States Department of the Treasury and to the Bureau of the Census of the U.S. Department of Commerce, in order that such allocation of state and federal funds of various kinds to the City or the County as may be affected by the annexation of the City of the territory hereby annexed and the population hereof may be revised in accordance with law on and after the effective date of this order.

7. Payment of Costs.

The City shall pay the costs of this proceeding in this Court, including the per diem charges and expenses of the court reporter, and expenses incurred by the Court in connection with the preparation and reproduction of its opinion.

8. Effective Date of the Order.

The annexation hereby ordered shall become effective at midnight on December 31, 1981. All County levies imposed on

every entry thereon in regard thereto, for which service he shall be paid by the City the fees allowed by law for similar services.

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The Clerk of this Court is ordered and directed to send a certified copy of this order to the Secretary of the Commonwealth, to the Auditor of Public Accounts of the Commonwealth of Virginia, to the Comptroller thereof, to the State Corporation Commission, to the Department of Taxation of the Commonwealth of Virginia, to the Department of Planning and Budget of the Commonwealth of Virginia, to the United States Department of the Treasury and to the Bureau of the Census of the U.S. Department of Commerce, in order that such allocation of state and federal funds of various kinds to the City or the County as may be affected by the annexation of the City of the territory hereby annexed and the population hereof may be revised in accordance with law on and after the effective date of this order.

7. Payment of Costs.

The City shall pay the costs of this proceeding in this Court, including the per diem charges and expenses of the court reporter, and expenses incurred by the Court in connection with the preparation and reproduction of its opinion.

8. Effective Date of the Order.

The annexation hereby ordered shall become effective at midnight on December 31, 1981. All County levies imposed on

persons and property within the territory hereby ordered to be annexed for any year prior to the effective date of annexation shall be paid to the County. On and after the effective date of annexation the territory hereby ordered to be annexed shall be governed, managed and controlled under and pursuant to the terms and provisions of the charter of the City of Harrisonburg as amended and shall in every respect be a part of the City and so governed.

9. Suspension.

Rockingham County, by counsel, having indicated its intention to appeal from this order, and having moved this Court to suspend its operation and execution, pursuant to Section 8.01-676 of the Virginia Code, as amended, it is further ADJUDGED and ORDERED that execution of this order be suspended so long thereafter as the County timely prosecutes an appeal and so long as the matter is under consideration by the Supreme Court.

10. Objections and Exceptions.

The County, by counsel, duly objected and excepted to all adverse rulings and actions of the Court in granting the aforesaid annexation and the terms and conditions thereof.

11. Adjournment.

It is ordered that this Court be adjourned, but not dissolved, subject to being reconvened in the manner provided by law

at anytime during a period of ten years from the effective date of this order.

Entered this 1st day of September, 1981.

R. William Arthur, Judge

Kenneth E. Trabue, Judge

Norman K. Moon, Judge

Seen:

William R. Coan
Counsel for City of Harrisonburg

EXCEPTED:
[Signature]
Counsel for County of Rockingham

A. Z. [Signature]
Counsel for Triple H Farms, Inc., et al.

Recorded In <u>Common Law</u>
Order Book <u>33</u> Page <u>79</u>
<u>9/1/81</u>

PROJECTED TO DECEMBER 31, 1981

Item No.	Description	Amount Authorized	Date Issued or Authorized	Interest Rate	Annual Maturities		Outstanding and Not Matured
					Amount	Dates	
SCHOOL FUND:							
A. School Bonds:							
1.	Bonds - 1962 Series	\$ 1 000 000	12- 1-62	3.125%	\$ 50 000	12-1-82	\$ 50 000
2.	Bonds - 1965 Series	800 000	10- 1-65	3.300%	40 000	4-1-82 thru 4-1-86	200 000
3.	Bonds - 1970 Series	1 000 000	2- 1-71	4.625%	50 000	2-1-82 thru 2-1-86	250 000
4.	Bonds - 1971 Series	1 500 000	6- 1-71	5.100%	75 000	12-1-82 thru 12-1-88	525 000
				5.000%	75 000	12-1-89 thru 12-1-91	225 000
5.	Bonds - 1974 Series	1 200 000	12-15-74	5.530%	60 000	12-15-82 thru 12-15-94	780 000
6.	Bonds - 1976A Series	3 000 000	6-15-76	5.340%	150 000	12-15-82 thru 12-15-94	2 250 000
7.	Bonds - 1976B Series	3 000 000	12-15-76	5.150%	150 000	12-15-82 thru 12-15-96	2 250 000
8.	Total School Bonds						\$ 6 530 000
B. State Literary Fund Loans:							
1.	John C. Myers School	150 000	6-15-64	3.000%	7 500	6-15-82 thru 6-15-84	\$ 22 500
2.	McGaheysville Elementary School	425 000	11-15-69	3.000%	21 250	11-15-82 thru 11-15-89	170 000
3.	Elkton Primary School	500 000	1-15-72	3.000%	25 000	1-15-82 thru 1-15-92	275 000
4.	Fulks Run Elementary School	100 000	8-15-75	3.000%	5 000	8-15-82 thru 8-15-95	70 000
5.	John C. Myers Intermediate School	500 000	8-15-76	3.000%	25 000	8-15-82 thru 8-15-96	375 000
6.	Spotswood High School	750 000	8- 1-79	3.000%	37 500	8-1-82 thru 8-1-99	675 000
7.	Massanutten Vocational Technical School	640,500	9-28-79	3.000%	Terms Have Not Yet Been Established		640 500
8.	Total State Literary Fund Loans		3-28-80				2 228 000
C. Grand Total - Rockingham County Long-Term Indebtedness							
							\$ 8 758 000

608

SEWER IMPROVEMENTS

<u>Section No.</u>	<u>Description</u>	<u>Line Size</u>	<u>Length (feet)</u>	<u>Priority</u>
<u>INTERCEPTORS</u>				
1A	Upper Ridge Road			
	(a-b)	8	2,200	1
	(b-c)	8	2,200	1
1B	Lower Ridge Road	8	4,800	1
1C	Route 710	8	3,000	1
1D	Route 11 (Radio Tower)	8	3,300	1
1E	Route 11 (Reservoir)	10	2,400	1
1E	Route 11 (Reservoir)	8	1,300	1
1G	Route 11 (Grace Chapel)	8	500	1
1K	Route 33 W (Stream)	8	2,500	1
1M	Route 33 W (Stream)			
	(a-b)	8	600	1
	(b-c)	10	3,100	1
1L	Circle Drive	8	2,100	1
1N	West Market Street	8	2,400	1
IV	Route 712	8	2,500	1
1R	Park View (Edom Rd.)	8	3,100	2
1S	Park View (Mt. Clinton Pike)	8	2,000	2
1T	Park View (Greystone St.)	8	1,900	2
1U	Route 710 Ridge Road	8	4,000	2
11A	Route 42 N	8	1,300	2
11B	Route 42 N	8	1,300	2

Sewer Improvements - Continued

<u>Section No.</u>	<u>Description</u>	<u>Line Size</u>	<u>Length (feet)</u>	<u>Priority</u>
111A	Route 726			
	(a-b)	8	2,700	3
	(b-c)	10	1,100	3
111B	Route 711	8	2,400	3
111D	Route 910	8	5,100	3
111E	Hillandale Avenue	8	3,200	3

COLLECTORS

1A	Upper Ridge Road	8	2,200	1
1H	Route 33 West	8	1,800	2
1I	Route 33 West	8	1,200	2
1K	Route 33 West (Stream)	8	600	2
1J	Route 33 West (Stream)	8	3,300	2
1L	Circle Drive	8	2,600	1
	Park View	8	11,400	3

Attachment B
(Page 2 of 2)

94

WATER IMPROVEMENTS

<u>Description</u>	<u>Length in Feet</u>	<u>Priority</u>
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Pump Station

(Port Republic Road) - - - - -		1
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Distribution Lines

8 - inch - - - - -	4,933- - - - -	1
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12 - inch - - - - -	17,656- - - - -	1
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16 - inch - - - - -	2,760- - - - -	1
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12 - inch - - - - -	14,920- - - - -	2
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16 - inch - - - - -	8,581- - - - -	3
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12 - inch - - - - -	2,858- - - - -	3
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16 - inch - - - - -	8,814- - - - -	3
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Fire Hydrants

37 - - - - -		1
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14 - - - - -		2
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19 - - - - -		3
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ROAD AND STREET IMPROVEMENTS

Street or Road

Section

From

To

Length

Priority

Route 11	Old South City Limits	I-81 Interchange	1.06 Miles	1 (1-4)
Circle Drive	Old West City Limits	Old West City Limits	0.61 Miles	1 (1-4)
Route 710	Old East City Limits	New East City Limits	1.00 Miles	1 (1-4)
Route 710	1 Mile East of East City Limits	New East City Limits	0.50 Miles	2 (4-7)
Chicago Avenue	Old West City Limits	New West City Limits	0.68 Miles	2 (4-7)
Westmoreland Dr.	Route 659	Old C & G	0.38 Miles	2 (4-7)
Route 710	Route 679	New West City Limits	1.06 Miles	2 (4-7)
Nelson Drive	Route 659	End	0.30 Miles	2 (4-7)
Route 704	Route 33	New East City Limits	0.60 Miles	2 (4-7)
Route 711	Route 710	Paved Area Near I-81	0.81 Miles	2 (4-7)
Route 1108	Route 726	End of Road	0.20 Miles	2 (4-7)
Route 42	Old North City Limits	Route 1124	0.32 Miles	3 (7-10)
Route 42	Route 1124	New North City Limits	0.68 Miles	3 (7-10)
Route 726	Huffman Street	New North City Limits	1.00 Miles	3 (7-10)
Route 33	Old West City Limits	New West City Limits	1.00 Miles	3 (7-10)
Route 910	Route 33	New Southern City Limits	1.57 Miles	3 (7-10)

Attachment D

ASSIGNMENTS OF ERROR

The court committed error as follows:

1. The court's finding that the City needed to expand its tax resources is not supported by the evidence.
2. The finding of the court that the City needed to obtain land for industrial or commercial use is not supported by the evidence.
3. The court failed to consider the adverse effect on the County of the loss of areas suitable and developable for industrial or commercial uses.
4. The court failed to properly consider the adverse effect of the loss of tax resources on the ability of the County to provide services to the people in the remaining portion of the County.
5. The court erred in its finding that the City had borne the burden of proving that the annexation was necessary and expedient.
6. The court exceeded its authority in requiring the County to transfer facilities to the City contrary to contracts between the parties and which were needed by the County.
7. The court drew adverse inference against the County contrary to the provisions of §15.1-1041(b1)(v), Code of Virginia.*
8. The court failed to consider arbitrary refusal of the City to enter into cooperative agreements which would have benefited citizens of both political subdivisions.

*All section references herein are to the Code of Virginia, anno., as amended.

9. The court failed to set forth in detail all terms and conditions upon which the petition was granted.

10. The court failed to comply with the provisions of §15.1-1042(a) in that it ordered the annexation of land which is not adapted to City improvements or which the City will not need in the reasonably near future for development when such was not necessarily embraced in a compact body of land.

11. The court erred in failing to require the City to properly compensate the County for its prospective loss of net tax revenue.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME I

This is to certify that the following is a transcript of the proceedings held before the Honorable Norman K. Moon, R. William Arthur, and Kenneth E. Trabue in the above styled case on the 7th and 8th day of April, 1981, in the Courtroom of the Circuit Court of Rockingham County, at Harrisonburg, Virginia.

The following was recorded by the undersigned and is certified to be a true and correct transcript of the proceedings according to the best of my knowledge and belief.

Given under my hand this 20th day of April, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.



Christine Bradshaw
Court Reporter

MARVIN B. MILAM,

having been duly sworn, testified as follows:

Direct Examination by Mr. Wickham:

Q. Mr. Milam, will you state your name, please.

A. My name is Marvin Bennett Milam.

Q. And your occupation?

A. City Manager for the City of Harrisonburg.

Q. Will you briefly describe your work experience?

A. Work experience?

Q. Yes.

A. In the City of Harrisonburg?

Q. No, your work experience with city government.

A. With city government I started twenty-eight years ago with the City of Roanoke as City Building Inspector and City Zoning Administrator in 1953. And I worked for the City of Roanoke until 1956.

Q. At which time you went to where, Mr. Milam?

A. In 1956 I moved to the City of Winchester.

Q. And what were your duties there?

A. I served in the position of City Building Inspector, City Planning Engineer, City Zoning Administrator, Secretary for the City Planning Commission.

Q. And how long did you stay with the City of Winchester?

A. I was with the City of Winchester from 1956 until 1962.

1. Q. And in 1962 where did you go?

2. A. I moved to Pennsylvania with the Borough of Tamaqua as
3. Borough Manager. I was also administrator for the Tama-
4. qua Borough Authority.

5. Q. Is a borough in Pennsylvania comparable to a municipal
6. corporation or to a county?

7. A. Yes, it is a municipal corporation under the Pennsylvania
8. law.

9. Q. And when did you come to the City of Harrisonburg?

10. A. Twelve years ago in 1969.

11. Q. And briefly what are the duties you perform as City Man-
12. ager?

13. A. The City Manager for the City of Harrisonburg's duties
14. are outlined in the City Charter, which are Acts of the
15. General Assembly. The City Manager carries out primarily
16. the policies of the City ordinances approved by the City
17. Council. He is to insure that those ordinances are car-
18. ried out. He has full supervision of all public works,
19. improvements, and he also appoints all directors and all
20. department heads that are not otherwise provided by law.
21. His other responsibility is the preparation of the bud-
22. get, which is a Charter provision, and the preparation
23. of the budget is then submitted to the City Council and
24. they have thirty days to approve or reject his budget.

1. Q. What type of city government does the City of Harrison-
2. burg have?

3. A. Harrisonburg converted in 1952 to the Council-Manager
4. form of government, the short term is the City Manager
5. form of government.

6. Q. I ask you now to turn to Map Exhibit H-1 on your left,
7. and will you briefly describe to the Court what this
8. vicinity map shows?

9. A. Exhibit H-1 indicates the entire boundaries of Rocking-
10. ham County. I'll start with my upper left-hand corner.
11. This area here is bordered by Hardy County, West Virgin-
12. ia, this being the Hardy County boundary. The Shenandoah
13. County boundary picks up about this point. To the north
14. of Rockingham County is Shenandoah County, to the north-
15. east of Rockingham County is Page County, to the east of
16. Rockingham County is Greene County and Albemarle County.
17. To the south of Rockingham County you will find Augusta
18. County. Again to the west of Rockingham County is the
19. West Virginia line, which is at the top of the Allegheny
20. Ridge or the Allegheny Mountain, and that's Pendleton
21. County, West Virginia.

22. Q. Now, what are the blue areas shown on that map?

23. A. The blue areas, starting at the top of the exhibit, in-
24. dicate the Town of Timberville, the Town of Broadway,

1. Q. What is the total assessed value estimated for the pro-
2. posed annexed area?

3. A. The total values, as best it could be estimated, is
4. \$142,513,836.00.

5. Q. I ask you now to turn to Tab Exhibit 13, which is the
6. organizational chart for the City of Harrisonburg.

7. First, Mr. Milam, is the City of Harrisonburg a city of
8. the second class or first class?

9. A. It's a city of the second class under the state statutes.

10. Q. How many members of City Council are there? And how
11. are they elected?

12. A. We have five members of City Council elected at large
13. on staggered terms. Two in a two-year period, three in
14. a two-year period. And amongst those five councilmen
15. they elect a mayor and vice-mayor.

16. Q. Do you report directly to the City Council?

17. A. Yes sir.

18. Q. And approximately how many departments are there under
19. you, Mr. Milam?

20. A. There are twelve municipal departments under the City
21. Manager.

22. Q. Does the City also have a number of authorities and
23. boards and commissions appointed by the City Council?

24. A. Yes sir, we have at least thirty-seven authorities,

1. to decide this case, do we?

2. MR. COGAR: I think that it's the inference
3. that he wasn't thrown out.

4. JUDGE MOON: Well, I don't think you can draw
5. any inference from that.

6. MR. FITZGERALD: Your Honor, the inference
7. was, the statement was, he had to explain the letter to
8. him. I don't know what the man may have done if he had
9. to explain the letter to him; but it's totally irrelevant.

10. JUDGE MOON: I think the point has been made.
11. Let's move on.

12. Q. Mr. Milam, what is the present ordinance in the City
13. concerning trailers and trailer parks?

14. A. At the present time, Mr. Wickham, trailers or trailer
15. parks are prohibited within the City because we never
16. felt that we had sufficient land to zone for trailer
17. parks with the proper criteria.

18. Q. What do you intend to recommend to Council if this
19. annexation is granted?

20. A. We intend to recommend prior to the effective date of
21. annexation, sometime following this hearing, prior to
22. January 1, that all trailer parks located in the propos-
23. ed annexation area would be grandfathered in, they would
24. be accepted as they presently exist. We would also ac-

1. cept any zoning that Rockingham County would have on the
2. land in this fourteen square miles. And at some future
3. date, hopefully before the annexation takes effect, we
4. will add a zoning category in the City ordinance provid-
5. ing for trailer parks with the proper design and proper
6. criteria for trailer parks. But the existing parks
7. would be grandfathered in.

8. Q. Have you considered recommendation of a land use tax
9. for certain areas of the proposed annexed area?

10. A. Yes sir. We've made some answers to that, the answers
11. to the interrogatories indicated that the City Manager
12. would recommend to City Council a land use tax, and we
13. would make recommendations under Article 1.1 of Chapter
14. 15, Title 58, of the Code of Virginia. And there is a
15. special provision in Title 58 for the first year follow-
16. ing an annexation, which went into effect in 1976.

17. JUDGE TRABUE: What was that code section?

18. A. The code section for special provisions for annexation
19. is 57-769.6.1.

20. Q. It's 58, isn't it, Title 58?

21. A. Title 58. I'm reading the whole section. This gives
22. us a one year transition period, Your Honor.

23. JUDGE ARTHUR: Give that section again.

24. A. It's Section 58-769.6.1. But the overall article that

1. I read to you is Article 1.1, Chapter 15, Title 58, Code
2. of Virginia.

3. Q. Mr. Milam, what are the present requirements for hookups
4. for water and sewer in the City?

5. A. The present requirement, Mr. Wickham, because we have
6. an urban area, small lots, generally speaking; but the
7. present ordinance for both water and sewer, the general
8. policy is that every building must be connected to a pub-
9. lic water supply and to a public sewer supply.

10. JUDGE MOON: You say general policy?

11. A. That's an ordinance within the City Code. It has some
12. exceptions to that policy. That policy would apply to
13. perhaps 99% of the cases. We do have something less than
14. one percent where you may have septic tanks. For example,
15. we have six or seven thousand buildings and maybe a few
16. septic tanks, but there is a provision in the City ordi-
17. nance that would allow if a building is located beyond
18. three hundred feet of a public water line or a public
19. sewer line, then either the water and sewer superinten-
20. dent or the health director can issue a variance in that
21. particular case. They are not mandated to make the con-
22. nection. And to move on on the sewer part, if he is
23. over the distance from a public sewer, then that permit
24. application from the City goes to the State Health Of-

1. ficer and they grant him a permit for a private sewage
2. disposal system satisfactory to the Health Officer.

3. Q. That is the present ordinance. What is the present prac-
4. tice?

5. A. The present practice, there are some--in other words,
6. the City Code says that every building shall be connect-
7. ed to public water and public sewer, but there are some
8. hardship cases due to economic conditions. And I think
9. a detour was arranged by the County yesterday so you
10. could see two of those streets. And we are not ashamed
11. of those streets, these are people living on very meager
12. income, they have very limited resources, there are times
13. when they cannot afford to make the economic outlay for
14. sewer connections and things of that nature. And hard-
15. ship cases are issued for those. And we try to live them
16. out and hope that time will cure the problem.

17. Q. What would be your policy for the annexed area?

18. A. We would recommend that in the annexed area that all sep-
19. tic tanks be allowed to continue as long as they are
20. properly functioning and sanitary and satisfactory to
21. the State Health Department.

22. Q. Will you state for the Court the present capacity of
23. the City's landfill?

24. A. In years?

1. Q. Yes, or anyway you want to state it.

2. A. It's been estimated by some people that we have three
3. to five years life left in the present landfill. And,
4. of course, that three to five years can vary depending
5. on who's making the estimate and depending on some other
6. factors. But roughly three to five years.

7. Q. What does the City plan to do when this landfill runs
8. out?

9. A. The City of Harrisonburg for many years has been trying
10. to develop a new system that's been in the making since
11. the early seventies, somewhere around 1972. The final
12. plans got in preparation in the year 1976-1977. We are
13. planning on building an energy recovery system on James
14. Madison University's property, east of 81, in the wooded
15. area that you saw yesterday. And the basic outline of
16. the design of that facility is totally--it has been to-
17. tally designed, it is out across the country, it is in
18. all parts of the state now seeking bids, and we have a
19. New York firm that's handling the design of that plant.
20. And that plant basically will have two fifty ton boilers
21. that will burn municipal waste, and we will furnish to
22. James Madison University the steam for their new Convo-
23. cation Center and the steam for their front campus, and
24. any surplus steam at a later date will be sold to the

1. hospital. And as this facility is built and comes on
2. line, James Madison will phase out one or two or several
3. boilers, and the same thing with the hospital. But bas-
4. ically our initial contract, we do have a twenty year
5. contract with the Commonwealth of Virginia, James Madi-
6. son University, it's the only one in the state, and we
7. think it will be a modern facility to handle solid waste
8. of this nature.

9. JUDGE ARTHUR: The waste, you say, will be
10. sold to these facilities, not donated?

11. A. No sir. We will pick up--the City of Harrisonburg will
12. collect all municipal garbage, municipal waste, domestic
13. waste, within the City. All of that waste will go to
14. this burning facility and it will go through the boilers,
15. the high temperature boilers, and that waste material,
16. municipal waste, will generate from water, will gener-
17. ate steam, and Madison has some underground steam lines
18. for the old campus. The new buildings that you saw, the
19. brick buildings, are electric heat. And they plan to
20. convert the electric heat to steam heat. They presently
21. already have the underground steam piping and underground
22. pipe trenches, and we will build the boiler facility
23. near the Convocation Center and we also plan to heat
24. the Convocation Center, which will seat about 9,000

1. people, and we will heat the Convocation Center and we
2. are also going to furnish air conditioning for that
3. building from steam. We are going to furnish steam to
4. the front campus. With municipal waste.

5. JUDGE ARTHUR: At a price?

6. A. At a price. And the price . . . we do have a contract,
7. the price will be under the O.P.E.C. market. It will
8. have a floating scale depending on what this country has
9. to pay for oil shipped in, we're going to charge James
10. Madison University ten percent under the O.P.E.C market
11. for the equivalent of B.T.U.'s generated from that fa-
12. cility. The estimated cost I believe we answered in
13. some interrogatories last week, the estimated cost by
14. the New York engineering firm for the total project is
15. 8.2 million. Are there any other questions on that?

16. Q. How do you expect to finance this project, Mr. Milam?

17. A. The financing has not been finalized. The bids are due,
18. I believe, on May 6. We have two Richmond firms that are
19. handling the bond issue. It will probably be financed
20. through general obligation bonds, but the main source of
21. revenue will be the sale of steam. The sale of steam to
22. Madison roughly will be a million dollars a year. We
23. will supplement that million dollars with our garbage
24. collection fee that we presently have within the communi-

1. cent to shopping centers. They are branch banks and
2. there are some located along South Main here, here, here,
3. here and here. And then there is a group that has re-
4. cently been built east of the City by these symbols here,
5. these banks.

6. Q. Are they branch facilities on Route 33 East?

7. A. Well, all of them, I believe, are branch facilities
8. with the exception of the Massanutten. And it has a
9. bank here, and one right there.

10. Q. Thank you, Mr. Milam.

11. A. Did I point out the medical facilities? I think we visit-
12. ed the hospital, which is right here. We came by a por-
13. tion of that. And that particular hospital serves not
14. only--it's Rockingham Memorial Hospital, it serves the
15. total area. And then we do have Medical Arts facilities
16. and some other doctor facilities located throughout the
17. City.

18. Q. Mr. Milam, as City Manager, will you state for the Court
19. the needs of the City of Harrisonburg for annexing the
20. proposed territory?

21. A. In my opinion there is a need to annex. We have the
22. urban type services that can deliver the services needed
23. in the fourteen square miles. The City has the appro-
24. priate police, fire, water, street construction, refuse

1. collection, snow removal, leaf collection, and a public
2. bus service, and that area needs urban-type services.
3. We need to consolidate that territory, that fourteen
4. square miles, with the present six square miles in order
5. to provide for orderly growth of that total urban service.
6. We have some other services, very important services:
7. planning, zoning, centralized inspection, and one admin-
8. istrative unit of government that would be the best for
9. that total area. It needs to be consolidated, it needs
10. to be combined into one unit of government. In the cate-
11. gory of people, the City of Harrisonburg, in my opinion,
12. we need to recapture some of our lost leaders that have
13. moved from the center City further on out. If this
14. doesn't occur, the City will be left with the poor and
15. the elderly. There have been many occasions where the
16. poor and the elderly have been sent to the City to re-
17. ceive social services, to receive public housing. Also
18. along the line of people, only an illustration, over
19. fifty percent of all the City employees, fifty percent,
20. live outside the City. It's not bad, but if this annex-
21. ation is not granted, and due to the skilled employees
22. that we have, the many years of service that they have
23. devoted to this City in the construction of streets, curb
24. and gutter, catch basins and what-have-you, we have ex-

1. cellent skilled personnel--if annexation is not granted,
2. then we are faced with lay-offs of these people, because
3. we have no further work inside the corporate limits for
4. certain people. There is a need for developable land,
5. there is a need for additional residential, commercial
6. and industrial land. And I believe you saw that on your
7. tour, very vividly. A lot of the farm land, when you
8. drive around our City, is ready for development; there
9. is pressures to be developed. This City, and in my
10. opinion, we need to curtail the erosion of our tax base,
11. and this will be proven at a later time; but it has and
12. is eroding. The City needs vacant land for new industry.
13. We are not competitive because of our small size. You
14. were taken by a street yesterday morning which was a
15. detour, a last minute change, but I reported to the Com-
16. mission here in the early part of December that to the
17. best of my knowledge at that particular date, at that
18. particular time, this City had not had one new industry
19. in the previous ten years; from December of 1980 until
20. December of 1970. And it was pointed out that the two
21. previous to that was the Kawneer in the 1969-70 annexa-
22. tion, effective the early part of 1970, and the 1965.
23. But I'm happy to report to you that only in recent days,
24. and this is a project that has been worked on for over

1. two years, a new industry appeared before City Council
2. in the early part of 1979, and we reported this to the
3. County. We made a detour yesterday and they pointed it
4. out. But I'm happy to report that there is a new indus-
5. try by the name of AMP, A-M-P, Incorporated, that has
6. commenced grading on North Charles Street in Harrison-
7. burg. And you passed that early yesterday morning. That
8. facility will probably cost in the neighborhood of about
9. three million. I don't have the exact figures, but I
10. understand it will be in the neighborhood of three mil-
11. lion, and it will have about a hundred thousand square
12. feet of floor space. I've only been told yesterday that
13. it could employ . . .

14. MR. FITZGERALD: I've let this go on, but he's
15. getting into where I believe he's going to say how many
16. people they're going to employ and all that. It's pure
17. hearsay. It's not our information that what was report-
18. ed on the tour yesterday was correct. If this witness is
19. going to swear to it, I want to object to it.

20. MR. WICKHAM: Well, Your Honors please, I'll
21. ask the witness if what he's testifying to now came to
22. him in the ordinary course of his business as City Man-
23. ager for the City of Harrisonburg. And if it did, I
24. think it's proper testimony.

a hundred and fifty employees.

Cross Examination by Mr. Fitzgerald:

Q. Mr. Milam, what you're saying is the industries closed down because of the general economic condition of the country, is that true?

A. Yes, that had something to do with it. Yes sir.

Q. It has everything to do with it, doesn't it?

A. Well, I'm not so sure. Some areas have a little more problem than other areas.

Q. One was in Bridgewater, the same Company, they closed that down, didn't they?

A. Yes sir. It is a soft good line of material.

Q. So, you're not saying that annexation would have saved it?

A. No, I didn't say that annexation would save them.

Q. Do you know that one of the other poultry processing firms is already in the process of acquiring the Swift Plant?

A. That has been reported in the paper. I have no facts to that knowledge.

Q. You mentioned to the Court that the City could provide services that the "area desired". How do you know what the area desires?

1. A. How do I know what the area desires?

2. Q. What the area desires.

3. A. Well, Mr. Fitzgerald, I've been here twelve years, and
4. we're constantly putting in water lines and sewer lines
5. and extending streets, and we have the demand in this
6. area surrounding the City. It is an ongoing process.
7. We wouldn't design a water line, only take it up to the
8. corporate limits and stop. These people are coming to
9. us and say that they are needing these facilities.

10. Q. You've been able and you have extended water and sewer
11. lines outside the City without annexation, haven't you?

12. A. Yes, but we have to design the inside system, or the
13. backbone system, to continue to serve the areas outside
14. the City, and . . .

15. Q. You charge water rates to take care of that, and sewer
16. rates, don't you?

17. A. Well, some people think that we make a lot of money on
18. that; but, no, I look at the rates that we charge outside
19. the City as a normal retail charge.

20. Q. I'm not saying it's too much. You charge enough to pro-
21. vide for the cost of putting the lines in and maintain-
22. ing them. That's true, isn't it?

23. A. Not really, Mr. Fitzgerald. I would sort of disagree
24. with that. Because, let me sort of illustrate that.

1. A hundred years ago the citizens of this community with
2. their tax money brought in a water line from the moun-
3. tain. Not from service charges, they used general taxes
4. in those days. And they bring in from a source in the
5. mountain down to this building and then it gradually ex-
6. tends and then you get into service charges. This fringe
7. area, all they're going to do is tap on and pay the min-
8. imum charge. They haven't paid the backup front-end
9. charge to receive that service. It's a very nominal
10. charge.

11. Q. Are you saying that in a hundred years you have never
12. recovered the cost of running that line?

13. A. I would think so.

14. Q. You don't think you've recovered that cost in a hundred
15. years?

16. A. No, I wouldn't think so. Not the reproduction cost.

17. Q. Well, you wouldn't want to recover the reproduction cost
18. for something you built a hundred years ago, would you?

19. A. I just don't think it's ever been recovered. Because
20. you just keep extending with a minimum charge.

21. Q. How much money are we talking about that you have never
22. recovered?

23. A. I just don't think that you really go back and recover
24. those investments. The charge that you make from day-to-

1. day, from month-to-month, to operate a utility is only
2. enough to pay for your production of your water and for
3. your personnel.

4. Q. And not for debt service?

5. A. Sure we charge for debt service.

6. Q. Yes sir. So, you set your rates as a business, don't
7. you? As a utility business? The rates are supposed to
8. cover the cost.

9. A. Yes sir, as close as possible.

10. Q. Yes sir. Are you saying that the City has not been able
11. to control its own destiny up until now?

12. A. Not really.

13. Q. After all these other annexation cases you still haven't
14. been able to control your destiny?

15. A. Not really. Because, Mr. Fitzgerald, under the Virginia
16. policies for the last several hundred years, when the
17. General Assembly made annexation, and then they changed
18. it to something else, and then they changed it to the
19. courts, each little town, each little city, gradually
20. provided the backbone of these systems anticipating that
21. somebody around the fringe would want one more water con-
22. nection, two more, ten more, thirty more. So, you've
23. got to build the backbone here to keep delivering and
24. delivering and delivering.

1. Q. I think my question had to do with the City controlling
2. its destiny. And you said that with the annexation it
3. had had in the past the City still had not been able to
4. control its destiny. So, that ends that question. Now
5. I'll go to the next one. You said that you told the
6. Commission that no new industry had located in the City
7. for ten years.

8. A. Yes sir.

9. Q. You knew at that time that AMP--since December 23, 1978,
10. had contacted the City about locating at that site in the
11. City, didn't you?

12. A. Yes sir. But, Mr. Fitzgerald, we reported to you all in
13. answers to interrogatories all of those dates, we furn-
14. ished copies of the Council minutes, and we had no assur-
15. ances at that time that they would locate.

16. Q. Do you know when you told us about the AMP Company locat-
17. ing here?

18. A. It was in one of your last interrogatories.

19. Q. The very last one furnished about a week ago, wasn't it?

20. A. It could be, I don't know the date on it.

21. Q. Well, that's what it's in, the first we knew about it.

22. And you had known about it since 1978.

23. A. Mr. Fitzgerald, when an industry comes to town--this is
24. the only one that we've had for many, many years. Of

1. course you have some others that never materialized.
2. This industry came to the City Council asking about a
3. roadway improvement. The roadways that you crossed over
4. it was estimated by one of our employees to be a twenty
5. or thirty thousand dollar improvement. They wanted to
6. know if we had water and sewer. They also needed a
7. right-of-way off of North Main Street. City Council
8. sends it to the City Planning Commission, it came back
9. to Council, they approved the right-of-way, and then you
10. don't hear anymore from them.

11. Q. When did they acquire the property?

12. A. I don't know that, sir.

13. Q. You don't know when they did?

14. A. No sir.

15. Q. Mr. Milam, as I understand your description of the City's
16. organization of government, the City's government is or-
17. ganized to govern a City, is it not?

18. A. I think the Council-Manager system parallels private cor-
19. porations and it is the most modern form of government
20. that we now have.

21. Q. Yes sir, but my question is, that it's designed to pro-
22. vide governmental services and regulations to a City.

23. A. Yes sir.

24. Q. And not to a county or rural area.

1. A. Generally speaking it's a city form of organization.

2. Q. Is your organizational chart, Exhibit 13, I believe it
3. is, whatever the organizational chart is, is that cor-
4. rect?

5. A. Generally speaking, yes, I would think it's correct.

6. Q. Does it comply with your Code that sets up the organiza-
7. tion of your city government?

8. A. I would think so, yes.

9. Q. Do you show a Department of Public Works on there?

10. A. Well, that's--the street department and the sanitation
11. is all in public works.

12. Q. Is that all?

13. A. Central garage is a separate entity. We call it public
14. works in our city budget, but we have these divisions.

15. Q. Are you familiar with Chapter 4 of the City Charter?
16. Or the City Code? Creation of departments and offices
17. of the City?

18. A. Generally speaking, yes sir.

19. Q. Do you know whether that organization of government com-
20. plies with your City ordinance?

21. A. I would think it's indicative of what the policies are.

22. Q. What the policies are?

23. A. Yes, what the--I don't know really what you're referring
24. there to. If you'll tell me, I may be able to answer it

1. previously he would make that recommendation.

2. Q. But as to what action the City Council would take, you
3. have no idea.

4. A. Well, I think Mr. Cogar helped to answer it. We had
5. answered it two different ways. You know, we would make
6. the recommendation or we would accept it being a part
7. of the Court order to make sure that it's adopted; but
8. I see no problem there, because there's a special provis-
9. ion under the land use where we could use that provision
10. for one year. And we can use the County's values.

11. Q. How much would that cost the City to have a land use
12. tax in the City?

13. A. To my knowledge, I don't know at the present time.

14. Q. But you would recommend they have it?

15. A. Yes sir.

16. Q. Would it have to apply to all the land in the City that
17. might come within the classification of land use?

18. A. Under that land use category, yes.

19. Q. How much land do you have in the City that you project
20. would come under that?

21. A. It's a couple of farms, and I wouldn't have any objection
22. to that.

23. Q. Any vacant land that might that is not farmed?

24. A. There was one farm that was pointed out yesterday on

1. Kratzer Road going toward Donnelley.

2. Q. But you have made no computation as to how much tax loss
3. that would cause the City?

4. A. No sir.

5. Q. Do you have any idea how much tax loss the County incurs
6. by the land use ordinance in the County in the area
7. sought to be annexed?

8. A. No sir. I've seen some figures, but I would prefer not
9. to quote those.

10. Q. You never thought about the land use tax until we brought
11. it out in our arguments in our memorandum submitted to
12. the Commission, did you? In your submission to the Com-
13. mission you never even recognized the effect of the land
14. use tax, did you?

15. A. I don't recall.

16. Q. You never mentioned it, did you? In your presentation
17. to the Commission.

18. A. We considered it in staff meetings, but we didn't report
19. it to the Commission.

20. Q. You didn't consider it important enough to report it to
21. the Commission, is that it?

22. A. I don't recall that being submitted.

23. Q. You also mentioned that you would have to adopt the
24. County's ordinances so far as trailer parks are concern-

1. ed because the City does not permit trailers.

2. A. Well, let me clarify my answer. In the City's existing
3. zoning ordinance, existing, no change is required. There
4. is a provision in the existing zoning ordinance that
5. says that any land annexed to the City of Harrisonburg,
6. the zoning classification of the County would continue
7. to apply for a period of one year, or what-have-you,
8. until such time as we go through the normal public pro-
9. cedures with the Planning Commission and the Council to
10. have that rezoned. So, all of the County's existing
11. zones in that fourteen square miles would be used imme-
12. diately. That's existing in the City ordinance.

13. Q. And you used the word, I believe, that the trailer parks
14. would be "grandfathered" in. Is that what you said?

15. A. Yes sir. If you don't have a zone. Now, if you have a
16. trailer park zone, that trailer park zone would apply.
17. But if you have it zoned A-1, agriculture, or a special
18. use permit, and you don't have it zoned, the County
19. doesn't have it zoned, then they would be grandfathered
20. in, they would be permitted to continue to exist until
21. such time as the appropriate bodies could make the
22. changes.

23. Q. Well, let me ask you this. Are you saying you think it
24. is desirable that the City have trailers and trailer parks

1. in the City?

2. A. If a City has sufficient territory. We've never felt
3. that we had sufficient land to create a fifth category
4. of residential or trailer parks.

5. Q. You weren't here in 1962, were you?

6. A. No sir.

7. Q. When the City doubled its size with considerable vacant
8. land. And what you're saying is, after that they still
9. didn't want trailers in the City.

10. A. That's correct, they didn't.

11. Q. Now, what other ordinances of the City would you recom-
12. mend would have to be changed in order to accommodate
13. this area if it were annexed to the City?

14. A. There may be several. I don't know what you--what kind
15. of question you want.

16. Q. Well, let me rephrase the question. With the changes
17. you have recommended are you telling the Court that the
18. City would be able to govern the area if the annexation
19. were granted?

20. A. Yes, we would be able to govern. There would be some
21. other minor changes, because of the growth of the City.
22. Each year it's a continuing process.

23. Q. Do you know of any other changes in your regulatory ordi-
24. nances that you would have to change in order to accommo-

1. date the governing of the area you seek to annex?

2. A. Well, I think I mentioned early on the water and sewer.

3. Didn't I mention that earlier? We would be happy to
4. change where a person beyond the three hundred feet or
5. on septic tank, yes, all of those would be amended so
6. that we can accommodate the people.

7. Q. Would that take an ordinance adopted by the City?

8. A. Yes sir.

9. Q. You are not now actually following the ordinances with
10. your policy on that, as I understand it, is that correct?

11. A. It . . .

12. Q. The ordinance says one thing and you do another in cer-
13. tain instances.

14. A. The ordinance requires that every premise and every
15. building be connected to public water and public sewer.
16. But we do have some private sewage disposal systems.
17. That's provided for under exceptions and under hardships.

18. Q. But there are some cases where your policy doesn't even
19. comply with that, is that true?

20. A. Well, like what?

21. Q. I don't know. I thought that's what you testified to.

22. A. Well, I just mentioned the water and the sewer, trailers.

23. Q. All right. Are there any other regulatory ordinances of
24. the City that would not be appropriate to govern the ter-

1. ritory you seek to annex?

2. A. I have given you four or five.

3. Q. Don't you think it's important that if you are proposing

4. to triple the size of the City and annex this area that

5. you would have looked at your structure of government

6. and your ordinances to see if they would apply appro-

7. priately to what you're trying to put into the City?

8. Do you think that's an important thing to consider?

9. A. Yes, I think various people have looked at the various

10. sections.

11. Q. When you said the area desires to have the City services,

12. that would be one of the things you'd have to consider,

13. wouldn't it, sir?

14. A. Yes, I mentioned water and sewer.

15. Q. Do you know if there are any hogs raised in the City?

16. A. Do I?

17. Q. Yes.

18. A. Not specifically.

19. Q. Do you know if it's unlawful to keep hogs in the City?

20. A. Yes sir.

21. Q. Do you know that there's quite a few turkeys raised in the
22. area?

23. A. Yes sir.

24. Q. Do you know it's unlawful to have offensive odors from

1. turkeys in the City?

2. A. Well, I believe you're referring to a section, you have
3. to have a certain distance from a private property line.

4. Q. Do you know if the City prohibits the parking of trucks
5. or trailers loaded with livestock or poultry on any
6. street within the City?

7. A. And I believe you're reading from a residential zone,
8. because the truck drivers drive up in a residential zone
9. and we had to come up with that so they wouldn't park
10. in a residential zone with the refrigeration running all
11. night.

12. Q. I think Section 15-2-5 of the City Code prohibits the
13. parking of trucks or trailers loaded with livestock or
14. poultry on any street within the City. Do you think
15. that would be . . .

16. MR. COGAR: Show him the ordinance that you're
17. referring to, Mr. Fitzgerald.

18. MR. FITZGERALD: He doesn't have a copy of
19. the City ordinance?

20. Q. I may be wrong, maybe it does refer to it, but we'll see.

21. A. We have many, many different types of parking regulations.
22. We try to get people to park their vehicles or take their
23. horse to their own barn and not leave it on public pro-
24. perty.

1. Q. Just read out loud Section 15-2-7 in your City Code.
2. A. (Witness examines Code Section) Isn't most of this en-
3. forced by the Health Officer?
4. Q. I don't know.
5. A. What section did you say?
6. Q. 15-2-7.
7. A. "It shall be unlawful for the owner or operator or other
8. persons in charge of any motor truck, trailer, loaded
9. with livestock or poultry to allow such truck or trailer
10. to remain standing or parked on any street within the
11. City."
12. Q. That's what I said, isn't it?
13. A. Yes.
14. Q. It doesn't say in a residential zone, does it?
15. A. It's a good policy.
16. Q. And you would enforce that throughout the new City?
17. A. It says streets. Yes, I would say it would be enforced
18. on the streets.
19. Q. Do you have an ordinance in the City that requires the
20. cutting of grass and weeds?
21. A. That's right.
22. Q. What does that say, do you remember, or do you want to
23. look it up?
24. A. It generally reads, Mr. Fitzgerald, on lots, to cut them

1. in May and August. They have to be cut twice a year and
2. it can't extend over six inches high. But there is a
3. liberal application by the police department on acreage.

4. Q. You mean they don't follow the ordinance?

5. A. Well, yes, they follow the ordinance; but if you're grow-
6. ing alfalfa or wheat they don't make you cut that in
7. May. It just says vacant--I believe it says lots. It
8. could say acreage, but the general rule is to prevent
9. a lot in a residential neighborhood from being owned by
10. an absentee owner and letting it grow up in weeds. If
11. he doesn't cut it when it gets six inches high, then we
12. send the Public Works Department in there and cut it,
13. and we assess his property. But it's generally not
14. applied to acreage.

15. Q. "Between May 20th and June 20th, and between August 1
16. and September 1 of each year, every owner of real estate
17. situate in the City at his sole expense shall cause to
18. be cut therefrom all grass, weeds," et cetera. Now, the
19. title does say, "Weeds, et cetera, on lots."

20. A. Yes.

21. Q. But the language of the ordinance says "every owner of
22. real estate".

23. A. Yes.

24. Q. But you say that's not strictly enforced?

1. A. Well, I'll say it's 99% enforced. We have some people
2. who own five or ten acres that live in Florida or New
3. York and refuse to cut it. So, you have those people
4. that you have to, because of the surrounding neighbors.

5. Q. But you agree that this area that you're seeking to annex
6. contains considerable farm land and farm operations,
7. don't you?

8. A. Yes.

9. Q. There's livestock raised on it.

10. MR. WICKHAM: If Your Honors please, Mr. Fitz-
11. gerald continues to argue with the witness. I think the
12. witness has fully explained the policy of this ordinance.
13. And there can be no real dispute about it.

14. MR. FITZGERALD: I wasn't talking about that
15. ordinance now, I'm going as to what's in the area.

16. JUDGE MOON: Go ahead.

17. Q. Do you agree that the area you seek to annex contains
18. considerable active farming? Livestock farming, poultry
19. farming, grass grazing operations?

20. A. Yes.

21. Q. Hay making operations?

22. A. Yes.

23. Q. And do you agree that the City's--up to now anyway--the
24. City's ordinances and its structure of government is not

1. suited to govern that type of area?

2. A. Well, the two that you mentioned, about parking trucks
3. in City streets--I don't know of any farmer who leaves
4. his truck out on the highway, for one. The other thing,
5. I don't know of any farmers way out there who would have
6. a lot and an adjoining neighborhood would complain about
7. weeds on the lot, where you'd have to enforce the cutting
8. of weeds.

9. Q. Do you know of any poultry farmer that may have to stop
10. a truck with poultry on it on a City street?

11. A. That's allowed in the City of Harrisonburg. We have them
12. everyday, Mr. Fitzgerald.

13. Q. Are there ordinances that allow them?

14. A. Yes sir, we have them everyday on North Liberty Street.
15. They're parked up there everyday.

16. Q. You're saying then you don't enforce that ordinance?

17. A. I'm saying that most ordinances are 99% complied with.
18. You do allow them to get into their property. If the lot
19. is filled up, I don't think the police are going to go
20. out there and make some arrests of someone. It's pri-
21. marily for the overnight parking in residential neigh-
22. borhoods.

23. Q. My question was, do you agree or disagree that the City's
24. form of government as it's structured and its ordinances,

1. as they exist now, are not appropriate in a number of re-
2. spects to govern the area you seek to annex?

3. A. I think the Harrisonburg City Charter and the present
4. organization is capable of administering the area that
5. is sought.

6. Q. Are you administering to the extent of any area you
7. seek with farms in it in the City at this time?

8. A. Sir?

9. Q. Do you have farm operations in the City?

10. A. Yes sir.

11. Q. To any extent?

12. A. Well, I don't know--what are you really . . .

13. Q. Do you have one or two farms in the City?

14. A. Well, they grow corn, hay, and it's a farming operation.

15. Q. Any livestock raised in the City?

16. A. I would think.

17. Q. Poultry farms in the City?

18. A. Not that I know of offhand.

19. Q. There are quite a few poultry farms in the area though?

20. A. But there are provisions in the zoning ordinances, if
21. you're so far away from property lines you can still
22. have these things. You just can't have it up within
23. five feet of somebody's window. This is the problem you
24. have in an urban society.

1. Q. I'm talking about your general regulatory ordinances
2. that we've been talking about. The ordinances I mention-
3. ed are not in the zoning ordinances, are they?

4. JUDGE MOON: Well, Mr. Milam, don't you agree
5. you've probably got to change some ordinances in order
6. to govern the annexation area being sought?

7. A. Yes sir. Yes sir, we alluded to that and we'll be happy
8. to do that.

9. JUDGE MOON: I think that answers that.

10. MR. FITZGERALD: That's all I was trying to
11. get him to admit. And if he admits that, then we'll go
12. on.

13. A. Yes.

14. Q. Do you agree too that you will have to take on some
15. functions that you do not have in your government at
16. this time?

17. A. The only one that I made reference to that would be
18. new would be the land use. Is that the one you're making
19. reference to?

20. Q. Well, that's one. But do you intend to add any function
21. in your structure of government concerning agriculture?

22. A. That would come under the Commissioner of Revenue on the
23. land use.

24. Q. But insofar as agriculture is concerned nothing except

1. the land use. Is that correct?

2. A. Well, I think the same facilities concerning agriculture,
3. the extension agent and what-have-you, the same facilit-
4. ies are available now to the City as is available to the
5. County; the same agents, the same Health Department.

6. Q. So, you would not make anymore changes in the ordinances
7. regarding agriculture, right?

8. A. I believe that our City Council and the government would
9. be amenable to the necessary changes in order to properly
10. administer the area.

11. Q. There again, it would take an act of Council?

12. A. Yes sir.

13. Q. We sort of went backwards and forwards on these exhibits,
14. so I may be a little slow in finding them. On your Ex-
15. hibit 35, which is, "Estimated Annual Expense to the
16. City of Harrisonburg for the Area Proposed for Annexa-
17. tion".

18. A. Yes sir.

19. Q. Did you do a similar study as to the estimated revenues
20. that you'd be getting from the area? The combined area
21. of the existing City . . .

22. A. I did not myself. I believe Wiley and Wilson prepared
23. some figures, and I don't have those with me.

24. Q. Did they prepare this exhibit, or did you?

1. profit for you?

2. A. Yes sir.

3. Q. And what year is that?

4. A. Two and a half years we can break even.

5. Q. Do you anticipate this will turn as much profit as your
6. electric co-op?

7. A. On the engineer's projection it looks like it will be
8. more, which is surprising, but it would return more pro-
9. fit than the electric.

10. Q. And a considerable amount of that profit will come from
11. payments made by the State to the City?

12. A. They are purchasing steam.

13. Q. Well, that's state income, isn't it?

14. A. They're purchasing steam based on the O.P.E.C. market,
15. at a discount. Ten percent under the oil price.

16. Q. You mentioned, sir, that the area needed the City's
17. planning and zoning.

18. A. Yes sir.

19. Q. The area has planning and zoning now by the County,
20. doesn't it?

21. A. I just gave you my personal opinion. I just think that
22. the area has not had the appropriate planning and zoning
23. in recent years, and that I believe the City is more
24. capable of doing that at the present time.

1. Q. Does the City have a Comprehensive Plan? In all respects?

2. A. In all respects, yes.

3. Q. It does?

4. A. Yes.

5. Q. Who is Robert J. Sullivan, Jr.?

6. A. He's the City Planner.

7. Q. Would he know whether or not you had a Comprehensive
8. Plan as of July of last year?

9. A. He . . .

10. MR. COGAR: He's going to testify.

11. A. He's going to testify.

12. Q. If he says you didn't, would he be right or you be right?

13. A. Well, you asked me a specific question. We do have a
14. Comprehensive Plan, dated 1966. It's been updated and
15. updated. And we had one in 1980.

16. Q. When was that?

17. A. And the Planning Commission has approved it and it's
18. pending before the City Council.

19. Q. Would you read this affidavit, please?

20. A. (Affidavit handed to witness)

21. Q. It's signed by Robert J. Sullivan, Jr., attested to on
22. the 8th day of July, 1980. Would you read it for the
23. record.

24. A. "This 8th day of July, 1980, personally appeared before

1. the undersigned Notary Public, Robert J. Sullivan, who
2. being sworn deposed as follows: I am Director of Plan-
3. ning, City of Harrisonburg, and I have held the position
4. for fifteen years. Neither the City Planning Commission
5. or the Council of the City of Harrisonburg have adopted
6. any part of the Comprehensive Plan relating to public
7. utilities, including water, sewer and electricity, nor
8. any community facilities plan, as I understand the term
9. of Comprehensive Plan as used under Chapter XI, Title
10. 15.1, Code of Virginia. Signed by Robert J. Sullivan,
11. Jr."

12. Q. Are you saying at this date the City Council is still
13. considering parts of a Comprehensive Plan?

14. A. Yes sir.

15. Q. You said it would be good for this area to have a unified
16. government or one government.

17. A. Yes sir.

18. Q. How many governments are going to be here serving the
19. County and the City after annexation if it's granted?

20. A. The same number.

21. Q. Two, right?

22. A. Two.

23. Q. Is the only way to actually unify the governments of the
24. City and County by way of consolidation or merger, where

1. you only have one?

2. A. That could be, and that's something in the future, if the
3. County would like to propose that. That's a possibility
4. at some future date.

5. Q. Well, haven't a number of groups here in this City even
6. proposed that?

7. A. We have an entirely different situation at the present
8. time, because of the City and the seven towns and the
9. County, and because of the size and magnitude of the
10. County. We think it's worth considering in due time,
11. but at the present time we would like to only consolidate
12. and combine the fourteen square miles, and it would put
13. us in a better bargaining position twenty or thirty years
14. down the road.

15. Q. So, you envision consolidation happening some twenty or
16. thirty years down the road?

17. A. It could be. I'm just saying we'd be in a better bar-
18. gaining position.

19. Q. What is it, if you're going to become one government,
20. one unit of government, what do you have to bargain about?

21. A. With one government?

22. Q. Yes, for the whole area.

23. A. Well, I don't like to get into politics, but that's what
24. you really get into; the redistricting and where the re-

1. presentatives are going to come from, and it gets to be
2. very complicated. It's more complicated than what's been
3. reported in the news media.

4. Q. So, the complications are political rather than function-
5. al, is that what you're saying?

6. A. That's quite a bit. But, you know, Mr. Fitzgerald, in
7. all my years with the City, or several cities, and I
8. might be regressing a little bit, but I'd like to just--
9. and no disrespect to anything--but a city to me has two
10. basic components. And maybe the county is two basic
11. components, but I always look at the city as two basic
12. components. One of those major components are all the
13. legal laws of the local, the state, the federal and what-
14. have-you. That's one large component. And the other
15. large component is the physical facilities. And if we
16. can put those two components together, regardless of the
17. size or what-have-you, if you can put those two compo-
18. nents together, to me you have a great city.

19. Q. Do you have them together now?

20. A. Not totally. We're still working on some legal problems
21. and some other physical problems. But, I say . . .

22. Q. What don't you have together now?

23. A. We have the physical facilities, we're working on the
24. legal facilities.

1. Q. What's that?
2. A. Well, this proposal here.
3. Q. Oh, that's what you're talking about.
4. A. Yes.
5. Q. I'm talking about the existing City. Do you have those
6. two elements together now in the City?
7. A. Basically you do.
8. Q. So, you have a great City?
9. A. Yes sir, we have a great City.
10. Q. Has the Council of the City been requested to sit down
11. and study or get together and try to work out a consoli-
12. dation agreement with the County?
13. A. Yes sir.
14. Q. Who has requested that of the City?
15. A. Who?
16. Q. Who.
17. A. Several individuals. It came in on a piece of stationery,
18. I believe, of the Chamber of Commerce.
19. Q. Have you ever seen this resolution of the Chamber of
20. Commerce of Harrisonburg and Rockingham County?
21. A. Yes sir.
22. Q. You've seen that?
23. A. City Council has a copy of that.
24. Q. This was presented to the City Council?

1. A. Yes sir.

2. MR. FITZGERALD: We would like to introduce
3. this into evidence, Your Honor.

4. MR. WICKHAM: May we see it?

5. MR. FITZGERALD: Oh, yes sir.

6. MR. WICKHAM: (Counsel examines document)

7. MR. COGAR: If Your Honors please, we object
8. to this. This is a merger proposal promulgated by what
9. looks like the Harrisonburg-Rockingham Chamber of Com-
10. merce, with a series of whereas's and recitals, which
11. I think would be more appropriate for the Chamber of
12. Commerce to come here and if they want to present a wit-
13. ness that can be examined upon the conclusions and reci-
14. tations contained here, we'll be delighted to have it
15. made a part of this case. But I think they are the ap-
16. propriate people to present this. Then we'd have an
17. opportunity to examine them about certain recitations
18. in this.

19. JUDGE MOON: It will be admitted only insofar
20. as it shows that some people would like to suggest that
21. there be consolidation as opposed to annexation. The
22. truth of any matter asserted in there, it will not be
23. received to prove the truth of any matter asserted in the
24. statement, only the fact that some people would like to

1. have consolidation considered as opposed to annexation.

2. MR. FITZGERALD: At this time the reason I am
3. presenting it is to elicit from the witness that it was
4. presented, a resolution was presented, this resolution
5. was presented to the City Council.

6. JUDGE MOON: For that reason it will be admit-
7. ted.

8. MR. FITZGERALD: If we could get the number
9. and give it to you before we recess.

10. JUDGE MOON: All right.

11. Q. Now, did the City Council respond to that resolution?

12. A. The City Council--to my knowledge it only came in in the
13. last couple of weeks, Mr. Fitzgerald, and to my knowledge
14. City Council received the resolution from someone from
15. the Chamber of Commerce, and said that they would take
16. it under advisement.

17. Q. Is that their response to it so far?

18. A. To my knowledge that was their response.

19. Q. Was this the first time that the request had been made
20. of the City Council to explore that possibility?

21. A. The Chamber of Commerce has come in several times, and
22. in just the last couple of years. But you'll have to
23. remember, in 1974, before this case was filed, we went
24. over a number of things with City Council, they adopted

1. the ordinance in 1975, and then in 1978 or 1979, two or
2. three years later, that you have these groups that are
3. wanting you to mediate and negotiate, consolidate, merge,
4. and what-have-you. And we felt that this case, which
5. has been pending since 1975, should be settled as early
6. as possible and as quick as possible, and then that con-
7. sideration would be given to one unified government..

8. Q. It wouldn't be much point in it for the City after annex-
9. ation, would it?

10. A. Yes sir, it would. Because you would have, the County
11. would have the voting population. And you're going to
12. have a difficult time arranging the representation for
13. the people in the towns, in the city and the county.
14. That's going to be your difficult problem. But we would
15. be in a better position to bargain with you if we had
16. twenty-five thousand people.

17. Q. If you had twenty-five thousand people you could . . .

18. A. Rather than nineteen thousand.

19. Q. You mentioned the fact that something like fifty percent
20. of the City's employees live outside the City?

21. A. Yes sir.

22. Q. Do you think that has anything to do with it being less
23. expensive to live outside the City than inside the City?

24. A. Less expensive?

1. Q. To live outside the City.

2. A. Some of these people don't even live in the annexed area
3. that's being sought, they live pretty far away.

4. Q. Where it's less expensive to live.

5. A. Well, I don't think that people are just going to buy a
6. house one way or the other. When you employ them there
7. are some cities that require you to take residents inside
8. the city. You know, I'm one of them. I can't live out-
9. side the City, and neither can the City Council.

10. Q. Well, let's talk about the fifty percent.

11. A. There are some people that live ten or fifteen miles
12. out. We have some people who are over in West Virginia.
13. They desire to commute. Property in the City, to pur-
14. chase it on today's market, is quite high. Yes.

15. Q. And that's the reason they live outside the City, because
16. it's where they desire to live.

17. A. I only give a difference that over fifty percent of our
18. employees do live outside the City.

19. Q. You've got no idea of what would happen if you annexed
20. any of these employees, whether they'd move on out further,
21. have you, sir?

22. A. No, I do not. They could.

23. ~~Q. I noticed on the tour something that was surprising to~~
24. ~~me, even though I've been around the City of Harrisonburg~~

1. ing lots.

2. Q. There are some children in Harrisonburg, either because
3. of age or lack of a car, has to walk.

4. A. Yes sir.

5. Q. Now let's talk about those.

6. A. Yes sir. They walk in the street probably.

7. Q. Walk in the street?

8. A. Yes.

9. Q. You mentioned in your opinion that if the annexation
10. weren't granted that you had some departments that you
11. would have to cut down on employees that you were no
12. longer needing.

13. A. I said that we have some technical people that are skill-
14. ed in certain trades and we are running out of this parti-
15. cular field of activity, and that if this is not granted,
16. whatever it is, a ten year delay, certainly that we will
17. be peaking out and we're going to have to lay off some
18. employees.

19. Q. And that would mean that you could reduce your budget,
20. wouldn't it, sir?

21. A. I hope so, yes.

22. Q. And maybe mean that you wouldn't have to raise taxes.

23. A. I haven't said today that we had to raise taxes.

24. Q. Well, you know what your experts told you, that if this

1. annexation is granted you're going to have to raise taxes.
2. A. I think there would be four or five alternatives of
3. how we could meet our obligations.

4. Q. You know what they've said up until now, anyway, that
5. you're going to have to raise your taxes.

6. JUDGE MOON: Well, I think the question is,
7. do you save some money by firing somebody or laying some-
8. body off, and the answer is obviously yes. I don't see
9. any reason to get into a big discussion over all of these
10. things that are so obvious.

11. Q. You say your tax base has eroded?

12. A. Yes.

13. Q. And yet you're . . . you reassess every two years?

14. A. Yes sir.

15. Q. In a two year time your assessed real estate values went
16. from two hundred and however many thousand . . .

17. A. Two sixty-nine to three sixty-eight, it was a grand total
18. of 39.5%, but 29% of that was inflation and 11% was con-
19. struction. And Rockingham County's should indicate the
20. same thing. Your billion dollars should go up at least
21. 29% to 30% this year.

22. Q. Because of inflation?

23. A. Because of inflation.

24. Q. Assessed values will go up 29% in one year or two years?

1. A. I would think. Because--now, you have to remember, your
2. assessment was in 1978 and you've got to add four years.
3. The average annual construction index is twelve percent
4. a year. Yours ought to go up forty-eight percent.

5. Q. I'm not arguing with you, but because of inflation, you
6. say, a large portion of your increase in assessed values
7. in a two year period of time was because of inflation.

8. A. Yes. Twenty-nine percent inflation.

9. Q. Now, in that period of time did your expenses go up be-
10. cause of inflation?

11. A. Yes sir.

12. Q. And your revenues went up because of inflation?

13. A. Yes sir.

14. Q. Did your expenses and revenues go up about the same per-
15. cent as inflation?

16. A. We try to ride with inflation, although the employees are
17. not satisfied with inflationary increases. They want
18. more.

19. Q. But your expenses have gone up at least in the same pro-
20. portion as your revenue.

21. A. Yes sir.

22. Q. Just, I think, one other question, Mr. Milam. In the
23. answers to interrogatories you said that your engineering
24. department did not provide services to cable T.V. In

1. the question, do we furnish design. The word "design",
2. no sir. We do furnish pole locations along the right-
3. of-way, but not design of the cable and the amplifiers
4. and things like that. Just to avoid conflicts within
5. the public right-of-way.

6. Q. So you separated that out of the question?

7. A. Well, I interpret that to mean do we design their receiv-
8. ers up on the mountain and this sort of thing, and we do
9. not, no sir.

10. Q. Now, the exceptions you said about hooking up to the
11. City's sewer system, you said it was done on a--sometimes
12. on an equitable basis. That's probably not the word you
13. used.

14. A. Hardship.

15. Q. Hardship basis. Can you tell us what the hardship is
16. that one of the City Councilmen has not yet hooked up
17. to the sewer system?

18. A. Well, I believe the County's exhibit, Mr. Fitzgerald,
19. someplace in your exhibits you show 62 septic tanks and
20. 10 pit privies. And Councilman Dingledine does have a
21. septic tank. There is nothing wrong with Councilman
22. Dingledine having a septic tank. He was down over the
23. hill, the house has been there for since perhaps in the
24. late thirties or forties. At the time the sewer was on

1. this side of the hill. And they have a satisfactory
2. operating septic tank. And if that septic tank fails,
3. according to the Health Department, he'll have to build
4. a lift station back up the hill to the next street. But
5. he does have a septic tank, and to my knowledge it's pro-
6. perly operating.

7. Q. Well, is the answer that he cannot hook to the sewer?

8. A. He can hook to the sewer if he builds a pumping station.

9. But you just mentioned the one or two septic tanks.

10. Again I would like to emphasize that all of those numbers
11. put together is less than one percent. In other words,
12. the City is 99% perfect. Over 99% perfect.

13. Q. Yes sir. That's pretty perfect.

14. A. Pretty perfect.

15. Q. Are you aware of businesses up in the area near Park
16. View that requested water and sewer service in the City
17. and were told that it couldn't be provided for them?

18. A. If you'll give me a name, I'll . . .

19. Q. Well, it's in the Chicago Avenue area. Is any of the
20. sewer and water services up in that area provided by
21. Park View that's actually in the City?

22. A. I'm not familiar with that, no. I don't know what you
23. mean.

24. Q. Do you know if any of the area of the City on Chicago

1. WILLIAM HAL AUSTIN,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Glass:

4. Q. Would you state your full name, please?

5. A. My name is William Hal Austin.

6. Q. And where are you presently employed and what position
7. do you occupy?

8. A. I am presently employed as the Chief of the Harrisonburg
9. Fire Department.

10. Q. Can you very briefly describe what functions you per-
11. form as the Fire Chief?

12. A. Very briefly, as Fire Chief it's my responsibility for
13. the overall management, planning, directing, the manager-
14. ial-operational setup of the entire department.

15. Q. Could you speak up?

16. A. Yes sir.

17. Q. Could you briefly describe your previous employment his-
18. tory prior to coming to Harrisonburg in the area of fire
19. protection?

20. A. Prior to my arrival in Harrisonburg I was employed by
21. the Richmond Bureau of Fire in Richmond, Virginia, for
22. approximately ten years. I have been in the City of
23. Harrisonburg approximately three years, since March of
24. 1978. Also prior to my arrival here I served in various

1. administrative positions in the City of Richmond and
2. various assignments that were sent down from the Chief's
3. office.

4. Q. Have you completed a number of fire related educational
5. courses?

6. A. Yes sir.

7. Q. Would you describe a few of those.

8. A. I am a graduate of the Executive Development Program of
9. the United States Fire Academy. I am also a graduate
10. of the College of William and Mary Arson Investigation
11. School. In addition to that I hold a Bachelor's Degree
12. in management from Virginia Commonwealth University, as
13. well as approximately twelve hours of graduate work in
14. labor law and labor relations.

15. Q. Are you a Certified State Fire Inspector?

16. A. Yes sir.

17. Q. And do you also teach certain fire prevention related
18. courses?

19. A. I teach both for the state--I've been an instructor for
20. about twelve years now--in addition to that I serve on
21. the adjunct faculty at Blue Ridge Community College as
22. an instructor in the Fire Science Program. In that ca-
23. pacity I teach courses in management, strategy and tactics,
24. hydraulics, and that sort of thing.

1. Q. Have you been given a rating by the State of Virginia as
2. to your competency in general fire prevention skills?

3. A. Yes sir, I have. A level 6.

4. Q. And what does that mean? How is that determined?

5. A. Based on national standards, that's the highest level
6. available to a fire officer in the United States.

7. Q. How was that determined?

8. A. That was determined by a statewide competency exam that
9. was administered by the State of Virginia. To the best
10. of my knowledge, at the present time there are only a
11. total of thirty-nine officers in the state who have ach-
12. ieved that level of competency.

13. Q. Could you refer for a moment to City Exhibit 14a, which
14. is in the smaller exhibit book. Does this exhibit ac-
15. curately describe the history, organization and opera-
16. tion of your department with the exception of one recent
17. change in the operations of your communication center,
18. which we'll talk about?

19. A. Yes sir.

20. Q. Could you give us a very brief history of the City Fire
21. Department?

22. JUDGE MOON: Do we need to go through all of
23. those?

24. JUDGE ARTHUR: We could read that.

1. JUDGE MOON: We promise you we'll read them.

2. Unless you want to cross examine on it. But it looks to
3. me like we could maybe save a little time. We're really
4. worried about the present operation.

5. Q. Chief, is your department composed of several divisions?

6. A. Yes, it is. At the present time it's composed of three
7. different divisions. The Fire Prevention and Fire Safety
8. Division, the Communications and Training Division, and
9. the Operations Division.

10. Q. Okay, what functions are provided by your Fire Preven-
11. tion and Fire Safety Education Division?

12. A. Basically the Fire Safety and Education Division has
13. three primary functions. First would be enforcement
14. of the City Fire Code, which was adopted on August 27,
15. 1979, and that is the BOCA Fire Code, Building Officials
16. and Code Administrators Code.

17. Q. What is the purpose of that Code?

18. A. The purpose of that Code--this is a maintenance code
19. that's used on buildings in the City after they've been
20. released by the building code. It's mainly for the main-
21. taining fire safety conditions in the structure.

22. Q. And approximately how many inspections are performed
23. during the course of a year?

24. A. During the course of a normal year it would run somewhere

1. in the area of about six hundred fire inspections.

2. Q. Have you occasionally been asked to do inspections with-
3. in the proposed annexation area?

4. A. Yes sir.

5. Q. What other functions are provided by this particular
6. division?

7. A. It is also the responsibility of the Fire Safety Educa-
8. tion Division to carry out our fire safety education
9. program, which includes everything from educational
10. classes for students in schools to various presentations
11. in front of civic groups, to industrial training that
12. takes place in various factories and nursing homes with-
13. in the City. It generally runs the extreme of everything
14. from poster campaigns to anything that would fall under
15. the category of fire prevention efforts. I would like
16. to add that we have a continuing on-going program that's
17. carried out throughout the year instead of this once-a-
18. year, one-week effort that's normally associated with
19. Fire Prevention Week. We carry the program out year-
20. round. Another responsibility that would come under
21. that division would be . . .

22. Q. Excuse me, before you go on. Have you received occa-
23. sional requests from organizations within the proposed
24. annexation area for this type of safety education pro-

1. gram?

2. A. Yes, we have.

3. Q. Where have you offered some to these organizations?

4. A. The last one that comes to mind would be at the senior
5. citizen's center, which would be at Route 910 and 726.
6. I think that's known as Garber's Church.

7. Q. Okay, what's the third principal function performed by
8. this division?

9. A. The third principal function of this division would be
10. arson investigation, and really that's a joint effort
11. of both Captain Darr, who is the commanding officer of
12. that division, and myself, as well as various City offi-
13. cials. In December of 1979, with the aid of some L.E.A.A.
14. money, we established an Arson Task Force here in the City.
15. It's a very low-key operation.

16. Q. Why did you establish this Arson Task Force?

17. A. Well, in 1979 we had what I considered to be somewhat
18. of a problem with incendiary type fires. In 1979 we
19. had a total of thirty-six incendiary type fires which
20. accounted for about eighty-five percent of all the dam-
21. age that was done in the City. And by incendiary I mean
22. everything from a trash can burning on a corner all the
23. way to a major building being set on fire.

24. Q. Who is included in the Arson Squad that you have?

1. A. It's made up of the City Manager and myself; the Police
2. Chief; the Chief Arson Investigator for the Police Force,
3. which is Lt. Hubert Myers; the Commonwealth Attorney,
4. David Walsh. Also included in that would be the Assis-
5. tant City Manager and various insurance officials here
6. in the City.

7. Q. And has this squad achieved some success? For example,
8. can you tell me what the clearance rate for suspected ar-
9. son fires has been?

10. A. We have--this is a matter of comparison. The national
11. average rate of conviction is about 1% on arson cases,
12. and we've enjoyed a percentage here somewhere in the
13. neighborhood of about thirty percent. Out of those
14. thirty-six cases I cited to you in 1979, we were able
15. to clear thirteen of them; a rather large clearance rate
16. on arson or incendiary type fires. I might also add
17. that at least on one occasion in the past we have assem-
18. bled the entire Task Force at the scene of a major fire
19. and made a decision right then, with everybody's input,
20. as to what action we wanted to take in the case. And
21. that was the whole purpose behind having it there. As
22. to its success, I think that can be laid partially just
23. to the mere fact that people knew we had it and the pub-
24. licity that we got out of it, and also probably to the

1. skills that are involved with the people that are on it.

2. Q. You also mentioned a Fire Training and Communications
3. Division. What do you provide in terms of training?

4. A. Well, we have a lieutenant who is assigned--Lt. Ernest
5. Shifflett, Jr., who is assigned at the present time as
6. the commanding officer of that division. It is his
7. responsibility to carry out the daily skill development
8. training that takes place within the department. It's
9. his responsibility to carry out the physical fitness
10. program that's carried on daily in the department. He
11. is also the direct supervisor of four communication per-
12. sonnel who work in the communication center.

13. Q. Have you also developed a professional course of instruc-
14. tion, classroom instruction?

15. A. We have under our training program, it's broken down
16. into three distinct areas. Skill development, that I
17. mentioned before, and that is basically the mechanics
18. of fire fighting. Basically everything from how to lay
19. hose . . . that sort of thing. Then we go into the area
20. of physical fitness program. We also have a third area
21. which is professional development, and that is an area
22. that I administer mainly. That's a 275 hour program
23. that's supposed to make managers out of the fire officers
24. that we have. It encompasses a wide variety of subjects,

1. all the way from standard college courses through tech-
2. nical fire courses offered at the Fire Academy.

3. Q. Where are some of these courses taught?

4. A. The courses--all the courses that are involved in the
5. professional development program are taught either at
6. the United States Fire Academy, James Madison University,
7. Blue Ridge Community College or the University of Mary-
8. land. It would be one of those four institutions.

9. Q. What level of participation do you have in these pro-
10. grams by your officers?

11. A. As far as the officers are concerned, we have a hundred
12. percent participation.

13. Q. Do you also have a Fire-Rescue Communications Center?

14. A. Yes, we do. We operate a Communications Center, which
15. as I indicated before, is also under the command of Lt.
16. Shifflett.

17. Q. Could you describe first how it operated a few months
18. ago and then explain certain changes that have taken
19. place.

20. A. Okay, prior to March--somewhere around the first of
21. March, it was operated as the Harrisonburg Fire Depart-
22. ment's Communications Center. We had a supervisor and
23. four communication officers, just as we do now. The
24. exception then was that only one of the communication

1. officers was paid--was a full-time City employee. We
2. had three other communication officers who were there
3. as part of the CETA program, and they were there as a
4. part of the City's contract which was administered by
5. Rockingham County. Shortly thereafter we entered into a
6. cooperative agreement with the County, with Rockingham
7. County. We now have basically the same program with
8. three major exceptions. First of all, we changed the
9. name of the communications center and it's now called
10. the Harrisonburg-Rockingham Fire Rescue Communications
11. Center. Second of all, we no longer have any employees
12. on CETA funds, they are all full-time permanent City
13. employees. And through a cooperative agreement with the
14. County, two of those four employees are funded by the
15. County on a shared cost basis. So that in effect we
16. have the same communication center, but we are employing
17. two full-time personnel and the County is paying for
18. two. So we have a cooperative agreement at that point.
19. The other significant change that was made was that in
20. return for the working agreement that we got with the
21. County, we agreed to expand that service to include any
22. and all companies in Rockingham County that wanted to
23. join the service; any and all fire or rescue companies,
24. I should say.

1. Q. You also mentioned a third primary division or Operations
2. Division. Is this the portion of your department that
3. provides the basic firefighting or fire protection ser-
4. vice?

5. A. Yes sir. The Operations Division is the third division
6. of the department, and it takes in the engine companies
7. and truck companies that provide the actual firefighting
8. that goes on.

9. Q. Could you refer first to Map Exhibit H-11 to your left
10. there and point out your existing fire stations and
11. describe the general service areas.

12. A. First of all, the area you see in yellow is the response
13. area on a single company response for Engine Company 28,
14. which is assigned to Fire Station No. 1. And when I say
15. single company response what we mean in fire service is
16. that on a small fire, for example, a brush fire or an au-
17. tomobile or trash fire or something of that nature, we
18. would only send one engine. And that's how we determine
19. the first alarm response areas. So, any of those small
20. type fires that would occur anywhere in this yellow zone
21. is where this Company would be taken care of by Engine
22. 28 and would be responding out of Station 1. The area
23. that you see outlined in green is the first alarm re-
24. sponse area of Engine Company 23. That's the company

1. that's assigned to Fire Station No. 4 where we stopped
2. at yesterday.

3. Q. Could you define what you mean by engine company?

4. A. Basically an engine company is any piece of apparatus
5. that carries men or water and hose. It could be called
6. a pumper or several other things, other terms.

7. Q. Is that distinguished from a truck company?

8. A. Yes sir. Basically the technical definition of a truck
9. company is a piece of apparatus that carries an aerial
10. ladder. For example, in the City of Harrisonburg we
11. have four engines and two aerials. So, we're talking
12. about really two distinct pieces of equipment.

13. Q. Could you refer now to tabular Exhibit 17, which is in
14. the basic exhibit book?

15. JUDGE MOON: Do I understand we're not sup-
16. posed to have H-11 in this book?

17. MR. GLASS: In the reduced map exhibits?

18. No sir. Only certain of those large maps would be in
19. the small map exhibit book.

20. Q. Using Exhibit 17, would you first describe your Fire
21. Station No. 1 in terms of numbers of personnel and the
22. equipment that you have available there?

23. A. Okay. Very basically, although we have two fire sta-
24. tions, the organization of the department is set up

1. as per the City Code to include such number of paid and
2. volunteer company as recommended by myself and approved
3. by the City Manager. So, with that in mind, what we
4. actually have, we have twelve firefighters assigned to
5. the suppression division or the Operations Division.
6. Those twelve firefighters are broken down on two shifts
7. of six men per shift. Now, that just basically gives
8. you the breakdown on how they work. The way they are
9. assigned is that the City, currently has two paid engine
10. companies, meaning that they are operated by career-type
11. personnel. One is assigned to Station 4 and one is as-
12. signed to Station 1. We also have a career or paid op-
13. erated truck company, which is assigned to Fire Station
14. No. 1. In addition to that, we also have a volunteer
15. fire company that is stationed at Fire Station No. 1.
16. That volunteer fire company is referred to as Fire Com-
17. pany No. 1, and it's located in this building right
18. here. It was incorporated in 1976 as a part of the Har-
19. risonburg Fire Department. So, even though they are vol-
20. unteer, they are an additional company in the department.
21. The volunteer company that we have at Fire Station No.
22. 4 is actually a Rockingham County Fire Company, although
23. we do like to emphasize the fact that they will respond
24. in the City through a mutual aid agreement that we have

1. with them.

2. Q. Is that a volunteer company?

3. A. Yes, it's a volunteer company.

4. Q. Does it have a volunteer chief?

5. A. Yes sir. It's totally volunteer, except Rockingham County
6. does supply four firefighters that are assigned to that
7. station, or they're assigned to that company, Hose Com-
8. pany No. 4.

9. Q. Who owns the building?

10. A. The building is owned and operated by the City of Har-
11. risonburg.

12. Q. Does the County also contribute some direct financial
13. support?

14. A. No sir. Basically the agreement is that we give Hose
15. Company No. 4 a place, a home, so-to-speak, and in return
16. for that they have agreed to respond to any calls we need
17. them for in the City.

18. Q. Do you provide utilities free of charge to the volunteer
19. company there?

20. A. Yes, we do. We provide all utilities. To the best of
21. my knowledge the only thing they pay for in that build-
22. ing is a private telephone they have.

23. Q. And do you also make the communications center available
24. to that unit?

1. A. Yes. We have for the last three years, we have dispatch-
2. ed from the communications center the Harrisonburg Fire
3. Department, the Harrisonburg Rescue Squad and Hose Com-
4. pany No. 4.

5. Q. What is the name of your volunteer company in your second
6. fire station, No. 4?

7. A. The name is Hose Company No. 4, Incorporated. That's a
8. private non-profit corporation that's incorporated and
9. recognized in Rockingham County.

10. Q. You mentioned four paid firemen provided through the
11. County. Can you tell me when those firemen first arrived
12. at the station?

13. A. To the best of my recollection, the first paid firefight-
14. er was assigned to that station somewhere around November
15. 1, 1979. There are another three firefighters who are
16. currently employed at that station by the County now,
17. who just arrived somewhere around, I believe it might
18. have been, March 1st; it was in March, somewhere in that
19. month.

20. Q. You mentioned you have recently entered into certain
21. mutual aid agreements?

22. A. Yes sir. We have mutual aid agreements with all . . .

23. Q. Before you describe that in detail, could you explain
24. how the system operated before you entered into these

1. mutual aid agreements? First, what was the service area
2. for Hose Company No. 4, the volunteer unit at your
3. second fire station?

4. A. Well the service area for Hose Company No. 4 was the sur-
5. rounding area in the County, including the proposed an-
6. nexation area.

7. Q. Did they occasionally run in the City also?

8. A. Yes, they would run under the agreement whenever they
9. were called.

10. Q. For example, do you have some figures for 1979 with
11. respect to the number of alarms answered within the
12. City by Hose Company No. 4?

13. A. In 1979 we had a total of 708 fire alarms within the
14. jurisdictional limits of the City of Harrisonburg. Out
15. of those 708, Hose Company No. 4 ran a total of 9 calls.

16. Q. How operationally would they respond prior to the mutual
17. aid agreement that you mentioned?

18. A. That was the kind of agreement where you would get on the
19. scene and realize that you needed some help, and you
20. would call back and say send some more help. That's
21. basically the way that worked.

22. Q. Okay, prior to the mutual aid agreement did your county
23. department respond at times within the county?

24. A. Do you mean City? Harrisonburg Fire Department?

1. Q. Yes.

2. A. Yes sir. In 1979 the Harrisonburg Fire Department respond-
3. ed to a total of 45 calls in the County.

4. Q. And how would that work operationally? When would you
5. go out into the County?

6. A. The same way. We would only go if they had a serious
7. situation and called for some additional help.

8. Q. Now, until about 1978, did the City supply certain paid
9. firemen to drive some of the trucks run by Hose Company
10. No. 4?

11. A. Prior to my arrival there was an agreement whereby City
12. paid personnel, with paid firefighters, could under cer-
13. tain conditions drive a piece of Hose Company No. 4's
14. equipment into the County to answer a call in the County.

15. Q. When would that occur?

16. A. As best I remember, the agreement that was in effect at
17. that time between what used to be called the Fire Com-
18. mission, which no longer exists, and Hose Company No. 4
19. was that if a call came in in the County, after a wait-
20. ing period of approximately three minutes, if the volun-
21. teers weren't able to answer the call, that a City paid
22. firefighter would go over and take their engine and go
23. ahead and answer the call.

24. Q. How far on occasion would your paid firemen run into the

1. County then?

2. A. To the best of my knowledge, they would run anywhere
3. that the--wherever the call was. There wasn't any stop-
4. ping point, they would just go wherever they were sent,
5. which include the western portion of the boundary lines
6. which would be the West Virginia state line to the west
7. and four or five miles to the east.

8. Q. Did you stop that policy?

9. A. Yes sir. Somewhere along about May 1, 1978, I changed
10. that policy and no longer allowed City paid personnel
11. to drive Hose Company No. 4's equipment in the County.
12. It's not exactly what it might sound like though, because
13. the only change that really took effect was that from
14. that point on I only allowed them to respond into the
15. County if they were on City-owned equipment. But they
16. were no longer allowed to . . . and I might add, the
17. reason for that action was because prior to my arrival
18. there had been known on occasion to only be one paid
19. man working at a fire station here in Harrisonburg. And
20. if the call was in the County and that one man went over
21. and got on a Hose Company No. 4 piece of equipment and
22. ran into the County, the City wouldn't have any people
23. in the station. So, basically what we were doing there
24. was just making sure that the firefighters who were paid

1. for by the City stayed in the City, unless they were
2. properly called and we would just have the City equip-
3. ment to answer the call.

4. Q. Now, could you describe the mutual aid agreements that
5. you mentioned? How do they operate and how is that dif-
6. ferent from the past?

7. A. Well, let me explain that we have two types of mutual
8. aid agreements. We have a mutual aid agreement with
9. all the Companies in the County, including some in Au-
10. gusta County, Page and Shenandoah County. We have agree-
11. ments with those people that just say basically is you
12. need help we'll help you, and if we need help you'll
13. help us. That's all they really say. With the under-
14. standing if they're already at a fire, we'll obviously
15. have to get somebody else. We have a rather unusual
16. mutual aid agreement with Hose Company No. 4. It was an
17. agreement that was worked out last summer. It was main-
18. ly spurred by the fact that the County was or had an-
19. nounced plans that they were going to increase their
20. paid personnel at Fire Station No. 4. Basically the new
21. agreement just simply says that we will, for the benefit
22. of everybody involved, we will just send the closest
23. available help to the call, whether it's in the City or
24. the County. And at the same time we have the use of the

1. County paid firefighters in the City and they have the
2. use of the City paid firefighters in the County.

3. Q. Can you tell me how many calls in a typical month, calls
4. and responses, have been made by Hose Company No. 4 with-
5. in the City since you adopted this mutual aid agreement?

6. A. Since August 1, 1980, Hose Company No. 4 has responded
7. to an average of about twenty calls per month in the City
8. of Harrisonburg, and that's out of a total of around
9. fifty calls a month that they would run.

10. Q. And how about the converse of that, how many calls have
11. the City department responded to in the County?

12. A. Okay, the Harrisonburg Fire Department has responded on
13. an average between thirty-five and forty calls in the
14. County each month out of a total of normally around a
15. hundred calls a month. I would say about thirty-five
16. percent of our calls are in the County.

17. Q. Can you tell me whether before you entered into these
18. agreements the manpower and equipment in the City depart-
19. ment was sufficient to provide the necessary fire pro-
20. tection service in the City?

21. A. Yes, it was.

22. Q. What did this agreement permit you to do then?

23. A. Well, basically what the agreement allows me to do is
24. to substitute personnel and have two people in reserve,

1. or have one Company in reserve, that we can answer a
2. second call if we're utilizing the County paid personnel.
3. I might add that those people would be used anywhere,
4. regardless of where the call was, either the City or the
5. County. So, it really didn't have . . . it helped me in
6. the sense that it supplemented the manpower. It was, you
7. might say, to get two additional people for a certain
8. part of the day. It didn't really have any operational
9. efficiency effect on the way we were set up.

10. Q. Can you tell me how many of the City's paid firefighters
11. are on duty at any one time during the day and during the
12. night?

13. A. It varies because of the time of day, but there will be
14. no less than four paid personnel on duty. That's as
15. per the 1962 ISO requirement. The normal response any
16. time of the day--the normal manpower for any given day
17. would be at least five people on duty. Now, in addition
18. to that, during the daylight hours, you would have the
19. training officer, myself, Captain Darr; so you would nor-
20. mally run in the daytime as many as eight--it would be as
21. many as eight or nine paid personnel.

22. Q. How many of the paid firefighters would volunteer unit,
23. Hose Company No. 4, have on duty at any one time?

24. A. As I understand their shift schedule now, two on duty at

1. a time, two paid personnel on duty for Hose Company No.
2. 4.

3. Q. Twenty-four hours a day?

4. A. No sir. They're only on duty from, if I remember cor-
5. rectly, seven o'clock in the morning until eight o'clock
6. at night.

7. Q. Are there generally recognized standards for evaluating
8. whether your fire suppression services are adequate?

9. A. Yes sir, there are standards that are provided by both
10. the National Fire Protection Association and the Insurance
11. Service Offices around the United States. In addition
12. there are certain standards provided by the Virginia
13. State Fire Service Commission. And those standards gen-
14. erally take in everything from the response that should
15. be taken to a fire, the amount of time that you take to
16. put water on a fire, the qualifications of the officers
17. involved, the qualifications of the firefighters involv-
18. ed. It generally covers the . . . there's very little
19. in fire service that you can ask a question about that
20. we can't find a standard to go by. And I might add that
21. the reason for that goes all the way back to the origins
22. of fire service, which naturally involved insurance people
23. who founded the first fire departments. So, we've always
24. been rather regulated and rather standardized.

1. Q. Are certain of these standards very important or more im-
2. portant than others in judging the adequacy of the fire
3. suppression services?

4. A. Yes, they would be.

5. Q. Could you mention a few of those.

6. A. Probably the most important standard that would be applied
7. certainly by any professional upon viewing any department
8. would be the department's ability to make an initial at-
9. tack and the training level of the people involved.

10. Q. And what do you mean by an initial attack?

11. A. Basically the standard calls for an initial response of
12. two pumpers or an engine and adequate personnel to be
13. able to apply five hundred gallons of water within three
14. minutes after you arrive at the scene of a house on fire
15. or whatever is on fire.

16. Q. What's the purpose of that particular standard, the pump-
17. ing of five hundred gallons within three minutes?

18. A. Because that would be the minimum that would be required
19. even in a residential, sparsely populated residential-type
20. area. It varies going all the way from five hundred gal-
21. lons a minute for up to two hours, all the way up to
22. twelve thousand gallons a minute for a period of about
23. ten hours. So, it just depends on the hazard, the inten-
24. sity, the population, the construction of the building,

1. and that sort of thing. There are a lot of factors that
2. enter into what the required water flow would be. For
3. example, the area that we're in here right now has a re-
4. quired fire flow of about forty-five hundred gallons per
5. minute. As opposed, for example, to the Ashby Heights
6. Subdivision, which would require about five hundred gal-
7. lons per minute.

8. Q. You mentioned for up to two hours. Could you explain
9. that?

10. A. Well, basically that's just the standard, that's the min-
11. imum standard that is applied by both the ISO and recog-
12. nized water officials that in order to suppress a major
13. fire, for example, in Ashby Heights, you would need to
14. be able to flow a minimum of five hundred gallons of
15. water for a period of up to two hours. The point there
16. is, I suppose, at least I was told, that if you can't
17. put it out in two hours, it's going to burn down anyway.
18. So, you know, it just goes on at that point.

19. Q. Is there any accepted standard as to the time within
20. which you should respond to the scene of the fire?

21. A. Yes, there is.

22. Q. What is that?

23. A. The average response time by National Fire Protection
24. standards would be, depending on the density of the pop-

1. ulation and growth in the area, would be no more than
2. three minutes. There are provisions made for sparsely
3. populated areas where you can have a little longer time
4. to get there; but in any case the maximum distance comes
5. into effect, meaning that you're supposed to have fire
6. protection within four or five miles from where you're
7. planning to protect. The Virginia State Fire Commission,
8. their standards are anywhere between two and four min-
9. utes they would consider an excellent response to a fire.

10. Q. Does your City Fire Department meet all of the standards
11. that you have just described?

12. A. Yes sir. The average response time within the City of
13. Harrisonburg as it's presently situated is between two
14. and a half and three minutes from the time the call is
15. received until the time we have the first piece of equip-
16. ment setting in front of the person's home.

17. Q. And what about the water pumping ability, the five hundred
18. gallons a minute. Can that be complied with in any por-
19. tion of the existing City?

20. A. Yes sir, because we run what's termed an ISO response on
21. any structural fire in the City. The Insurance Service
22. Offices have determined that the minimum response to
23. even just a residential structure would be two engine
24. companies or pumpers and one vehicle that's capable of

1. aerial work. So, we run a standard ISO response of two
2. engines and one truck company on any structure fire.
3. That way we're able to meet the standard of applying five
4. hundred gallons a minute within the first three minutes
5. after arriving by utilization of those two pumpers.

6. Q. Now, before you entered into the mutual aid agreements
7. in the last year or so, did you calculate the average
8. response time from the time you got an alarm until you
9. reached the scene within the City?

10. A. Yes sir, it was determined to be between two and a half
11. and three minutes.

12. Q. And were you able to calculate the response time by
13. Hose Company No. 4, the volunteer company, within the
14. annexation area?

15. A. Within the annexation area we did a survey from November
16. of 1979 through May of 1980. During that period of time
17. we analyzed all calls that occurred in the existing an-
18. nexation--proposed annexation area. And the average
19. response time was eight and a half minutes.

20. Q. How were you able to develop the figures?

21. A. Well, really it was kind of easy, because since we are
22. the communications center, the dispatch center, we have
23. all the response time cards. They are public record.
24. In other words, we have a clock record of every call

1. that they go on.

2. Q. Has there been an improvement in the response time to
3. alarms within the annexation area since you entered into
4. the mutual aid agreement?

5. A. I would say yes sir, because of two probably very impor-
6. tant factors. Now that we are dispatching the closest
7. available help, anywhere in this area of the proposed
8. annexation area the initial response, the first piece of
9. equipment that's going to arrive at the fire, would come
10. out of this station right here (indicating on map). As
11. well as in the other direction--which means that we've
12. been able to reduce the response time just by that fac-
13. tor alone to around five and a half minutes. We've
14. knocked about three minutes off of it. Now, the other
15. action that the County took that also helped in the other
16. direction was that by the County having two paid person-
17. nel on duty at Hose Company No. 4, they in turn were able
18. to do the same thing going the other direction, which
19. means that basically the time worked out to be about
20. five and a half minutes before a person would be on the
21. scene.

22. Q. What is the approximate response time still to the Valley
23. Mall area, and could you point that out.

24. A. The Valley Mall is located right in this area right here

1. (indicating on map). The average response time to the
2. Valley Mall is somewhere between four and five minutes.
3. The response to the Mall, I might add, would probably
4. not be affected that much by what the City did, but the
5. addition of the County paid personnel at No. 4 made the
6. response to that call about four to five minutes. They
7. have a pretty straight shot right out 33 there. Now,
8. at the same time that's maintained because even at night
9. after they go off duty, if a call comes in from the Mall
10. the first piece of equipment that gets there from the
11. City is Engine Company 23 that comes out of that station
12. also. Because the first unit there is going to come out
13. of this station regardless of whether it's a City unit
14. or Hose Company No. 4's unit. So, therefore, it had an
15. effect on the time it took to get there.

16. Q. You mentioned this other standard involving the ability
17. to pump five hundred gallons of water per minute for
18. two hours. Even with your mutual aid agreement is that
19. standard being met throughout the proposed annexation
20. area?

21. A. I would say in a majority of the cases, no. And I might
22. explain the reason for that is that when we talk about
23. the standard, being able to apply five hundred gallons
24. within the first three minutes as a part of the initial

1. attack, that standard is based on time and it's based on
2. the fact that you're running two engines or you're sup-
3. posed to be running two engines to the call. There are
4. some various factors that would enter into that, for
5. example if there was water available, if the County paid
6. personnel were on duty, if the call occurred at the right
7. time of the day. There are two main reasons why it can't
8. be met in the annexation area. First of all, during the
9. daytime it is a standard policy with Hose Company No. 4
10. to back up a City engine company who's running into the
11. area with a tanker. Which means, in effect, they're
12. bringing the water but they're not bringing the capacity.
13. So, even during the daytime they're unable to do it be-
14. cause they're not able to meet the five hundred gallons
15. a minute standard within three minutes because of that
16. reason; really just because of the way they operate.
17. The second factor would be that anywhere in the annexation,
18. the proposed annexation area, at night time, if it occurs
19. after a certain time at night, the only guarantee you're
20. going to get is that there's going to be a City engine
21. company pull up in front of your house. And they may be
22. by themselves for five or six minutes. It's impossible
23. for one company by themselves to do that kind of evolu-
24. tion, where they can apply five hundred gallons per min-

1. ute.

2. Q. Is firefighting in that area hampered by a lack of fire
3. hydrants in certain areas also?

4. A. Yes, there are certain areas in the annexation area,
5. obviously, that right now are water problems. They
6. basically are in the area, for example, on Route 910.
7. There isn't any water available in that area at all.
8. There is a little bit of water available, but you have
9. to be in the right spot, when you come across Ridge Road.
10. But basically just about any area up Route 712 here, the
11. County has installed hydrants in that area, a certain
12. portion of it, but there isn't any water in them. Any-
13. where in the proposed annexation area where you would
14. not have a resource of water provided by hydrants or what-
15. ever, or somebody's swimming pool, then you're back at
16. the point where you have to bring a tanker along and you
17. have to pump the water in, and that slows down the whole
18. process. If there's any single factor that's going to
19. make or break any kind of fire evolution that's perform-
20. ed anywhere, whether it's in a rural area or even in
21. downtown Richmond, it's going to be the capability to
22. apply that water as quickly as possible.

23. Q. These various standards that you've just mentioned, do
24. they apply to the annexation area? By that I mean is

1. there sufficient density in terms of population and dwell-
2. ings and approximate values that under the organizations
3. who set up those standards they are applicable to an
4. area of this sort?

5. A. I would say yes for two reasons. First of all, the same
6. standards that are used by the Insurance Service Offices
7. in rating the City of Harrisonburg and its fire defenses
8. is the same standard that's used to grade the County.
9. And that's the reason why the City of Harrisonburg is a
10. five and has a rating of five, and the surrounding area
11. in the proposed annexation area is basically a nine;
12. although it is my understanding that some places where
13. City water is already available they may be as low as an
14. eight. But it's the same standard that's applied in both
15. cases.

16. Q. And what is this rating?

17. A. It's the fire suppression rating schedule as provided
18. by the Insurance Service Offices of Virginia. Basically
19. it's used in conjunction with construction features by
20. insurance companies to set the premiums for homeowners'
21. insurance.

22. Q. And what do they take into account in rating a system?

23. A. They would take into account the construction class of
24. the building involved, they would take into account any

1. built-in fire safety features, for example, sprinklers or
2. standpipes. In fact, they would be required in some
3. buildings over a certain square footage. They also take
4. into account the availability of water. And by changing
5. the rating, with all those things considered, depending
6. on the rating that's given by the suppression forces, or
7. given to the Fire Department, then you're back to either
8. a high rate or a low rate or somewhere in between. The
9. best that you can be is a class one and the worst you
10. can be is a class ten, meaning you don't have a fire de-
11. partment or water supply.

12. Q. Has your department recently applied for a reevaluation
13. of your rating by the Insurance Service Offices?

14. A. Yes sir.

15. Q. And why did you do that?

16. A. Because I conveyed to the City Manager my personal be-
17. lief that we would be able to at this point move up to
18. at least a class four schedule. We would also have a
19. good chance of even being a three. Another factor that
20. was involved in that would be possibly the direct effect
21. that it would have, for example, on the proposed annexa-
22. tion area. I wanted to know definitely so I could stand
23. here and talk intelligently about it and, you know, just
24. what effect it would have.

1. Q. Have you formulated an opinion then as to whether the
2. proposed annexation area is receiving sufficient fire
3. suppression services?

4. A. I would say based on the value of the property involved
5. and the density of population in the proposed fourteen
6. square miles, that it's not receiving the type of fire
7. protection it should receive.

8. Q. And could you describe on what bases you make that opin-
9. ion?

10. A. Well, possibly I could do that, if you'll allow me to,
11. possibly by using a couple of examples.

12. Q. If you would, please.

13. A. Maybe it would be easier to point out the difference by
14. telling you what they get now and what they would get
15. if the area was annexed. For example, an area that every-
16. body is familiar with is the Valley Mall. As I mentioned
17. before, the response time due to the location of Station
18. 4 is between four and five minutes. The response time
19. would be reduced by having a proposed--which we'll talk
20. about in a few minutes--the proposed location of another
21. fire station in this general area, which would cut the
22. time down below the three minute mark. In addition to
23. that, at the present time when an alarm occurs, given
24. the benefit of the doubt that the alarm occurs during

1. the daytime, the initial response to the Valley Mall is
2. going to be one City engine company and Hose Company No.
3. 4 is going to take their paid personnel in one of the
4. engines. So, it would be two engines responding to that
5. location. That would be initial response. Based on the
6. square footage and the required flow of water that would
7. be required to contain a fire in that structure or any
8. part of it, the initial response should be no less than
9. four engines and at least one aerial. I don't really
10. have any complaints or qualms about the amount of water
11. that's available there, because there is sufficient water,
12. I believe, at that location, if the proper amount of
13. manpower and the proper amount of equipment is there.

14. Q. Do those buildings in that area contain a sprinkler sys-
15. tem?

16. A. Yes sir, they do have a sprinkler system, they do have
17. a standpipe system.

18. Q. Under these standards would that area still require the
19. number of engines and personnel that you just mentioned,
20. despite the sprinkler systems?

21. A. Yes, you would, because of two very important things.
22. First of all, the Valley Mall, the entire Valley Mall
23. complex, has an eighteen--to the best of my knowledge, if
24. I remember correctly from the plans--has an eighteen p.s.i.

1. roof on it. It is sprinkled throughout, however they've
2. allowed the individual shop owners to come in and lower
3. the sprinklers down--they've put in false ceilings and
4. just did anything really that would add to the beautifi-
5. cation of their individual shops. But at the same time
6. they were creating sometimes eight or ten foot void spaces
7. above those sprinkler heads. So, the most serious problem
8. that I can see in the Mall right now, other than the life
9. hazard, which certainly is no problem getting the people
10. out of there; but the most serious problem as far as fire
11. protection would be concerned would be the short period
12. of time they'd have before the roof would cave in. I
13. would estimate a serious fire in one of those businesses
14. at the Mall, you might get twenty to thirty minutes be-
15. fore the roof fell in. It's not going to burn up, it's
16. just going to fall in.

17. ~~Q. Could you point out the Deer Run Apartment area?~~

18. ~~A. (Witness indicates on map)~~

19. ~~Q. Is that another problem area?~~

20. ~~A. Can I make one more point on that?~~

21. ~~Q. Certainly.~~

22. A. The point I was going to make was, the illustration that
23. I gave you where there was a City engine company and Hose
24. Company No. 4 running an engine out there, the initial

1. response of four minutes during the daytime. If that
2. same call occurred at night, it is possible for about
3. five to six or eight minutes that the only thing on the
4. scene would be the City engine company with its persons.
5. So, there could be a variation between whether the call
6. occurred at night or daytime right now on the number of
7. people and the manner in which they got there. Now, un-
8. der the City's proposal, regardless of the time of night
9. or day, the Mall would get four engine companies and a
10. truck company. It would have the same response regard-
11. less of the day of the week or the time or day or what-
12. ever; they would be receiving the same level of service.
13. We have another area, just for an example, and it kind
14. of mystifies me in a sense, because it's a brand new
15. project--I shouldn't say project, it's a brand new devel-
16. opment that's being built right here (indicating on map)
17. on Route 659 or Port Republic Road. We didn't pull into
18. it yesterday, but it was indicated on the tour. To the
19. best of my knowledge that I've been able to find in that
20. entire complex, which for lack of a better term I'll
21. call it--it's basically just a lumber yard setting out
22. there. There are two hydrants, but the only place I can
23. find any water is--evidently it's being fed off of Ashby
24. Heights Subdivision water line. The best that I've been

1. able to determine, using the Hazen-Williams standard for-
2. mula for calculating water, is that the anticipated flow
3. in that area right now would be about eight hundred gal-
4. lons per minute. There's not a single building in that
5. complex that would not require from fifteen hundred to
6. two thousand gallons of water a minute. So, in addition
7. to the response, the quickness of the response and the
8. manpower response problems that we have at the Mall,
9. you've got the same thing here, only you don't have the
10. water. That's a very, especially from an exposure angle,
11. that's a very clear possibility there of being a major
12. fire. I might add also that that's an area that if it
13. were annexed into the City would have to have immediate
14. priority as far as water lines and this sort of thing.
15. We have another example I would consider possibly a
16. severe hazard, and that is at the Heritage Haven Nursing
17. Home that you passed by yesterday. To the best that I
18. personally have been able to figure out, we have an el-
19. derly housing type situation there. Those people are
20. able to get around a good bit, they're not the kind that
21. can't help themselves. The problem that we have there
22. is that the initial response in the area would be a
23. City engine company with its personnel plus Hose Company
24. No. 4 would run a tanker to back it up. Now, within a

1. few minutes after that, a couple of minutes, they would
2. also come in with another engine company. And since it
3. is a nursing home, we would also automatically send a
4. truck company up there. But the initial response to
5. that location would be a City engine company, Hose Com-
6. pany No. 4 would run a tanker, and we would also run a
7. truck company. The initial response because of that
8. being the nature that it is, by any standards, not just
9. here but anywhere in the state or in the United States,
10. if it's available, should be no less than four engine
11. companies and no less than two truck companies. And
12. that's on the first alarm. Now, to compound that situa-
13. tion, we also have a water problem, or what I perceive
14. to be a water problem. To the best that I can figure
15. out using the Hazen-Williams type method is that we might
16. have a water flow in that area of between six to seven
17. hundred gallons a minute. There is not a single part of
18. that complex in there that wouldn't require somewhere
19. in the neighborhood of about three thousand gallons of
20. water a minute to control a major fire. Without the
21. water and without the adequate response and without being
22. able to apply the five hundred gallons initially on arri-
23. val, diametrically you're giving the fire time to pro-
24. gress by leaps and bounds. Because the major concern

1. there is going to be the evacuation of people.

2. JUDGE ARTHUR: Does that building have sprink-
3. lers?

4. A. It has--no sir, it's not sprinkled. There are smoke
5. detectors in each room. Even though that building is
6. physically located in the County, we have requested that
7. they install an automatic alarm so that if something goes
8. wrong it would automatically come into our communications
9. center. They haven't done that as of yet. The building
10. is occupied. The only way we would have of notification
11. of an alarm in that building would be that they would
12. actually have to call you on the phone.

13. Q. Are those the only areas that you think are inadequate in
14. terms of existing fire suppression services? Or are those
15. merely examples?

16. A. No, those are just merely examples. I used those because
17. they're kind of the most extreme examples. Even, for
18. example, the place I mentioned before, right here in
19. Ashby Heights, we have the water there; but, there again,
20. the initial response would be a City engine company out
21. of this station, Hose Company No. 4, they would run a
22. tanker in this case out of that station by their paid
23. personnel. So, one of the things I'm trying to point out
24. is, just the tactical way that they're set up to handle

1. their operation doesn't allow them to meet any kind of
2. standard. I don't mean that in a critical sense, because
3. I feel very strongly that they're doing everything they
4. can possibly do, because it is a volunteer organization.
5. I don't mean it from a standpoint that they're not doing
6. it because they don't want to. I give them every bit of
7. credit in the world; they're doing everything they can.

8. Q. Have you determined how to extend the same level of ser-
9. vice provided in the existing City to the annexation area?

10. A. Yes sir.

11. Q. Would you refer to Tabular Exhibit 18 and also Map Exhib-
12. it H-12. First, do you propose to add some additional
13. fire stations?

14. A. Right. Well, basically in accordance with Section 5, sub-
15. part A and B of the City Ordinance dated May 13, 1975, the
16. basic standards that I have explained to the Court today
17. that apply in the City now will just be extended into the
18. annexation area. Now, in order to do that, we would ob-
19. viously have to add some equipment, build two addition-
20. al stations that I'll point out to you in just a se-
21. cond, and hire some personnel. The proposal is, as you
22. can see, we now have the City broke down into four
23. zones instead of the two you saw before. We would
24. have an engine company located somewhere in the general

1. geographical area of the Holiday Inn on Route 11 South.
2. We would also have a fire station and engine company
3. located somewhere in the geographical area of the Valley
4. Mall. By locating those two stations somewhere in that
5. area, we are able to comply with the three minute rule
6. on the initial attack, three minute standard I should
7. say. We are able to maintain the same level of service
8. in the manning that would be in the companies assigned
9. to those stations; the same level of manning that we
10. currently now use at Station No. 1 and 4. We would have
11. the capability at that point of answering any fire in
12. the annexation area under the required ISO standards
13. that's now used in downtown Harrisonburg.

14. Q. What additional personnel would you have to hire?

15. A. What we propose to do is hire an additional ten people
16. for fire suppression, which basically we would split,
17. put five people on one shift and five on another. We
18. would have four men assigned to this station (indicating
19. on map), and six men assigned to this station. And
20. that doesn't mean that one station has any better pro-
21. tection than the other areas, but it just means that we
22. need an odd number of men in anticipation of somebody
23. being off; generally somebody is off on sick leave,
24. vacation, or whatever. So that you never really have

1. more than two paid personnel working at any one given
2. station. This extra man would be carried at that sta-
3. tion, but that doesn't necessarily mean he would be there.
4. He would just be to fill in at Station 2 or whatever sta-
5. tion on a given day.

6. Q. How many paid personnel would that give you on duty at
7. any one single time during the course of a day?

8. A. Instead of the standard right now, the normal response
9. of five men, this would add to make the normal response--
10. make the normal manning, I should say, of nine men on
11. duty a day; nine or ten.

12. Q. Would you also have to add some equipment in terms of
13. trucks or engines?

14. A. Yes, we would. I have proposed that we purchase a unit
15. which could be located at either one of these stations.
16. It's indicated in the exhibits that it would be located
17. at No. 3. That would be Engine Company 26, and that
18. would be a brand new engine. We have a second alarm
19. piece of equipment that's not used in the City on a first
20. alarm at all. We have a second alarm piece of equipment,
21. Engine 25, that's now located at Fire Station No. 1. It
22. would be relocated to Station No. 2 and become a front
23. line piece of equipment. The reason that we're able to
24. do that is because we just spent in 1979, we put a brand

1. new motor in the thing, it was seven thousand dollars.

2. We upgraded it, it passed all the tests, and we in effect
3. have a refurbished engine. It is a 1968 Mack, in terms
4. of years; but in terms of wear and tear it's almost brand
5. new. It is my professional opinion that we could utilize
6. that piece of equipment at this station.

7. Q. Would that reduce the level of your service in the exist-
8. ing City by transferring that piece of equipment?

9. A. No, because as I indicated before, that's not a first
10. alarm piece of equipment. It's a piece of equipment--
11. I don't think that the Court saw it when they drove by,
12. because it was setting in the back of Station 1. It's
13. probably the best piece of backup equipment that there
14. is anywhere in the Valley. In addition to those ten
15. personnel that we talked about hiring for fire suppres-
16. sion, because of such an expansion in the size of the
17. City we would in addition to that hire a deputy chief,
18. a deputy fire chief. We would also employ one additional
19. fire inspector to assist Captain Darr with his duties.
20. Due to the recent arrangement with Rockingham County, we
21. would no longer need the three dispatchers we were talk-
22. ing about hiring for the simple reason that we've already
23. got them. And what we anticipated not happening until
24. later on has already happened, so the end effect of all

1. of this has taken care of the communications problem.
2. So, we would actually have to increase the force by
3. twelve personnel. I would like to make that notation
4. here. Exhibit 18 shows four dispatchers, we've already
5. got the four dispatchers.

6. Q. And four dispatchers would be sufficient to handle the
7. communications center for the entire area?

8. A. Up to a certain level. The plan is, as we've already
9. worked out with the County. Right now they handle the
10. Harrisonburg Fire Department, Hose Company No. 4, and the
11. Harrisonburg Rescue Squad, and that's a total of about
12. 4,000 alarms a year, or about ten a day. As part of the
13. agreement that I explained before where we agreed to ex-
14. pand in return for the County help, we agreed to include
15. anybody who wanted to come in on it. The total of all
16. the other companies combined, the other six fire depart-
17. ments and the other four rescue squads involved in this
18. program, all those people put together would add on about
19. another 4,000 calls. So what we're really saying in
20. effect is that when everybody is in it the work load will
21. be double. Now, that doesn't mean that the number of
22. dispatchers will double, because it goes up in progres-
23. sion based on a standard, N.F.P.A. Standard 1221, that
24. tells you when you need to hire certain people. We have

1. an agreement already worked out where any additional
2. personnel needed in the communications center will be
3. on a fifty-fifty cost basis with Rockingham County and
4. the City of Harrisonburg. When those people will be need-
5. ed is totally dependent on how quick the other companies
6. come into the program.

7. Q. Would there be any additional fire hydrants out in the
8. annexation area?

9. A. I have been over the area, I could practically drive it
10. in my sleep. The water superintendent and myself have
11. consulted and worked up a plan kind of together. We
12. have, and I'm in complete agreement with his proposals,
13. the water proposals, the evidence submitted to the Court.

14. Q. Could you describe generally in what areas more fire
15. hydrants would be placed? That will be shown in a later
16. exhibit, but if you could just point out the general
17. area.

18. A. Well, just generally, as I mentioned before, we'll have
19. to do something in the Deer Run section, off of Route
20. 710, which is known as Ridge Road. The only available
21. water out in that area now is where the County line
22. crosses the route. We'll have to expand that. We do
23. have an area down in the area of 710 and Route 711, that
24. you rode through yesterday where you saw the County well

1. that was running out into the road. There aren't any
2. hydrants other than right back at the railroad track,
3. and they don't have any water in them yet. We already
4. have sufficient water, according to our calculations, in
5. the Pleasant Valley Industrial Park. Working around this
6. way, we would need some water in the 726 area and follow-
7. ing the Ridge Road area, Route 710. As we get back up
8. to Route 33 West or the Rawley Pike, there are some hy-
9. drants sparsely situated in that area. The exhibit sets
10. the priority on how we can do that. Basically priority-
11. wise the extension of some main lines, for example, out
12. past the Mall and up here in the Park View area, the area
13. I was talking about before, the area of Heritage Haven
14. Nursing Home. That's the top priority as far as I'm con-
15. cerned, Heritage Haven Nursing Home and Deer Run would
16. have to have water as quickly as we could possibly get
17. it. In general, I'm pleased with what we came up with.

18. Q. With what you proposed would you then be able to meet
19. the three minute response time standard throughout that
20. entire area?

21. A. In relationship to the water . . .

22. Q. All of what you've just described there.

23. A. Right. The location of the stations and the additional
24. equipment and manpower that would be there, we're going

1. to be well within that.

2. Q. Would those improvements also permit you to meet the
3. water pumping capacity requirements that you mentioned,
4. the minimum of five hundred gallons per minute?

5. A. Okay, initially we would be able to meet it with the
6. equipment, because we would have the proper equipment
7. there to pump the five hundred gallons on the initial
8. attack. As has already been outlined, there are obvious-
9. ly some problems with the source of water, which we're
10. going to rectify as soon as possible. I might point
11. out though that one of the recommendations that we're
12. proposing here is that we will buy or purchase a tanker
13. to use to supplement, the same as everybody else does,
14. particularly right in this area. And this is the pri-
15. mary area right in here, all this extensive area right
16. in here, the 712 area, that we would propose to use the
17. tanker in. The reason I say that is because we are pro-
18. posing to put it at Station No. 1, so that it could eith-
19. er run down 11 South or down 42 South for quick utiliza-
20. tion. So, this is the primary area that we're talking
21. about using it in. Quite frankly, if the Commission's
22. recommendation is held up, in my opinion I don't think
23. we'd even need the tanker.

24. Q. Would those proposed improvements also permit you to

1. comply with the durational pumping requirements you men-
2. tioned, the two hours at so many gallons per minute?

3. A. As soon as we can get the water lines in, yes sir. Ob-
4. viously with the tanker, we wouldn't be able to pump
5. water out of the tanker for two hours. But that would
6. be an acceptable substitute to ISO, as indicated to me,
7. until we could get the proper water line.

8. JUDGE TRABUE: Excuse me, I may have missed
9. something. Did you say that if, considering the Commis-
10. sion's Report, and specifically I guess you were refer-
11. ring to Study Area No. 3.

12. A. Yes sir.

13. JUDGE TRABUE: If that were followed, you
14. would not need the new tanker?

15. A. No sir.

16. JUDGE TRABUE: If there were followed would
17. you still place the fire station, No. 2, in the same
18. location?

19. A. Yes sir.

20. JUDGE TRABUE: Even though it's on the line?

21. A. Well, yes sir. You see, the station is put here--the
22. basis behind putting the station there was the amount of
23. money that's tied up in this industrial complex here,
24. the amount of loss involved. As I stated before, the

1. equipment, here ready to go. And it would temporarily be
2. located at the two current City fire stations. Just as
3. soon as we can get construction underway, we would move
4. 26 to the station right here (indicating on map) and move
5. 25 to the station right here. Now, another alternative
6. to that would be in the interim period to just rent a
7. service station or available space somewhere down here
8. and the same way over here; find a suitable location to
9. temporarily use. No longer than we anticipate construc-
10. tion time is on the facilities that we are proposing, I
11. don't know that that would be reasonable, unless the Court
12. says we should.

13. Q. Have you estimated the cost involved in order to buy this
14. equipment and build the fire stations and hire these
15. personnel?

16. A. Yes sir.

17. Q. Could you refer to Exhibit 27, paragraph 3, Fire. Could
18. you explain first category A, what's included in supplies
19. and materials

20. A. Okay, let me preface that by saying that the figures you
21. see here is my proposal to the City administration for
22. the initial first year incidental costs involving the
23. annexation. Now, I noticed that there was some confus-
24. ion about it before, but let me explain this. The way

1. what I'm going to really do is take this thirty-eight
2. thousand dollars and add forty-seven thousand to it and
3. end up with eighty-five thousand dollars.

4. Q. How much do you actually have in reserve today? Exclud-
5. ing this year's budget.

6. A. Okay, excluding this year's budget we have about twenty
7. thousand dollars.

8. Q. And you have something budgeted this year?

9. A. Yes sir. In the proposed budget right now that's under
10. consideration, it's fifty-seven thousand dollars. It
11. might be good to point out just for clarification that
12. if we were not in an annexation case, the only thing
13. we'd be doing this year would be setting aside a certain
14. amount, fifteen or twenty thousand dollars, for that equip-
15. ment reserve.

16. Q. Would you turn to Exhibit 33 now?

17. A. Okay.

18. Q. Look at line 5, and could you tell the Court what is
19. included in that, the figure of two hundred and fifty
20. thousand dollars.

21. A. Okay, included in the quarter million dollars you see
22. on that line is the construction of two fire stations,
23. the land involved with those two fire stations, the ar-
24. chitectural design and that sort of stuff that goes with

1. it, as well as what was previously mentioned here, some-
2. thing about fourteen thousand dollars for equipment.

3. Q. What equipment would that be?

4. A. That equipment means the tables and chairs, beds, refrig-
5. erators, and that kind of stuff that has to go in a sta-
6. tion. It does not mean in any sense the type of fire
7. apparatus that's going to be in the building. That's
8. fourteen thousand set aside just to make sure we've got
9. beds and pillows and that kind of stuff in the building.

10. Q. Of that amount, the total amount, about how much is al-
11. loted toward the construction of the two stations them-
12. selves?

13. A. Approximately two hundred fourteen thousand five hundred
14. dollars.

15. Q. And how did you arrive at that figure generally?

16. A. We have proposed--at least I have proposed to the City
17. administration, that we build two fire stations which
18. would contain approximately 2,773 square feet, about the
19. size of an average rancher, or I guess a little bigger
20. than the average rancher, but basically the same thing;
21. of brick and block construction with a wood truss roof,
22. and that sort of thing. The anticipated construction cost
23. would be, or at least I've been told by some area construc-
24. tion companies, it would be in the area of thirty to

1. Company 23 and Truck 27. We also had a piece that was
2. there, Engine Company 28 was there, from Station No. 1.
3. I brought that engine over simply to display to the
4. Court. I happen to be very proud of that engine, there's
5. no other engine in the state that's equipped kind of like
6. that one. And, quite frankly, if we'd have had room to
7. park the bus, I would have brought everything over there
8. and put it out for you. We wouldn't have had room to
9. pull the bus up there if I'd done that, so I didn't.

10. JUDGE ARTHUR: Which piece of equipment is it
11. that you're talking about you're proud of?

12. A. Well, I'm proud of everything we've got, but especially
13. Engine 28, the one we had there yesterday, and our new
14. aerial ladder . . .

15. JUDGE ARTHUR: Which one was Engine 28?

16. A. That was the one that was setting in the middle of the
17. red equipment.

18. JUDGE ARTHUR: The newest unit?

19. A. Yes sir, that's a 1975, the newest engine we have, a
20. 1975 Mack.

21. Q. One last question, does your Hose Company No. 4 volunteer
22. company have an aerial ladder that can be used throughout
23. the annexation area?

24. A. No sir. They rely on us through the mutual aid agreement.

1. to supply an aerial truck.

2. MR. GLASS: That's all the questions I have.

3.

4. Cross Examination by Mr. Smith:

5. Q. Mr. Austin, how long have you been the Fire Chief for the
6. City of Harrisonburg?

7. A. I was employed on March 16, 1978.

8. Q. 1978?

9. A. 1978. Approximately three years ago.

10. Q. I'm looking at page 2 of your Exhibit 14a, and it says
11. that John Humes ran the fire department until 1976.

12. William Austin became the Fire Chief for the City and
13. still holds that position. Is that not correct?

14. A. Yes sir.

15. Q. Well, was it 1976 or 1978 that you became the Fire Chief?

16. A. No sir, I'm very sure I came here March 16, 1978.

17. Q. Who was the Chief before you?

18. A. The department at that time was under the control of the
19. two Assistant Chiefs, one at Station 1 and one at Station
20. 4. The operations administratively was under control of
21. a sergeant, a career type sergeant.

22. Q. So, do I understand that between 1976 and 1978 that the
23. City didn't have a professional Fire Chief?

24. A. No sir, they had an Acting Fire Chief whose name was

1. Ernest Shifflett, Sr.

2. Q. He was an Acting Chief?

3. A. Yes sir. According to the information I received he
4. was the senior volunteer chief at the time and he was
5. technically in command of the department.

6. Q. Was he a volunteer?

7. A. Yes. Well, he was paid by the City. At that time--I
8. say volunteer assistant chief--at that time, when I came
9. here, the assistant chief was paid a small salary.

10. Q. Well, they were in reality volunteers that had other jobs
11. somewhere, were they not?

12. A. Yes sir, except in that case there are some records to
13. prove that he was paid an additional amount.

14. Q. Well, was he a full-time Fire Chief?

15. A. No sir.

16. Q. The exhibit goes on to say that Mr. Austin began by
17. reorganizing the department. I gather from that that
18. the department needed to be reorganized when you took
19. over in 1978?

20. A. I would prefer to say that it wasn't set up the way I
21. wanted it to be set up.

22. Q. So, it didn't need to be changed in the manner that you
23. changed it? It could have operated just as efficiently
24. some other way?

1. A. In my professional opinion it needed to be changed, yes
2. sir.

3. Q. And how did it need to be changed?

4. A. Well, if I might explain. Any department goes through,
5. any fire department in the United States, goes through
6. what's called five stages of growth. The first stage, or
7. the fifth stage, I should say, the fifth stage where it
8. is totally volunteer, totally independent of any kind of
9. municipal government. The fourth stage would be where
10. that volunteer department approaches the local government
11. and receives aid in the form of paid drivers. For exam-
12. ple, the way Hose Company No. 4 operates right now, it's
13. a volunteer company but it has paid drivers. It's in
14. stage four growth.

15. Q. Was Harrisonburg like that when you took over in 1978?

16. A. No sir. If I might continue. The next stage, or stage
17. three, is where you have a volunteer department--well,
18. let me back up a minute. Stage four is where you have
19. paid drivers but it's under volunteer control, like Hose
20. Company No. 4. Stage 3 is where you have, it's predomi-
21. nantly volunteers, but you have paid control or career
22. control. There is a paid Fire Chief or something of that
23. nature. Stage two is where the volunteers own no equip-
24. ment of their own, they're a back up to the paid forces

1. there; very similar to the way we operate at this point.
2. And stage one, or the last stage, would be where they're
3. totally paid without any volunteers. Now, at the time I
4. came here we were in a period of transition where the
5. department was shifting away from being a department con-
6. trolled by volunteers, to a department controlled by the
7. City as a standard city department. So, that was the
8. prime reason that we shifted emphasis at that point. Up
9. until that time the volunteers' influence had been very
10. strong in both stations. As I mentioned before, we had
11. a Fire Commission made up of volunteers. We did away
12. with the Fire Commission, we did away with the assistant
13. chiefs, and put it strictly under a municipal type service.

14. Q. And this occurred sometime after March of 1978?

15. A. Yes sir, shortly after my arrival.

16. Q. The City still has a volunteer company, does it not?

17. A. Yes sir, Company No. 1.

18. Q. How many members does that volunteer company have?

19. A. Their official roll shows somewhere in the neighborhood
20. of about 146 people.

21. Q. And they are housed in your Station No. 1?

22. A. Yes sir. I was going to point out, however, that they
23. only have about twenty active volunteers.

24. Q. All right, sir. And they have their own equipment?

1. A. They do have an engine that they own.

2. Q. And it's operational and it's used to fight fires in the
3. City?

4. A. Yes sir. That's commonly called Engine Company 31.

5. Q. You said that in 1979 you had a problem with incendiary
6. fires and that there was some thirty-six of them that
7. occurred that year?

8. A. Yes sir.

9. Q. And that you cleared thirteen of those. Does that mean
10. that you caught whoever was responsible for that, or
11. found a solution to the case somehow?

12. A. That's all it means, we found a solution to the case.
13. It includes everything from arrest and conviction of a
14. gentleman, for example, who burned up Jesse's Restaurant,
15. all the way back to just some, for example, juveniles
16. who were setting fires and we were able to catch them.

17. Q. So, the remaining twenty-three, they have never been
18. cleared, I gather?

19. A. No sir.

20. Q. Now the Arson Task Force was created as a result of that
21. situation?

22. A. I would say primarily that was the material that was
23. used to document the request to the Law Enforcement As-
24. sistance program.

1. Q. Were you a member of the Arson Task Force?

2. A. Yes sir, I assume so.

3. Q. How many meetings has that Task Force had?

4. A. We had--we went to New Orleans, Louisiana in January of
5. 1980.

6. Q. For a meeting of the Harrisonburg Arson Task Force?

7. A. Well, the government, the federal government, provided
8. funds for us to go, you know, to . . .

9. Q. To what?

10. A. It was really a training program on how to operate the
11. thing.

12. Q. As a matter of fact, this Task Force was created in order
13. to get some LEAA funds to go to this New Orleans training
14. program, wasn't it?

15. A. No, we didn't really get any funds, we got a travel sub-
16. sidy. We had to pay for everything else. If you want
17. to say we got twelve hundred dollars to pay for gas,
18. then yes sir, we got some funds.

19. Q. The federal government paid that, right?

20. A. But that didn't even begin to touch the effort that we
21. were trying to make.

22. Q. All right, sir. Now, the training program that the City
23. Fire Department has are attended by the City volunteers?

24. A. They're open to any volunteer, City or County.

1. Q. Do County volunteers participate in them?

2. A. On a very limited basis.

3. Q. Do people from Hose Company No. 4 participate in this
4. program?

5. A. Yes sir.

6. Q. And you're aware that the County has other training
7. programs for its firemen in various parts of the County?

8. A. I'm not aware of anything other than some funds that are
9. available for the County to send their career personnel.

10. Q. Well, the volunteers have their own training program.

11. A. Well, yes, I'm sure they do.

12. Q. I'm sure your company does too from time to time, doesn't
13. it?

14. A. Well, we don't do anything that's not available to every-
15. body. I don't know what the others do in the towns, I'm
16. sure they have to have training programs.

17. Q. All right, sir. You said that under your reorganization
18. a Fire Rescue Communications Center was set up?

19. A. Yes sir.

20. Q. Was that set up after the mutual agreement was made with
21. the County in 1980?

22. A. No, we've had that Communications Center since June 1,
23. 1978.

24. Q. But now it serves both the Volunteer Company No. 4, the

1. County Company, and also the City?

2. A. Well, it always has served Hose Company No. 4.

3. Q. And the County contributes funds to that, does it not?

4. A. Yes sir, they have agreed to assist us with that.

5. Q. Do you know what the percentage ratio is of County funds
6. and City funds?

7. A. At the present time it's, strictly on salary it's a
8. fifty-fifty basis. The entire cost of the operations
9. and equipment and everything else is being borne by the
10. City.

11. Q. Being borne by the City?

12. A. Well, I guess you'd say that because I'm paying for it.

13. Q. Well, what did you mean by on a fifty-fifty basis?

14. A. The only deal that we have with the County is that they
15. would assist--it would be fifty-fifty on the salaries of
16. the personnel involved.

17. Q. So, they pay fifty percent of the salaries of the per-
18. sonnel involved?

19. A. Yes sir. And at this particular time there's no other
20. money involved in the electronic equipment or the radio
21. equipment or any other type.

22. Q. I understand that. I think you've answered my question.
23. Now, under that cooperative agreement, County fires are
24. responded to by Hose Company No. 4 unless the Captain of

1. that Company requests something different, some aid from
2. the City, is that not true?

3. A. No sir, that's not the way it works.

4. Q. How does it work?

5. A. You're speaking of a fire in the County?

6. Q. Yes sir.

7. A. Under the agreement there's an automatic response any-
8. where in Hose Company No. 4's district, which includes
9. all the way to West Virginia that way, to Penn Laird
10. this way or whatever, it automatically on a structure
11. fire includes the response of a City Engine Company.

12. Q. Well, is that a result of City policy, which I guess is
13. your policy, or is that spelled out in the written agree-
14. ment?

15. A. It's spelled out in the written agreement that we would
16. respond automatically wherever the Chief of Hose Company
17. No. 4 and I agreed on, and that's what we agreed on.

18. Q. Let's take a look at Exhibit 17, and it shows the exist-
19. ing fire facilities and equipment, is that correct?

20. A. Yes sir.

21. Q. It shows that in Station No. 1 there are twenty volunteer
22. firefighters assigned to that?

23. A. Yes sir.

24. Q. And that there are twenty volunteers assigned to No. 4,

1. Engine Company 4?
2. A. No sir.
3. Q. Well, are these County volunteers or City volunteers
4. you've got listed here?
5. A. Those are Hose Company No. 4's volunteers. And directly
6. beside that is Hose Company No. 4's equipment.
7. Q. As a matter of fact, it looks from this like Hose Com-
8. pany 4 has the only tanker; the City doesn't have any
9. tanker at the present time.
10. A. We don't have a need for a tanker.
11. Q. The question was, do you have a tanker?
12. A. No sir.
13. Q. Now, Station No. 4, you have a captain, a lieutenant
14. and two firefighters. Does that count the County's fire-
15. fighters?
16. A. No sir.
17. Q. But they are there at the present time, are they not?
18. A. Yes sir, they are assigned to Hose Company No. 4.
19. Q. And these County volunteers man that station at night
20. when the paid firemen of the County are not there, isn't
21. that true?
22. A. No sir, not exactly.
23. Q. Well, tell me how it's not true.
24. A. There's no requirement that they man the station. When

1. a call comes in they would respond on the call.
2. Q. Are they around the station at night?
3. A. On any night you can find a couple of them there.
4. Q. All right.
5. A. But that doesn't mean they're drivers and it doesn't
6. mean that they're even off probation.
7. Q. But they are there when the paid firemen aren't there?
8. A. In some cases, yes sir. On the average evening there
9. would be a couple of them around there.
10. Q. Well, during the average day there's only a couple of
11. paid people there, right?
12. A. Yes sir, but they . . .
13. Q. You said you didn't have more than two of them at a
14. station.
15. A. There's a distinct difference between what's there in
16. the daytime and what's there at night.
17. Q. Have you hired any paid firemen in the City in the last
18. two years?
19. A. Yes sir. When I came here there was twelve personnel
20. assigned to the department, and now there's fifteen
21. counting myself.
22. Q. You have hired three since 1978?
23. A. We've hired two.
24. Q. Are they assigned to Station No. 4?

1. A. No sir, they're not assigned--the fire personnel in this
2. City are distributed among the City everyday to meet the
3. manpower. There's no way that you can look at one of
4. these exhibits and say that a certain person is assigned
5. to a certain station, because on any given day he could
6. be working at the other station. We rotate people on a
7. daily basis wherever they're needed. All personnel have
8. to be qualified drivers and aerial operators, and that
9. sort of thing.

10. Q. All right, sir. Can you tell me when you hired the two
11. firefighters that the City has in Station No. 4?

12. A. One of the firefighters that's working there now was
13. hired in 1968, and the other firefighter on the other
14. shift was hired in 1975.

15. Q. And when did you hire the two additional that you referred
16. to a little earlier?

17. A. The last two personnel we hired in the suppression divis-
18. ion was in September of 1979 and October 9, 1979.

19. Q. What happened when the County put those paid firemen in
20. Station No. 4?

21. A. I suppose you're referring, sir, to an incident where I
22. advised them that we would not allow the people to work
23. in the station. Is that what you're talking about?

24. Q. Well, yes.

1. A. That was action that was taken on my part for the simple
2. reason that in October or November of 1979 when they put
3. that one man in that building the same as they had every-
4. where else, it didn't really cause me any great amount
5. of heartache; but all of a sudden, unbeknown to me, I
6. read in the paper one day that there's going to be an
7. additional three guys working in the station.

8. Q. Well, what heartache did the three additional firefight-
9. ers cause you?

10. A. It caused me heartache because if you went home and
11. found some people living in your house, you'd probably
12. ask them what they were doing there. And due to the sit-
13. uation where there was County personnel going to work at
14. the City station that I had no knowledge of.

15. Q. But it's also a County station.

16. A. No sir. That building is owned and operated by the City
17. of Harrisonburg.

18. Q. But you have an agreement whereby it houses the County's
19. volunteer company.

20. A. I have an agreement where I allow Hose Company No. 4 to
21. park their equipment in that station and the volunteers
22. to be in that station. And until we had this agreement
23. here signed along about the first of August of last year,
24. we didn't have any agreement with the County to allow

1. their personnel to work in that station.
2. Q. And by that agreement the City Council is a party and
3. Hose Company No. 4 is the other party, is that correct?
4. A. No sir. That agreement is signed by the Chief of Hose
5. Company No. 4 and myself.
6. Q. There's no written agreement between the Council and the
7. hose company?
8. A. No sir, it was worked out through the cooperation of
9. the County Administrator and the City Manager.
10. Q. All right. So, now you allow the County's paid firemen
11. in that station without any heartache, I guess.
12. A. Yes sir.
13. Q. Basically since the mutual agreement was entered into
14. in August of 1980, have things been pretty smooth in
15. Station No. 4?
16. A. I've had, to the best of my knowledge, no complaints from
17. the people under me. And I've had no complaints from them.
18. Q. And you say that the mutual aid agreement does not re-
19. quire the Chief of Hose Company No. 4, the County's fire-
20. men, to agree or to request that the City respond to a
21. fire in the County before the City goes?
22. A. Well, the agreement says that we would automatically--
23. we agreed to set up an automatic response system so we
24. automatically respond. It's not necessary for the Chief

1. to come on the radio everytime himself. We have an ar-
2. rangement worked out where we already respond.

3. Q. Well, prior to the mutual agreement of 1980, was that the
4. case? That before the City responded in the County,
5. they were requested by the Chief of the volunteer com-
6. pany?

7. A. Yes sir.

8. Q. And the same for the volunteer company responding to
9. fires in the City, they had to be requested by you or
10. your predecessor, is that right?

11. A. Right.

12. Q. And that's the reason for the disparity in the amount
13. of calls in the City and the County during that time
14. prior to the mutual agreement.

15. A. Yes sir, I pointed that out. Prior to that agreement
16. that was the way it worked.

17. Q. Now, you testified to certain standards of the adequacy
18. of fire suppression based on various formulas by Hazen-
19. Williams?

20. A. Yes sir.

21. Q. Would it surprise you to know that in Deer Run, the area
22. you testified to as I think a pile of timber, or some-
23. thing like that, that there's seventeen hundred gallons
24. per minute of flow there?

1. A. More correctly I referred to it as a lumber yard; and,
2. yes sir, it would surprise me if you could prove that
3. there's seventeen hundred gallons of water.

4. Q. Did you personally check that?

5. A. No sir, I used the size of the pipe and the source it
6. was coming from, the elevation involved, all the variables
7. that go in the formula. And it's mathematically almost
8. impossible with the size of the lines to have seventeen
9. hundred gallons of water.

10. Q. Well, we'll have testimony about that a little later.
11. You testified that you had applied to reduce the City's
12. number five rating to something less?

13. A. We have requested an ISO reevaluation of the City, yes
14. sir.

15. Q. And that's for the purpose of getting a lesser rating,
16. a four or three or something like that?

17. A. Yes sir.

18. Q. Does the City have the capability now of reducing its
19. fire rating?

20. A. Yes sir.

21. Q. And does the addition of your new water tank that's in
22. the area annexed in 1962 have something to do with that
23. capability?

24. A. I would believe that out of a total of five thousand

1. points that water tank alone might add fifty points.
2. It would be a very small thing.
3. Q. It was just filled with water in the last couple of
4. weeks, wasn't it?
5. A. I don't know. To tell you the truth, I imagine it was.
6. Q. Was there a pressure problem before that?
7. A. I've never had any problem with it. It's my understand-
8. ing that tank supplies the high level system, and we've
9. had fires, for example, at the hospital and Ott Street
10. and all up in that area, and we've never had any trouble.
11. It was my understanding that a lot of that was precipi-
12. tated by the fact that the domestic water service in the
13. area was having problems. But, as far as fire protection,
14. it actually helped us a great deal as far as additional
15. water. I didn't have any complaints before about pres-
16. sure.
17. Q. How about the Forest Hills Subdivision? Have you ever
18. had any complaints about pressure in there?
19. A. No sir, because I'm not responsible for Forest Hills.
20. Q. Are there any pressure problems in there?
21. A. I couldn't tell you.
22. Q. Do you know whether or not it's the City that supplies
23. the water in there?
24. A. I do know that the City, yes sir, puts the water in there.

1. Q. And you've never heard of anyone with pressure problems
2. in Forest Hills?

3. A. We have occasionally had a pump break down. There are
4. two pumps located right in this area right here (indi-
5. cating on map). But, other than that, I have no reason
6. to pay any attention really to what the water pressure
7. is up there.

8. Q. In respect to the City's fire rating, what will happen
9. to that rating in the event you annex this area?

10. A. We would have . . .

11. Q. It's going to go up, isn't it?

12. A. No sir. We would have, in effect, a dual rating. What-
13. ever we are evaluated at in the old City, the five or
14. it could be a four. The effect is that for a period of
15. up to five years the annexation area would carry a separ-
16. ate evaluation.

17. Q. Would that be the same as it's got now?

18. A. It would in the areas that already have water.

19. Q. What period of time did you say?

20. A. For a period of five years the ISO allows you to have
21. a split rate in the City. We would have some areas in
22. the City that it would have the immediate effect of up-
23. grading them to about a six. The other areas where water
24. is already at, by some source or another, it would be the

1. same as the rest of it. It's not unusual at all to find
2. a major area that has different ISO ratings.

3. Q. For a period of five years?

4. A. For a period of up to five years. If at that point--at
5. that point the whole City is supposed to be the same.

6. Q. Right, and if the two new stations aren't in operation
7. by then, the entire City's rating is going to change
8. for the worse, isn't it?

9. A. I would say based on the ISO ratings as I know them, yes
10. sir. If we don't take this action before then.

11. Q. Are you familiar with Fairway Hills Subdivision?

12. A. Yes sir.

13. Q. Do they have a different rating than the rest of that
14. area sought for annexation?

15. A. I'm under the impression, or at least I've been led to
16. believe by a local insurance company, that whenever they
17. write insurance policies in Fairway Hills that they al-
18. low them to have a class eight rating, which is about
19. two cents per hundred better than a class nine. And the
20. reason for that is because of the water.

21. Q. I don't want to belabor this point, I just want to go
22. back across it one more time. I've got what purports
23. to be the agreement signed by William H. Austin and
24. Robert Layman, dated July of 1980.

1. and as described on the attached response map." So, what
2. it's saying there is we've already agreed where we're
3. going to run to start with, and this last paragraph down
4. here only covers anything that happened to be misplaced.
5. We've already agreed ahead of time, or we already know
6. ahead of time through these official documents, where
7. we're going to run.

8. Q. Now, I was talking about pressure problems a little while
9. earlier, and I was wondering, were you familiar with
10. the situation at the Valley Mall prior to the construc-
11. tion by the County of a tank on Chestnut Ridge? Were
12. there pressure problems at the Mall prior to that time,
13. at K-Mart and Krogers?

14. A. I couldn't tell you, sir. They were building the Mall
15. when I got here, if I remember correctly.

16. Q. You mentioned the nursing home for the elderly in the
17. Park View area of the County?

18. A. Yes sir.

19. Q. The plans for the proposed area, the two buildings,
20. won't improve the response time to that; there's nothing
21. developed any closer to that nursing home than what is
22. already there. Is that true?

23. A. If you're talking about response time, we can be out
24. of Station 4 and to the edge of the City limits right

1. now in about two minutes. So, this area that you're look-
2. ing at right here would encompass about another minute or
3. minute and a half response.

4. Q. Where is the nursing home approximately?

5. A. The nursing home is right here (indicating on map).

6. Q. It looks to me like the closest station is Company No. 4.

7. Is that true?

8. A. Yes sir.

9. Q. So, your plan isn't going to help the response time, it's
10. not going to make the station any closer, is it?

11. A. We already have an adequate response time to that loca-
12. tion. What will help is the additional manpower, equip-
13. ment and that water line that comes out 42.

14. Q. Were you aware that there are some sprinklers in that
15. building?

16. A. Yes sir, on a very sparse basis.

17. Q. They're in what they call the high risk areas, store
18. houses or storerooms and things like that?

19. A. Yes sir. They don't have sprinklers in the individual
20. units.

21. Q. You said if there was a major fire in one of the stores
22. at the Mall, that within a relatively short period of
23. time the roof would cave in?

24. A. I'm saying that common experience that has been exper-

1. ienced throughout the United States in fires of construc-
2. tion of that nature have indicated to any Fire Chief who
3. has paid attention to the fire problem that he has only
4. about twenty minutes to try to knock the fire down, and
5. if he can't knock it down an 18 p.s.i. roof is going to
6. collapse.

7. Q. Well, there are sprinklers in the Mall, are there not?

8. A. Yes sir, I indicated that.

9. Q. And I assume that it just being built in the last few
10. years, the roof had to meet some kind of construction
11. standard.

12. A. I suppose you'd have to ask the County Superintendent.

13. Q. You don't have any reason to doubt that, do you?

14. A. No sir.

15. Q. Okay, let's move on to the exhibit concerning the improve-
16. ments in the annexed area. You said you're going to pur-
17. chase one new pumper?

18. A. Yes sir.

19. Q. And what would the cost of that be?

20. A. As I previously testified to, I anticipate it being in
21. the area of eighty-five thousand dollars.

22. Q. And you said you already had some twenty thousand of
23. that money?

24. A. Yes sir.

1. A. It's listed on Exhibit 17 as being a 750 gallon pumper
2. stationed at Station 4 in reserve.

3. Q. And it's not in use at the present time?

4. A. No sir.

5. Q. And you said you were going to move a pumper from Fire
6. Station No. 1 down here to the proposed area in the event
7. of annexation.

8. A. Yes sir.

9. Q. And that would be the . . .

10. A. It's a 1968 Mack, 1000 gallon per minute engine, with a
11. 1979 Detroit Diesel--or Maxidyne Engine.

12. Q. And you said if you annex that area you're also going to
13. need a tanker to serve it?

14. A. No sir. What I indicated was, in my professional opin-
15. ion if we end up with this area right in here, we're
16. going to need the tanker. And I only wanted to point
17. out to the Court that we may or may not need that tanker.
18. If we get the entire annexation area, yes sir, we need
19. a tanker. And it would be located at Station 1.

20. Q. That entire annexation area is roughly two and a half
21. times the present City, is it not?

22. A. From six to another fourteen would be about two and a
23. third.

24. Q. And to serve the entire area you're for sure going to get

1. one pumper and maybe a tanker.

2. A. Yes sir.

3. Q. And that's the basic equipment, that's all the new equip-
4. ment?

5. A. Yes sir.

6. Q. How long does it take to get a new pumper?

7. A. Depending on who you purchase it from, sir, the average
8. construction time is 240 days. However, there is not a
9. manufacturer today who doesn't have some stuff already
10. built. They have the same problems that every car manu-
11. facturer has got, they can't hardly even give them away.

12. Q. Is the same true for a tanker?

13. A. Yes sir.

14. Q. The same time frame?

15. A. Well, no. A tanker, because of the way it's constructed,
16. would take about ninety days.

17. Q. Your current budget hasn't been approved yet, I think
18. you said that.

19. A. No sir.

20. Q. Has the Arson Task Force had a meeting since the New
21. Orleans meeting?

22. A. No sir. As I started to tell you before, it is not a
23. social club and we don't really have regular meetings.
24. We meet when the need is there, and other than that we

1. don't.

2. Q. All right, sir. Now, back to the two proposed fire sta-
3. tions. In the answers to interrogatories, Interrogatory
4. 21 of the second set of interrogatories, you indicated
5. in answer to the County's questions that the design cost
6. for the two new stations would be fifteen hundred dollars.

7. A. Yes sir.

8. Q. Has someone prepared these designs?

9. A. Yes sir.

10. Q. Who has prepared them?

11. A. We have a basic design that's kind of the unofficial
12. version. It was designed by D. P. Davis' architectural
13. firm.

14. Q. Is that a local architect?

15. A. Yes sir.

16. Q. And that was his actual charge for that service?

17. A. No sir, his actual charge was nothing. He didn't charge
18. anything for it.

19. Q. And you said that for the land acquisition for the two
20. tracts of land, twenty thousand dollars?

21. A. Yes sir.

22. Q. How much land do you need for each station?

23. A. The smallest piece of land we could get by with would
24. be maybe four thousand square feet.

1. he wished we'd build it there, he'd let us do it for
2. nothing.

3. Q. But it's your plan, and you're going to stick to this
4. plan, I assume, to build Station No. 2 down along Route
5. 11?

6. A. No sir. I indicated when I was testifying before that
7. they were general geographical areas. It doesn't mean
8. that the station is going to be located right there on
9. that spot. In the first place it's going to turn out
10. to be on a very undesirable piece of land that nobody
11. else would want, and it could be anywhere right in that
12. area.

13. Q. So, you have located no site for either of these sta-
14. tions to date.

15. A. I have three sites in this area that I'm very actively
16. looking at, and I also have three sites in this area
17. that I'm looking at. As a matter of fact, I have four
18. in this area.

19. Q. What is the average price on those?

20. A. Between ten and fifteen thousand dollars. And I want
21. to mention ahead of time, they're not selling them to us
22. obviously at market value; they're doing it as a favor.

23. Q. Can you tell me how far from the Valley Mall they are
24. located? How far is the closest one from the Mall?

1. A. The closest one would be about a thousand feet, right
2. here on Burgess Road, the entrance before you get into
3. the Dunham-Bush Plant.

4. Q. Who is the owner of that tract?

5. A. The land I'm talking about at this time would be owned
6. by Mr. Neff.

7. Q. Let me ask you this, Mr. Austin. There was a misunder-
8. standing, apparently, with the City Manager and he never
9. did answer to our satisfaction this morning about the
10. difference between equipment costs of thirty-eight
11. thousand on your Exhibit 27, Item 3B, as opposed to the
12. answer to 21B in the interrogatories. What was that dif-
13. ference? It shows the thirty-eight thousand for equip-
14. ment in one place and fourteen in the other.

15. A. Yes sir. As I previously mentioned, that fourteen thou-
16. sand dollars is not motorized fire apparatus, it's beds,
17. refrigerators, stoves, all the stuff that would go into
18. a normal fire station as far as equipment.

19. Q. Is that shown on Exhibit 27?

20. A. No sir, it's shown in Exhibit 33. That's part of the
21. quarter million dollars.

22. Q. It's part of the two hundred and fifty thousand?

23. A. Yes sir. As I indicated in the answer to that interrog-
24. atory, fourteen thousand dollars of that quarter million

1. thousands is set aside for equipment to go in the sta-
2. tion, meaning stoves, refrigerators, that kind of thing.

3. Q. Do you have adequate fire personnel and facilities and
4. equipment for the existing City?

5. A. Yes sir, I would say so.

6. Q. But you'd like to have another pumper. Do you really
7. need that other pumper?

8. A. Since the one I want to replace is in reserve, I feel
9. like I'm caught between a rock and hard place, because
10. I made a presentation to the Planning Commission in order
11. to get it. If you want to nail me to the wall, I would
12. say it's going to replace the reserve engine.

13. Q. Have you requested a new one from the Council in your
14. budget?

15. A. I've asked that they increase my normal funding by thirty-
16. eight thousand dollars so that we can do this.

17. Q. When did you ask for that?

18. A. When I made the presentation in front of the Planning
19. Commission.

20. Q. When was that?

21. A. March. Sometime in March.

22. Q. March of 1981?

23. A. Yes sir.

24. Q. Did you also make that same request in 1980?

1. A. Yes sir. I got twenty thousand dollars in the budget.

2. Q. How much did you request?

3. A. Well, I requested the whole thing be funded.

4. Q. In 1980?

5. A. In 1980.

6. Q. So, I guess you felt that you needed it at that time?

7. A. Well, sir, any department that you can go to in the
8. United States is going to have a systematic apparatus
9. replacement program. And I was simply trying to set
10. aside a certain amount of money each year. Certainly
11. I'm going to go in and ask for the whole shooting match,
12. knowing that I'm not going to get it.

13. Q. Well, you asked for the whole thing in 1980, didn't you?

14. A. I sure did.

15. Q. Did you ask for it before that, in 1979?

16. A. Yes sir, I believe I did ask for it in 1979. I'm not sure.

17. Q. So, it was needed back as far as 1979?

18. A. In the sense that I wanted to replace an old engine, yes.

19. Q. You wouldn't ask Council for it if you didn't really feel
20. you needed it.

21. A. I wasn't asking Council, I was asking the Planning Com-
22. mission.

23. MR. SMITH: That's all.

24.

RICHARD PRESGRAVE,

having been duly sworn, testified as follows:

Direct Examination by Mr. Glass:

Q. Would you state your full name, please.

A. Richard Wayne Presgrave.

Q. And where are you employed and what position do you hold presently?

A. Chief of Police, City of Harrisonburg.

Q. And what experience have you had in police work before your present position?

A. I started my police career with the City of Harrisonburg in August of 1960, and was appointed to my present position in January of 1975. I served in supervisory positions the prior fourteen years with the exception of four as patrolman.

Q. What are your duties as Chief of Police?

A. Overall administration of the police department.

Q. Have you examined City Exhibit 14b, and does it accurately describe the general operation of your department?

A. Yes, it does.

Q. Could you refer to Exhibit 19 in the exhibit book in front of you there?

A. The big book or the little book?

Q. The large book, Exhibit 19. How many personnel do you

1. have in your department right now?

2. A. At the present time I have forty-seven. When this was
3. submitted to the Commission on Local Government, I had
4. forty-six. But approximately a month ago I added a
5. secretary to the investigative division.

6. Q. So, that total should be forty-seven there, and you've
7. got two secretaries.

8. A. That's correct.

9. Q. How many sworn officers are among the total there?

10. A. Including myself there are thirty.

11. Q. And how is your department generally organized? Are
12. you made up of certain divisions?

13. A. Yes, we have basically three divisions. The field
14. division, the administrative and investigative.

15. Q. What are the general functions of your administrative
16. division?

17. A. The administrative division takes care of the communica-
18. tions, receiving of phone calls, dispatching, keeping
19. of records, training, the normal logistics that are need-
20. ed for the other units to operate.

21. Q. And how many personnel do you have assigned to that par-
22. ticular division?

23. A. There is a secretary, myself, the records clerk, and we
24. also have four dispatchers.

1. Q. And you mentioned an investigative division. What func-
2. tions does that division perform?

3. A. That division investigates all felonies that occur in
4. the City, they perform background investigations for
5. applicants for the department, they also, if the need
6. arises, conduct the internal investigations within the
7. department.

8. Q. And your last division is the field division? Is that
9. correct?

10. A. That is correct.

11. Q. Could you explain basically how that is organized, and
12. could you also refer to Map Exhibit H-13, which is next
13. to you, in describing the patrol areas.

14. A. The patrol division is the largest division within the
15. department. It's composed of four squads which are made
16. up of a sergeant, a lieutenant and four patrolmen. Also
17. within this division is an animal control officer, a
18. meter officer and a contingent of seven school crossing
19. guards. This is headed by a captain of police, who is
20. also my administrative assistant and acts as acting
21. chief of police in my absence. We use these units to
22. cover the City on a twenty-four hour a day basis. Our
23. grid here, we use this for patrol sectors. If I might
24. explain. In police work we don't set inflexible areas.

1. There is always change in patterns, in crimes, and where
2. the need arises we'll assign people to that area. How-
3. ever, as a basic operation we have a north patrol, a
4. central patrol, a south patrol and a foot patrol of the
5. downtown area. And this is manned by motor patrols as-
6. signed to each area with the supervisors operating on a
7. roving basis. But as far as an area, if it develops a
8. higher problem, we'll concentrate our efforts in that
9. area.

10. Q. Could you explain how many officers you have on duty
11. during each shift patrolling those areas?

12. A. Well, it will vary, but on an average on midnight to
13. eight we'll average six officers; in daylight we'll av-
14. erage nine; and on four to twelve we'll average six.

15. Q. And do you have a fourth shift actually?

16. A. That's a floating patrolman that we use on the eight to
17. four shift which supplements the four to twelve during
18. high incident time.

19. Q. Do you know roughly how many sworn officers per thousand
20. people in the City that results in?

21. A. It's roughly 1.5 officers per thousand. Within the
22. City we have, I guess it would mathematically figure
23. out about the same, probably about one officer per 650
24. citizens.

1. Q. Does the James Madison University have a separate police
2. force?

3. A. Yes, they do. They have approximately sixteen officers.

4. Q. As a result does your department patrol that portion of
5. the City?

6. A. No sir.

7. Q. Do you respond there if there are emergencies?

8. A. Yes sir.

9. Q. Does this division also provide home inspection services?

10. A. Within the patrol division we have a crime prevention
11. officer, Lt. Holloway. He started into this program
12. approximately a year ago. They formed a crime preven-
13. tion organization and he attended that, and he started
14. setting up a program where we will inspect homes, make
15. suggestions for security, and hopefully give help with
16. crime prevention.

17. Q. In addition to the inspection services, does this di-
18. vision provide any other special function?

19. A. Out of patrol and one member out of the investigative
20. division, they compose a five man what we call special
21. situation team. They train together once a month for
22. certain situations that would need a high degree of ex-
23. pertise in handling.

24. Q. Do you also have meter maids?

1. A. Yes, we have one meter maid that enforces the parking
2. ordinances in the downtown area.

3. Q. Do you have an animal warden?

4. A. Yes, we have one animal warden who does an excellent
5. job for us, and we've received many compliments on him.

6. Q. And do you have school crossing guards also?

7. A. Yes sir, seven school crossing guards who work major
8. thoroughfares where children cross going to school.
9. They also conduct pedestrian safety programs for pre-
10. school children, bicycle safety programs, and coordi-
11. nate the patrols, safety patrol activities, that we have
12. within the City school system.

13. Q. In addition to your department, does the City also have
14. a Sheriff's Department?

15. A. Yes, the Rockingham County Sheriff's Department also
16. serves the City of Harrisonburg.

17. Q. Why is that?

18. A. Because of our status as a city of the second class,
19. the Sheriff also serves us.

20. Q. Does the City pay a proportionate share of all the ex-
21. penses for the operation of the Sheriff's Department,
22. including capital outlay?

23. A. It's my understanding they do. As far as the exact percen-
24. tage, I'm not sure. My department pays a per diem basis

1. on prisoner days to the sheriff, and I'm not sure, but
2. I understand that the City pays twenty-five percent of
3. twenty-five percent of the total operation of the Sher-
4. iff's Department and other legal agencies.

5. Q. What services does this joint Sheriff's Department ac-
6. tually perform in the City itself?

7. A. They can perform any function within the City. Basic-
8. ally it's the civil process that the Sheriff serves in the
9. City.

10. Q. Do you recall what the percentage again of the contribu-
11. tion by the City is to the financial operation? I think
12. you said twenty-five percent of twenty-five percent?

13. A. As I said, I'm not that familiar with the costs pro-
14. rated to the City, other than the fact that I pay pri-
15. soner days out of my budget. Now, what I've heard, and
16. I'm not sure this is correct, but I understand that the
17. state pays seventy-five percent, the County picks up the
18. other twenty-five percent, and the City pays a quarter
19. of that twenty-five percent; if that clarifies it, and
20. maybe I misunderstood what I've heard.

21. Q. Does the joint Sheriff's Department provide all jail ser-
22. vices in the area?

23. A. Yes sir.

24. Q. Does the Sheriff's Department provide any general patrol-

1. ling within the City, or have you simply separated patrol
2. areas between the two units?

3. A. The Sheriff's Department leaves the general patrolling
4. and the enforcement of ordinances and laws within the
5. City limits to our department. There have been occasions
6. where they have exercised their authority within the
7. City; but primarily their service to the City is process
8. serving.

9. Q. Does your department presently have arrest jurisdiction
10. outside the existing City boundaries?

11. A. We have authority within a mile radius of the City.

12. Q. All right.

13. JUDGE TRABUE: Do you exercise it? Do you
14. exercise your authority within the mile outside the
15. City?

16. A. Not on a regular basis. It's primarily in response to
17. a request from the Sheriff's Department or an emergency
18. felony situation.

19. Q. Can you tell me, are there some businesses located with-
20. in the proposed annexation area which are hooked into
21. your alarm system?

22. A. Yes sir, there are.

23. Q. Could you point some of those out, where they are locat-
24. ed?

1. A. Most of them--there are six that are located on the
2. 33 corridor and Valley Mall area; most of them being
3. banking institutions and one of them is the J. C. Penney
4. store. Their alarm is in our building. There has also
5. been recently opened another branch of a bank out here
6. on South Main, Massanutten Bank and Trust, which has put
7. their alarm into our office.

8. Q. Do you also provide any escort service for some business-
9. es in the annexation area?

10. A. We will on request, which is primarily the branch banks
11. whose main offices are located within the City limits.

12. Q. Can you tell me how many sworn officers the joint Sher-
13. iff's Office has on duty at any one time during the day?

14. A. They have twenty deputies plus the Sheriff; twenty-one
15. enforcement officers. And a breakdown of I believe it's
16. the April schedule showed that there would be an average
17. of four deputies on midnight to eight, and seven from
18. eight to four, and five from four to twelve, if I remem-
19. ber correctly. I believe that's correct.

20. Q. Have you recently calculated your average response time
21. when you receive an emergency call?

22. A. I had one of my records clerks do an analysis. On over
23. three hundred calls of a non-emergency situation which
24. didn't require the use of red lights or sirens, the

1. response time was between three and four minutes. In
2. over a hundred emergency-type calls where they used red
3. lights and sirens to respond, it was between one and two
4. minutes response time.

5. Q. You mentioned that on occasion you respond to an emer-
6. gency in the annexation area. Have you on occasion been
7. the first unit to respond to the scene?

8. A. Yes. Primarily because of the close proximity to it
9. and a unit being in an area that may be adjacent to it.
10. We would on an emergency at times be the first to arrive.

11. Q. Have you recently examined the published crime statistics
12. collected by your joint Sheriff's Department?

13. A. Yes, I've looked at some figures within the grid areas.

14. Q. Could you tell me what those figures indicated, with re-
15. spect to the crime rate within the proposed annexation
16. area as compared to the rest of the County.

17. A. I didn't work up a percentage on them, but according to
18. the Commission's report figures in a section, the D Sec-
19. tion, I believe, according to the Commission's figures
20. the crime in this proposed annexation area amounted to
21. approximately twenty-eight percent of the crime report-
22. ed for 1980, I believe, for the Sheriff's Department;
23. which is indicative of an urbanizing area. Wherever you
24. have a higher concentration of people and businesses and

1. stuff, you'll tend to have a higher incidence of crime.

2. Q. You said you didn't calculate a percentage yourself, but
3. what could you tell from the examination of the statis-
4. tics yourself?

5. A. Compared to the other areas that it showed a higher
6. incident than some of the other eight grid areas.

7. Q. Can you tell me if in police circles it's generally ac-
8. cepted that a higher incidence of crime in a particular
9. area would require greater police protection on a compar-
10. ison basis?

11. A. Yes.

12. Q. Is it generally accepted in police circles that urban
13. or urbanizing areas require greater police protection
14. than rural areas?

15. A. It requires a higher concentration.

16. Q. Do you have an opinion as to whether there is a need
17. for increased police patrol within the annexation area?

18. A. Yes, it's my opinion that the Rockingham County Sher-
19. iff's Department, they have a fine department, and they
20. are well trained. I guess if you put us on a scale as
21. far as training and type personnel, it would balance
22. out. However, on geographical area we would be able to
23. provide faster response time, more concentrated patrol;
24. because the Sheriff has such a tremendous area that he

1. has to cover with the personnel he has. He has, as I
2. said before, I think twenty-one personnel counting him-
3. self that are enforcement officers, and I'm not sure of
4. my math on this, but it's over eight hundred and fifty-
5. some square miles that he has to cover. So, basically
6. on space and manpower availability, we'd be able to re-
7. spond faster and have a higher concentration.

8. Q. If the annexation of this area was granted could the
9. joint Sheriff's Department concentrate their efforts on
10. a smaller geographical area?

11. A. Well, I would assume that the same procedure would ex-
12. ist that exists now, that primarily the civil process
13. would take place within this area and the general patrol-
14. ling and enforcement would be basically left up to our
15. department. However, this still doesn't relieve him of
16. any enforcement responsibility within there. So, there-
17. fore he would be able to concentrate his personnel on
18. a smaller area by not having to concentrate on the area
19. that's proposed.

20. Q. Have you developed a plan as to how to extend the same
21. level of services provided by your department in the
22. existing City into the proposed annexation area?

23. A. Well, I have a general plan which, as I've stated before,
24. is very flexible.

1. Q. Could you refer to Map Exhibit H-14 on your left there,
2. and explain what that shows.

3. MR. FITZGERALD: It's H-12.

4. Q. Pardon me. (Exhibit H-14 placed before witness)

5. A. This just basically shows a dividing of the area. As the
6. City was north, central and south, we have northwest or
7. northeast, southeast and southwest, and the units would
8. be assigned into the area as the situation dictated.

9. Q. Those would be general patrol areas?

10. A. Yes, these are general patrol areas. There would be
11. two units primarily in this area, a unit and supervisor
12. unit here, the foot patrol still in the downtown area.
13. As I said before, this is flexible, depending on what's
14. needed at the time.

15. Q. How many additional personnel do you propose to add to
16. your existing staff to serve that area?

17. A. It's not a great number. Six. I feel that we'd be able
18. to add additional personnel to the patrol division and
19. investigative division, and that they would be able to
20. concentrate their efforts in these areas, and still main-
21. tain the same level that we have at this time.

22. Q. Would you add an additional station at all?

23. A. No.

24. Q. Why would you not do that?

1. A. We have sufficient facilities at the present time for
2. this proposal.

3. Q. Could you refer to Exhibit 27. Have you estimated the
4. cost of capital outlays that would be necessary to extend
5. services?

6. A. Yes, I have. This is, as you've said, an estimate.

7. Q. How many patrol cars would you have to add in order to
8. extend the patrol area?

9. A. Three. I believe three would be sufficient.

10. Q. Can you buy three patrol cars for eighteen thousand dol-
11. lars?

12. A. Well, hopefully we can. It would be put out for bid.
13. At the time I made this estimate I felt that we could
14. possibly get the bid at that price.

15. Q. Have you in the past purchased some cars for something
16. in that neighborhood?

17. A. Relatively close, yes.

18. Q. What is included in the ten thousand five hundred dollars
19. for equipment for the three cars? What would that be?

20. A. This is more or less your radio equipment, red lights,
21. siren, weapons that go with the vehicle; this type emer-
22. gency equipment.

23. Q. How about the six thousand dollars, item C?

24. A. This is based on the average that we worked up, that it

costs about a thousand dollars to equip a police officer from the skin out.

MR. GLASS: I have no further questions.

Cross Examination by Mr. Smith:

Q. Just a couple of questions, Chief. One thing I sure won't ask you about is your meter maid, because as far as I'm concerned she's probably the best in all of Virginia.

A. I'll convey that to her.

Q. The training of the Sheriff's Department is basically the same as of your department, isn't it?

A. Yes.

Q. Both the same, at the Academy in Waynesboro, Virginia.

A. Yes.

Q. Could I see your existing patrol areas exhibit? What part of the City has the most intense crime rate?

A. Well, I like to think we don't have any one particular area that has any intense crime rate. I'm proud of Harrisonburg and I think the citizens here are, and it's a safe city. I think it would be doing an injustice to point out any particular area and say that this is a higher crime area or a higher incident, because a relatively few people commit crimes, and to point to a par-

1. ticular area, I think, is unfair to other people living
2. in that area.

3. Q. You have a walking patrol in the downtown area, is that
4. for a particular reason?

5. A. It's kind of a public relations, give direction type
6. thing. At night we have some cocktail lounges and dif-
7. ferent type security patrols for downtown businesses.

8. Q. All right, sir. You testified that James Madison Univer-
9. sity has its own police department?

10. A. Yes sir.

11. Q. And you don't respond there except on emergencies.

12. A. Yes, they have sixteen men.

13. Q. And there are also state police officers operating in
14. this area, are there not?

15. A. Yes sir, they have their area office right out in this
16. area.

17. Q. And do they operate to patrol the interstate along the
18. City boundary and also in the annexation area?

19. A. I know they patrol the interstate, they work accidents
20. and traffic throughout the County. And I think on oc-
21. casion they will do some criminal investigations.

22. Q. Will they do criminal investigations in the City?

23. A. Not normally. They have, as the Sheriff's Department
24. has, jurisdiction within the City. However, they more

1. or less maintain their patrols and stuff outside the City.
2. However, if a trooper comes within the City limits and
3. sees a violation, he will take, of course, some action.

4. Q. I've heard reference to a joint Sheriff's Department.
5. What does that mean? There's only one Sheriff, isn't
6. there?

7. A. There certainly is, Glenn Weatherholtz.

8. Q. He's elected by the voters of the City and the County?

9. A. Yes.

10. Q. And he runs the jail?

11. A. Yes sir.

12. Q. You don't have anything to do with that?

13. A. I pay per diem per prisoner day.

14. Q. And that's the City's participation, isn't it?

15. A. Yes sir.

16. Q. It pays on a per head basis, doesn't it?

17. A. Yes sir.

18. Q. And the towns in the County also have police departments
19. of their own to one extent or the other, do they not?

20. A. Yes sir.

21. Q. You said there were businesses in the Route 33 East area
22. that had communication hookups with your department; there
23. was six of them out there?

24. A. Yes sir, I believe that's the number.

1. Q. And there are also a greater number that are hooked into
2. the Sheriff's Department, are they not?

3. A. I don't know what the number is, but there are some in
4. the area, yes sir.

5. Q. Although the Sheriff has a large County area to cover,
6. there really isn't any crime in the National Forest and
7. those areas, is there?

8. A. Well, wherever you can get some people together I guess
9. you can have crime anywhere; so I would assume there are
10. at times crime in the National Forest.

11. Q. Do you have any statistics on that?

12. A. No sir, I don't.

13. Q. Do you recognize this book called, "Crime in Virginia"?

14. A. Yes sir.

15. Q. There are various statistics in this book concerning
16. crimes in all the localities in Virginia, are there not?

17. A. Yes sir.

18. Q. And your department provides information each year for
19. this purpose?

20. A. Yes sir, that's correct.

21. Q. And the Sheriff's Department provides information each
22. year for this purpose?

23. A. That's correct.

24. Q. This book here is for the year 1979. Would you show me

1. the number of crimes per hundred thousand that occurred
2. in 1979 in the City of Harrisonburg?
3. A. This is the crime rate per hundred thousand. Three thou-
4. sand seven hundred and seventy-eight point nine four.
5. Q. And the total crime index is what, sir?
6. A. Seven hundred and eighteen.
7. Q. Is that the actual number of crimes that happened that
8. year?
9. A. That's the actual number of reported crimes..
10. Q. And there's also a column for the percent of them clear-
11. ed?
12. A. That's correct.
13. Q. Would you tell us what that is for the City of Harrison-
14. burg?
15. A. Twenty-three point two zero.
16. Q. Now, for the same year let's compare that to Rockingham
17. County. How many crimes per hundred thousand people
18. in Rockingham County?
19. A. One thousand two hundred and fifty-two point seventy-
20. two.
21. Q. And the actual crime by number?
22. A. Six hundred and eighty-nine.
23. Q. And what was the Sheriff's ratio for clearing them in
24. that year?

1. A. Approximately three percent more than mine at that time.
2. But my average was the state average--a little bit better
3. than the state average.

4. Q. So, is it fair to say, Chief Presgrave, that in 1979
5. there were fewer crimes in the eight hundred and some
6. square miles of the County than there were in your six
7. square miles of the City?

8. A. It would be fair to say that there were fewer reported
9. crimes in the County than in the City.

10. Q. Aren't those statistics the best you can get? They're
11. provided by your department and the Sheriff's Department.

12. A. That's right, and our statistics are gathered from those
13. that are reported to us by the citizens.

14. Q. Well, you keep records on the number of crimes that
15. happen in your City, don't you?

16. A. Yes sir.

17. Q. And the ones that are cleared?

18. A. Yes sir.

19. Q. And these are your figures that go into this.

20. JUDGE MOON: I think he's answered the ques-
21. tion. The point he's making is, which is known every-
22. where, that over half the crime is never reported any-
23. where. I think that's what he's saying.

24. A. And I think, you know, to clarify it a little bit, since

1. you got to talking about percentage rates and things,
2. I think if you'll look at the bottom line, this is true
3. of Sheriff Weatherholtz too in the County, he's below
4. the state average and above the state average in crime
5. clearance. The City of Harrisonburg is below the crime
6. per hundred thousand on the state average, and slightly
7. above the clearance rate on the state average.

8. Q. Your twenty-eight percent figure for the area, I believe
9. it's D, around the City, you said that that was twenty-
10. eight percent of the County's total?

11. A. I didn't say . . . I said that I read in the Commission's
12. report that of the total crimes that were reported in
13. 1980, twenty-eight percent of them or twenty-eight per-
14. cent of the increase was within the quadrant D, I believe
15. is what it was, which is in this proposed area. Like I
16. said, I didn't get the percent; this was in the Commis-
17. sion's report.

18. Q. You don't have any of your own information on that, do
19. you, sir?

20. A. Other than this report that the Commission had.

21. Q. Where did you get that from?

22. A. Mr. Glass.

23. Q. When you testified to twenty-eight percent, what were
24. you referring to? Was that twenty-eight percent of the

1. County's crime or twenty-eight percent of the City's, or
2. what? What does that figure relate to, where did it come
3. from?

4. A. My understanding from the report was that they were within
5. the area that encompasses the proposed annexation area,
6. excluding Harrisonburg.

7. Q. But it's twenty-eight percent of what, Chief?

8. A. Of his total reported crime in the County.

9. Q. Of the County.

10. A. Yes. Which shows to me, which is obvious, that you have
11. higher crime in urbanized area versus rural area. And
12. as this area urbanizes, the incident of crime will in-
13. crease.

14. Q. Did someone prepare that twenty-eight percent figure for
15. you?

16. A. The only one that prepared it was in that Commission's
17. report. The Commission prepared it, I assume.

18. Q. Then you said, I think, that your departments you feel
19. are about equal in their ability and training and so on?

20. A. Yes, we both have excellent departments.

21. Q. Just a couple more questions, Chief. It looks to me
22. like in the yellow patrol area that it's split by Inter-
23. state 81. How are your people going to get back over
24. there if they get a call if they're patrolling in this

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant

VOLUME II

This is to certify that the following is a transcript of the proceedings held before the Honorable Norman K. Moon, R. William Arthur, and Kenneth E. Trabue, in the above styled case on the 9th day of April, 1981, in the Courtroom of the Circuit Court of Rockingham County, at Harrisonburg, Virginia.

The following was recorded by the undersigned and is certified to be a true and correct transcript of the proceedings according to the best of my knowledge and belief.

Given under my hand this 24th day of April, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.

Christine Bradshaw
Court Reporter

1. MR. GLASS: We have one brief witness, Glenn
2. Weatherholtz.

3. MR. SMITH: If this is for the purpose of
4. putting that document before the Court, we'll agree to have
5. you do that.

6. MR. GLASS: I have another question or two,
7. but it is basically for that purpose.

8. MR. SMITH: Are you calling him as your wit-
9. ness?

10. MR. GLASS: Yes, we are.

11.
12. GLENN M. WEATHERHOLTZ,
13. having been duly sworn, testified as follows:

14. Direct Examination by Mr. Glass:

15. Q. Would you state your full name, please.

16. A. Glenn M. Weatherholtz.

17. Q. Where are you employed now and what is your position?

18. A. I am the Sheriff of Rockingham County and the City of
19. Harrisonburg.

20. Q. I would like to show you a document. Would you explain
21. to the Court what this document shows?

22. A. This is the crime record for Rockingham County dealing
23. with 1979 calendar year, and we have the County marked
24. off in grids to show where our problem areas are and al-

1. so for statistical purposes, for filing. That's basical-
2. ly it.

3. Q. So, do the letters marked on the map correlate to the
4. figures on the tabular page?

5. A. Yes sir.

6. Q. And does the page showing the figures of crimes accurate-
7. ly reflect the crimes reported to your department?

8. A. Yes sir, they do.

9. Q. Was this document presented to the Commission on Local
10. Government through its Executive Director last December?

11. A. I gave it to the Executive Director; I didn't give it to
12. the Commission. He asked me for this when we had a dis-
13. cussion during a break.

14. MR. GLASS: Judge, we would like to introduce
15. this as City Exhibit 54.

16. JUDGE MOON: It will be received as Exhibit
17. 54.

18. Q. Sheriff, if the proposed annexation were granted, would
19. you be able to better concentrate your patrol forces in
20. the smaller geographic area?

21. A. Yes sir. I would say overall that would be a true state-
22. ment.

23. MR. GLASS: No further questions.

24.

REGINALD S. SMITH,

having been duly sworn, testified as follows:

Direct Examination by Mr. Glass:

Q. Would you state your full name, please.

A. Reginald S. Smith.

Q. And where are you employed presently?

A. I'm the Director of Public Transportation for the City of Harrisonburg.

Q. And what functions do you have as Director of Public Transportation?

A. I manage and operate the transportation system, which consists of a taxicab company, a fixed route bus system, a paid school system, and vans which perform special functions.

Q. Have you had any prior education in the field of public transportation?

A. I've attended seminars. In 1977 I attended a seminar at V.P.I., Transportation for the Handicapped. In December of 1977 I attended a seminar, Transportation, Public Transportation as Part of the Transit System. In 1980 I attended a seminar, Non-Urbanized Public Transportation.

Q. Other than privately owned cars and trucks, can you tell me what transportation is available to the general public

1. in the Harrisonburg area excluding what's provided by
2. your department.

3. A. Greyhound operates an intercity fixed route bus service,
4. and there is one taxicab in Dayton.

5. Q. Does Greyhound provide local service throughout the area,
6. or how does that operate?

7. A. They have a terminal in Harrisonburg. They don't provide
8. local service, they just have a terminal in Harrisonburg
9. where they stop.

10. Q. Does City Exhibit 14d accurately describe the history
11. and operation of your department?

12. A. Yes sir.

13. Q. Can you explain how the City initially became involved
14. in providing public transportation?

15. A. Originally there were two taxicab companies that operat-
16. ed as one, City Cab and Yellow Cab. They operated as
17. one company. And their operations were running into
18. deficits, and they in 1975 informed the City that they
19. were operating at a deficit and intended to discontinue
20. business. At that time the City offered them a subsidy
21. of fifteen cents per mile to operate, to continue opera-
22. tion. So, the City paid them fifteen cents a mile for
23. all City runs. And with this they operated until 1976,
24. and informed the City that at the end of 1976 they in-

1. tended to discontinue operating regardless of whether
2. the City continued the subsidy or not.

3. Q. About that same time did you have some outside consul-
4. tants study the need for public transportation in the
5. Harrisonburg area?

6. A. Yes sir. Kimley-Horn did a study in 1976, Immediate
7. Action for Transportation. And in 1978 we did a study
8. with the Highway Department on public transportation in
9. the area.

10. Q. Can you state very briefly what those consultants found
11. with respect to the need for public transportation in
12. the City?

13. A. Well, Kimley-Horn found that there was definitely
14. a need for transportation in Harrisonburg, with the
15. economy, the people that lived in the area, the low in-
16. come, elderly, and students. And they felt that the
17. City should provide some type of transportation if the
18. taxicab companies did discontinue business, that there
19. would be quite a few people with no transportation.

20. Q. Since that time has the City met the basic requirements
21. for public transportation which was recommended in those
22. reports?

23. A. Yes sir. Kimley-Horn in their study gave the City
24. four alternatives, and they highly recommended that the

1. City purchase the taxicab company, which the City has
2. done. And we've followed their recommendations and the
3. Highway Department's recommendations.

4. Q. Can you tell me how your department is organized?

5. A. Well, myself, we have a supervisor who's under me, a
6. bookkeeper, a secretary which is under me, and our dis-
7. patchers who are the supervisors in charge or basically
8. run the operation.

9. Q. Does your department operate a fixed route bus system?

10. A. Yes sir, it does.

11. Q. Could you refer to City Exhibit 23b and also Map Exhibit
12. H-29, which is to your right?

13. A. This shows our fixed route system. In a study that I
14. personally did we determined that about sixty-five per-
15. cent of our passengers had trips that originated or des-
16. tinations downtown. So, with the help of several individ-
17. uals we set up a fixed route system, which originates
18. downtown. There are four basic routes which run on a
19. loop system, a full loop system, and have headways of
20. one hour. They are half hour routes that begin on the
21. hour and half hour. The blue route we call Route 1,
22. the orange route begins downtown on the hour, the green
23. route and the red route begin downtown on the half hour.
24. These buses run their route and return downtown. When

1. we set up these routes we were concerned with the school
2. population. We set up each route so we could cover all
3. the schools. Route 1, we covered the Senior Citizen's
4. Center, the Activities Center at Westover Park, Hillan-
5. dale Park, residential in Hillandale, Valley Heritage
6. which is a shopping complex, and we return downtown.
7. Route 2 covers Harris Gardens, which was a major concern
8. of ours, it comes through by Simms School, it goes to
9. Cloverleaf Shopping Center, it goes to the medical of-
10. fices in that area, and then goes by Spotswood Elementary
11. School, and it returns downtown. Route 3 goes by the
12. Medical Arts Center, out to Nichols, by James Madison
13. University, Purcell Park, to Rockingham Memorial Hospi-
14. tal. Route 4 also covers Harris Gardens, Heritage Haven
15. which is actually outside the City limits, Eastern Men-
16. nonite College, Park View Medical Center, Waterman
17. School. In our route system we cover all the schools,
18. all the major generators of passengers within the City
19. and a few in the Park View area.

20. Q. Did you say what frequency the service runs?

21. A. Each route is run once an hour. So, we have one hour
22. headways, and they're half hour routes that would run--
23. Route 1 and 2 will run on the hour, and Route 3 and 4
24. begin on the half hour.

1. Q. How many hours a day do the buses run?

2. A. We run from seven in the morning until six in the even-
3. ing.

4. Q. How many days a week?

5. A. Monday through Friday. And from nine to three on Satur-
6. day. We run these on all days except holidays; but if
7. schools are open we run on holidays, any day schools
8. would be open.

9. Q. What is the basic fare for riding those buses?

10. A. We charge forty cents for your average, regular passen-
11. ger, and twenty-five cents for students, senior citizens
12. and the handicapped.

13. Q. Can you board anywhere along each route?

14. A. Yes sir. Our routes are set up so that a person, if he
15. lives along the route, he can call our dispatcher--all
16. our equipment is equipped with two-way radios--and he
17. can stop the bus anywhere along the route. He wouldn't
18. have to walk two blocks just to get to a bus stop.

19. Q. About how many people use this route system during a
20. typical day?

21. A. Presently we're at about a hundred and fifty to a hun-
22. dred and sixty passengers a day. Our ridership has been
23. slowly increasing since this service began. When we
24. began we were about a hundred and twenty a day, and we're

1. slowly increasing.

2. Q. What type of people are typically your riders on the sys-
3. tem?

4. A. We figure about thirty-three percent are senior citizens,
5. another thirty-three percent are students, with the re-
6. mainder being to and from work.

7. Q. And how many buses do you actually have to operate this?

8. A. For this system we have three seventeen-passenger Wayne
9. Transette buses.

10. Q. Are you in the process of buying more buses right now?

11. A. Yes sir. We have an application in through the Urban
12. Mass Transportation Act, Section 18, to buy two addition-
13. al buses, which would be diesel, thirty-one passenger
14. buses.

15. Q. And how much do those buses run?

16. A. About a hundred, hundred and eight thousand dollars.

17. Q. Have you received any indication as to whether your
18. application will be approved?

19. A. I have received oral word that our application would be
20. approved, and we've been given instructions to go ahead
21. and start writing up our specifications, which are forty-
22. six pages. So, we feel certain that we'll get this grant.

23. Q. You mentioned taxi service also. Could you describe that
24. aspect of your department?

1. A. We run a conventional taxi service. It's a metered sys-
2. tem which does basically what any taxi company would do.
3. Our dispatcher takes calls, we serve the Harrisonburg
4. area, and anywhere basically a person wants to go.
5. Through this system we do transportation for the school
6. system for special education, we do a lot of package
7. deliveries. Just a conventional taxi service.

8. Q. How many taxis do you have?

9. A. Right now we have ten taxis. We operate that system
10. from six in the morning until midnight, three hundred
11. and sixty-five days a year. And unlike most taxi compan-
12. ies, when it snows or the weather is bad it's less expen-
13. sive for them to shut their doors; we during bad snow
14. storms, we've stayed open twenty-four hours a day to
15. ensure people would get to work at the hospital or doc-
16. tors needing to get to patients. We've kept this busi-
17. ness open.

18. Q. And you said your taxis operate basically anywhere people
19. want to go?

20. A. Yes sir.

21. Q. How far do they actually go?

22. A. Well, occasionally we'll have trips to Washington, D. C.,
23. to the airport; basically anywhere a person has money
24. that they want to travel, we'll take them. On our per-

1. mit we can go anywhere in the state.

2. Q. Do you operate at a loss on the runs outside the City?

3. A. No sir.

4. Q. Your meter doesn't start until you get there or it only
5. runs halfway, doesn't it?

6. A. Yes sir.

7. Q. Why are you able to do that?

8. A. Well, actually, if you put a driver in a car and he
9. leaves Harrisonburg and drives for an hour, he can cover
10. say fifty miles. Our fare for that would be thirty dol-
11. lars. The average fare for running in town, or the aver-
12. age driver that stays in town, will average seven dol-
13. lars an hour. Well, the time he spends driving back is
14. dead time, but he still will have more revenue, it's
15. less wear and tear on the car, and it's less gasoline
16. than remaining in town. Actually as a business we would
17. prefer to run out of town all the time and forget about
18. staying in town.

19. Q. You mentioned school busing also. What does your de-
20. partment provide in terms of busing for students?

21. A. Well, when the City started the transit system, their
22. main concern was school children. Because there are
23. some areas that there is a problem or was a problem for
24. transportation. The City is not required by law to pro-

1. vide free busing for students. The schools aren't far
2. enough away from where the children live. And we began
3. when the City got in the taxi business, we began trans-
4. porting them in taxis. Our numbers got too large to take
5. them in taxi cabs and we started this bus system. And
6. when the bus system began during school times we got off
7. our routes and did what was necessary to get the school
8. children home. With seventeen passenger buses we over-
9. loaded them within six months time. So, we bought yellow
10. school buses, which we felt were safer, they had more
11. room, and they were more for students to ride on. And
12. we have routes for Waterman School, Spotswood School,
13. and the High School that we . . .

14. Q. Fixed routes?

15. A. Fixed routes that we run in the morning and the evening.
16. And we charge a fare for students to ride this bus.

17. Q. How much is that?

18. A. Twenty-five cents, or they can buy coupons, twenty-five
19. rides for five dollars, which will save a dollar.

20. Q. About how many children ride it per day?

21. A. At present we have about three hundred and ten to three
22. hundred and fifty students a day that we transport to and
23. from school.

24. Q. Do you also provide any special services for the schools?

1. A. Our department, when the City took it over, the School
2. Board provided us with a van that they had used for spe-
3. cial education. In the meantime the special education
4. laws have grown and our department has purchased a wheel-
5. chair lift van and we have another fifteen passenger van
6. that we use in providing free transportation for special
7. education students through something we've worked out
8. with the School Board. In that program we have probably
9. thirty to forty students a day that through taxicabs,
10. our vans and the buses, for special education pay no fare.

11. Q. Does your department also provide other specialized trans-
12. portation services; and, if so, could you describe those.

13. A. Well, with our school buses we provide transportation
14. for the high school. At this time of year the high
15. school has a busy athletic schedule, they have a lot of
16. athletic events, and we do some transportation for them.
17. The bus that you rode on Monday is owned by the schools
18. but the driver that was driving it is employed by me.
19. We pretty much see to it that that vehicle is maintained,
20. cleaned. If the regular driver can't drive, I schedule
21. someone to drive that bus.

22. Q. Do you provide services for the senior citizens?

23. A. Yes sir. We have a contract with Valley Program for
24. the Aging Services, where any senior that's going to the

1. Senior Citizens Center can board one of our route buses
2. and go to the center for no fare. We go by the center
3. once an hour, we also provide--they have a food program
4. where we deliver their food to them. They have home-
5. bounds, people that can't get out, food is delivered to
6. them. We take care of this service. If they have field
7. trips or special events, we will provide their transpor-
8. tation.

9. Q. Do you provide any transportation for handicapped adults?

10. A. Yes sir. Like I said before, we have a wheelchair lift
11. van that we have available at all times to anyone in the
12. public in the general area that needs transportation and
13. is required to ride in a wheelchair lift van. It is
14. available to the public.

15. Q. Have you developed a proposal as to how the City would
16. extend its fixed route bus system into the annexation
17. area if the annexation is granted?

18. A. Yes sir.

19. Q. Before you describe that, was there one addition to the
20. large map showing your existing system which is not
21. shown in the reduced size map?

22. A. Yes sir. This area right here, Heritage Haven. On the
23. reduced map we did not include this, because we've chang-
24. ed this route. It opened after all the other maps had

1. gone into the printer. And March 1st we began serving
2. this area.

3. Q. Could you describe how you would extend your fixed route
4. system upon annexation? This is Map Exhibit H-30.

5. A. Our blue route--now, there's a mistake right here. It's
6. shown as going across, midway between Harrisonburg and
7. Dayton. There's no road in there. We would extend this
8. to cover to Dayton, back across through Mosby Road, and
9. try to make sure we serve this trailer park right in
10. here. Also we would serve Pleasant Valley Industrial
11. Park, which we have demand for service in that area.
12. There are a lot of people working in this area which have
13. transportation problems. I might mention too, the Dayton
14. area, Marval Poultry, they have a transportation problem
15. with employees. We've worked with them in providing
16. transportation during the past. We would also stop at
17. the Deer Run area, which is a low income housing project.
18. I'm sure it's going to demand transportation. And the
19. Ashby Heights-Forest Hills area. Our orange route, Route
20. 2, we would extend out to the Valley Mall. There is a
21. constant demand for our service to provide bus service
22. to the Mall. The drivers say everyday they're getting
23. people wanting to go, and I know I've gotten numerous
24. calls; it's highly demanded for transportation to that

1. area. North of town we would continue to serve Heritage
2. Haven and Park View.

3. Q. Would you adjust and/or extend those routes based on
4. changes in the demand for services that might occur?

5. A. Whatever is necessary. We know that these are areas that
6. we need to serve, and what follows after that, we'll ad-
7. just the services.

8. Q. If the annexation of this area is granted would you con-
9. tinue to provide the school bus transportation?

10. A. No sir. If the annexation is granted the school system
11. would be required to provide free school busing. I'm
12. sure though that we would work with the school system,
13. since we are running buses--would be running buses in
14. this area. We'd work with them and we'd provide a cer-
15. tain amount, but we wouldn't be doing all the school
16. busing.

17. Q. Would the various special transportation services that
18. you described be extended into the annexation area?

19. A. Yes sir. Our contract with V.P.A.S. is to cover the
20. Harrisonburg vicinity, and we would do that with no
21. problem. Our taxi service goes anywhere now, and we
22. don't see any problems there.

23. Q. Would you need any additional equipment in order to pro-
24. vide those specialized transportation services?

1. A. Not really. Our fifteen passenger van we use now for
2. special services is used out of the day approximately
3. four hours, and in a year's time we put five thousand
4. miles on it. Our wheelchair lift van is two and a half
5. years old and we've got four thousand miles on it. So,
6. we don't feel we need to purchase equipment for special
7. services.

8. Q. You think you have some surplus capacity?

9. A. Yes sir.

10. Q. How many additional personnel would you have to hire
11. to operate the extended fixed route bus system?

12. A. We anticipate four additional employees; one supervisor
13. and three drivers.

14. Q. How many additional buses would you have to purchase?

15. A. We'd purchase three additional buses to the two we're
16. getting right now.

17. Q. Could you refer to City Exhibit 27, and look at line 5,
18. it's headed Public Transportation Department.

19. MR. FITZGERALD: Exhibit 27?

20. MR. GLASS: Exhibit 27.

21. Q. Could you explain the six thousand dollar figure adja-
22. cent to A, three twenty-nine passenger buses.

23. A. The six thousand dollars is the local cost of purchasing
24. three twenty-nine passenger buses. Under Section 18 the

1. local share is one percent, and that would be our percent.

2. Q. How much would the actual cost of those buses be?

3. A. It would be three hundred thousand dollars is what we
4. figured.

5. Q. And would you have to apply for federal funding?

6. A. Yes sir.

7. Q. In the ordinary course of the operation of your depart-
8. ment, do you receive information with respect to avail-
9. able federal funding and procedures to obtain such?

10. A. Yes sir, we get about five publications and the state
11. publication, and we're in contact with Richmond pretty
12. regularly.

13. Q. And could you tell me if President Reagan's proposed bud-
14. get cuts would affect the funding that you referred to
15. in relation to the purchase of these buses?

16. A. From what I understand right now, President Reagan's cut
17. will be in operating expenses and for projects that aren't
18. finished. He's not proposed to cut out capital--he'd
19. like to see cities continue to operate their systems.

20. JUDGE TRABUE: Are these the same three bus-
21. es you were talking about already anticipated?

22. A. No sir, these would be additional.

23. Q. You now have an application in for three buses?

24. A. Two right now. Two at present, yes sir.

1. Q. This would require a separate application?

2. A. Yes sir.

3. Q. What would the twenty-six thousand dollar figure repre-
4. sent, the category of materials?

5. A. Well, we anticipate that the annexed area, it would
6. take pretty extensive advertising to make the public
7. aware of what services we do provide, and it takes right
8. many materials to get the buses going; to put brochures
9. out, the different materials we'll need, just to serve
10. this area.

11. Q. Can you tell me if your department is self-sufficient
12. from a revenue standpoint? And by that I mean do the
13. revenues that you receive from fares and for fees under
14. your contract for special transportation services cover
15. all of your expenses?

16. A. No sir, not as a total department. We have it broken
17. down and certain divisions are on a break-even basis,
18. but as a total department we do not break even.

19. Q. Which are on a break-even basis?

20. A. The taxicab company, we try to run them at a break-even
21. point and we pretty well do that. And our school buses
22. we try to, but we don't do it. So, really the taxicab
23. is the only one that breaks even or some of the vans.

24. Q. So, does the City from other funds subsidize the opera-

1. tion of your department?

2. A. Yes sir, from the general fund we're subsidized. This
3. year's budget calls for seventy thousand dollars from
4. the general fund. Last year was sixty-one thousand dol-
5. lars. 1978, I believe, was fifty-eight thousand. 1977
6. was twenty-five thousand. In addition to that there's
7. money for capital, for purchasing equipment that the
8. City has put into the system also.

9. ~~MR. GLASS: I have no further questions.~~

10.
11. Cross Examination by Mr. Fitzgerald:

12. Q. How much do these buses cost?

13. A. A hundred thousand dollars a piece.

14. Q. You're buying three of them?

15. A. For the annexed area, yes sir.

16. Q. And you say the local share is one percent?

17. A. Yes sir.

18. Q. And one percent of three hundred thousand is six thou-
19. sand?

20. A. I believe. I don't have my calculator with me.

21. Q. You need a calculator to take one percent of three hun-
22. dred thousand?

23. A. All right, that's two percent, excuse me. The federal
24. share is eighty percent, the state share is eighteen

1. percent, and the local share is two percent.

2. Q. Two percent.

3. A. Yes sir.

4. Q. How long have you had the application pending for the
5. two that you say you need now?

6. A. I believe it went in July of last year.

7. Q. So, from July of last year until now you still haven't
8. gotten the final word?

9. A. I haven't, not in writing, no sir.

10. Q. Until you get it in writing you don't have it, do you?

11. A. I don't have any dollars in my hand.

12. Q. And you don't have approval that you can go ahead and
13. order buses on, do you?

14. A. I have oral approval.

15. Q. Are you going to order the buses on that oral approval?

16. A. No sir.

17. Q. So, you can't order those two buses until you get written
18. approval.

19. A. No sir.

20. Q. How long do you anticipate that it will be before you
21. get those two buses from the time you order them?

22. A. From talking to salesmen, most of them right now are
23. promising four to five months.

24. Q. Four to five months. So, have you had any experience of

1. A. No sir.

2. Q. You didn't decide the proposed bus route?

3. A. I drew the line going up there to Dayton. Now, I don't
4. know how . . . originally there wasn't a road in there,
5. but evidently when it went to the printers somebody
6. thought that was a road through there and they changed
7. it. I didn't draw that road there.

8. Q. The line where it is is not where you said it should be?

9. A. I don't think so.

10. Q. You certainly wouldn't have proposed a bus route where
11. there was no road.

12. A. Unless I was going to build a road on it.

13. Q. And you don't propose that.

14. A. No sir.

15. Q. You have never recommended to the Council that they
16. increase the bus fares to approach the break-even point?

17. A. No sir. We're in the process of trying to--we feel that
18. raising our fares would discourage people from riding
19. the buses. And, like I say, just over the past six
20. months our revenues have increased about seventy percent
21. daily, since say school began; and we feel that our re-
22. venues are increasing and to raise our fares would dis-
23. courage people from riding the buses and they would, in
24. turn, go back to the taxicabs or just not ride at all.

1. A. Now, this is the year ending July 1, 1980.

2. Q. Right.

3. A. Now, taxi fares, do you want to add these figures up?

4. For City fares we got \$86,000.00, for County fares we
5. got \$44,000.00, under a contract we have with the Health
6. Department to provide transportation for persons to and
7. from medical facilities we got approximately \$7,000.00,
8. and for package delivery \$5,500.00.

9. Q. Fifty-five hundred?

10. A. Yes sir.

11. Q. For that package delivery anybody can call up and get
12. a taxi to deliver a package?

13. A. Yes. We have a lot of businesses in the Pleasant Valley
14. Industrial Complex we do a lot of package delivery for
15. now.

16. Q. Now, do you have a copy of the Audit Report for that
17. year? Are you familiar with the City Audit Report?

18. A. Audit?

19. Q. Yes sir.

20. A. No sir.

21. Q. You are already providing some bus routes outside the
22. City, aren't you?

23. A. Yes sir, to Park View.

24. Q. I believe you said that as your ridership increases you

1. keep approaching a point nearer a break-even point on
2. your buses.

3. A. Hopefully, but not many transit companies do have.

4. Q. I understand it's a hard job, but it's true that the
5. more full the buses are . . .

6. A. The closer you can get.

7. Q. The closer you can come to it. You recognize that?

8. A. Yes sir.

9. Q. And that, I assume, is why you're running a route to
10. Park View, because of the business there and you feel
11. the need there.

12. A. Actually, the reason we're running to Park View is be-
13. cause we told them we would.

14. Q. Well, you must have had some reason to tell them you
15. would.

16. A. And when we set up the system we wanted to cover Eastern
17. Mennonite College.

18. Q. It was profitable or reasonable.

19. A. We thought so, yes sir.

20. Q. And you've found no difficulty running up there outside
21. the City, have you?

22. A. Well, this last change to go to Heritage Haven, we spent
23. probably--we have brochures right now, we ran an ad in
24. the paper that cost about five hundred dollars. So, it

1. is pretty costly to do it. It will take a good while to
2. pay for it. But there's a lot of people that's moved
3. from the City to that complex that's been riding our
4. bus system. I don't know, we just felt we should get
5. them a way into town. They're kind of stuck out there
6. with no means of transportation.

7. Q. Well, what you're saying is, there was a demand for it?

8. A. Yes sir.

9. Q. And you feel you've covered that demand.

10. A. Yes sir.

11. Q. Where did you get the bus from to haul the elderly people?

12. A. The bus?

13. Q. Yes, is this one of your regular buses that goes out
14. there?

15. A. That goes out to Heritage Haven?

16. Q. Yes.

17. A. It's one of our seventeen passenger buses.

18. Q. One that you bought, the City bought?

19. A. The City bought, yes sir.

20. Q. Were you furnished any funds from the state to buy that
21. bus?

22. A. No sir.

23. Q. I've been looking at my copy in the small book, is that
24. H-30 up on the board?

1. I believe a year and a half later. When the City took
2. it over gasoline was fifty-five cents a gallon, and
3. that's about the time gasoline skyrocketed. When the
4. City took it over also a lot of employees there were
5. making two dollars an hour. And, you know, we've made
6. some changes. The City immediately spent \$110,000.00
7. in purchasing equipment for the City Cab.

8. Q. But at the time you took it over gasoline was fifty-five
9. cents a gallon and the two taxicab companies couldn't
10. make a go of it, even with a fifteen cents per mile
11. subsidy.

12. A. No sir, not according to them.

13. Q. And they got the City to purchase both companies and the
14. equipment. And the City raised the rates to \$2.70 . . .
15. is it a flat rate, or how much is it?

16. A. Our rate now is \$1.00 for the first two-sixths of a mile,
17. ten cents a sixth. And if you'll look around the state,
18. there's not anyplace in the state that you're going to
19. ride for those rates. We're still very cheap.

20. Q. Very low?

21. A. Yes sir.

22. Q. You're paying two and a half times the amount that the
23. other cab companies were paying for gasoline at least.
24. What do you pay for gasoline now?

1. A. Well, we won't exactly run to West Virginia out of the
2. clear blue sky. You have to understand that you just
3. don't--you know, you get some prank calls and things like
4. that. But if a person would get in a cab here in Harri-
5. sonburg and put the money on the meter, we'll take them
6. to West Virginia. But we wouldn't run over there unless
7. we were certain that there was a passenger there.

8. Q. I believe it was Mr. Milam who testified at the Commis-
9. sion hearing that if somebody in West Virginia, one of
10. the nearby towns, wanted to come to Harrisonburg, they
11. could call the cab company and the cab would go out there
12. and get them and charge them one way.

13. A. Yes. Well, if we know that they're there and we have a
14. lot of cases where it might be paid by the Health De-
15. partment, Medicaid, Welfare; if we're certain we're going
16. to get our money, we'll go get them.

17. Q. You'll go get them?

18. A. Yes sir.

19. Q. And even you say you'll take people to Washington, D. C.

20. A. Yes sir. We have businessmen or individuals who need
21. to go to the airport, and we'll go to Washington, D. C.

22. Q. And I believe I asked the question, if I called up from
23. Middleburg and asked them to come get me and bring me
24. here, if they were sure of getting the money they'd bring

1. me.

2. A. I guess we would.

3. Q. And still it's a break-even proposition to charge for
4. only a one-way trip on that?

5. A. Well, if we're only transporting them one way, yes sir.
6. Now, if they go to and from, we'll charge them half fare
7. for the return trip. But, like I explained before, a
8. driver, when he gets in his car and rides for fifty
9. miles, he's going to--for an hour, he's going to approx-
10. imately cover fifty miles. The fare would be thirty
11. dollars. It will take him an hour to return. So, he
12. has received an average of fifteen dollars an hour.
13. To stay in town, to run dollar calls, \$1.20 calls, they
14. average around seven dollars an hour. So, actually he
15. has doubled his regular rate.

16. Q. Well, in that hour you would have to conclude that the
17. cab in town would be running constantly, wouldn't you?

18. A. Yes.

19. Q. If they're not running, they're not using gasoline.

20. A. No sir.

21. Q. Your proposed line you show down to the southeastern
22. end of the proposed area to be annexed, goes down to
23. what point?

24. A. Well, it would go down to Dayton, down to Marval, which

1. would actually extend out of the proposed line. Like
2. I say, this is incorrect, there is no road here. It
3. would come down to this corner, hit Route 701, and come
4. back Mosby Road.

5. Q. Come down into the Town of Dayton?

6. A. Well, it would come in on 42. There's a stoplight there
7. where we took the bus tour and turn left.

8. Q. I'm talking about the one over to the east.

9. A. Okay, right here, yes sir.

10. Q. You show it coming down and going back.

11. A. Yes sir.

12. Q. The red line.

13. A. Yes sir.

14. Q. What is at the end of that red line?

15. A. Right here?

16. Q. Yes.

17. A. This is Pleasant Valley Industrial Park.

18. Q. All right. Do you know that just down below that is
19. the Welfare Department?

20. A. Well, we'll cover this general area. Wherever we can
21. find a reasonable turn-around point, we'll turn around.

22. Q. That's just general then.

23. A. Yes sir. And we have a lot of passengers now that we
24. take to the Welfare Department in taxicabs from, you know,

1. from the area.

2. Q. Your taxicab service wouldn't change at all in the area
3. that's annexed, would it?

4. A. Well, right now we charge a flat rate. If we pick up
5. a person at the Valley Mall and take them over to Neff's
6. Trailer, we're running out of the City limits, we never
7. come in the City limits, we charge a flat rate which is
8. a little more than the mileage, which the way the ordi-
9. nance is, we don't have to go by meter there. Now, that
10. we would run on the meter. Actually the fares to the
11. people in this area would be reduced.

12. Q. It would be reduced?

13. A. Yes sir.

14. Q. It would depend on where they were going, wouldn't it?

15. A. It would depend on where they were going, yes sir.

16. Q. And how far.

17. A. If a person--like right now we'll get a person that lives
18. in this area right here, if they come back and don't come
19. in the City limits here, they pay a flat rate. Right now
20. also in this area. If they don't come back in the City
21. limits, they pay more than if they come in the City lim-
22. its. They'll pay proportionately a little bit more.

23. Q. They pay more for a shorter trip than for a longer trip?

24. A. Yes sir, because it takes us gas and time to go to this

1. distance, and then we don't return to the City limits;
2. which we base our operation within the City.

3. Q. So, if they'd just come over in the City limits, it
4. would cost them less than if they stopped short of the
5. City.

6. A. Well, not necessarily cost them less, but their fare
7. would be proportionately . . .

8. Q. Yes sir. So, the question of whether or not they pay
9. less or more depends on how far they are going.

10. A. Yes sir.

11. Q. Regardless of the fares, I'm talking about the service,
12. the service, the taxi service, would be identical.

13. A. Yes sir.

14. MR. FITZGERALD: Okay. That's all.

15. JUDGE MOON: Thank you, sir.

16. MR. GLASS: Cecil Gilkerson.

17.

18.

19.

20.

21.

22.

23.

24.

1. CECIL GILKERSON,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Glass:

4. Q. State your full name, please.

5. A. Cecil Gilkerson.

6. Q. Where are you employed, Mr. Gilkerson?

7. A. With the City of Harrisonburg as Director of Parks and
8. Recreation.

9. Q. And what functions do you have as the Director of Parks
10. and Recreation?

11. A. To organize a municipal recreation department and to
12. have thorough knowledge of the parks system, and have
13. proper training in both.

14. Q. What education and prior experience do you have in the
15. field of parks and recreation?

16. A. I hold an A.B. Degree in Parks and Recreation Administra-
17. tion from North Carolina, Catawba College; and I have
18. had graduate courses in parks and recreation. I have
19. also served on commissions throughout the state, I've
20. been president of the Parks and Recreation Society, I
21. served on the Regional Commission under Governor Harri-
22. son which was the forerunner of the Commission of Out-
23. door Recreation. I have been the Director of Parks and
24. Recreation in the City of Harrisonburg for twenty-seven

1. years.

2. Q. Have you examined City Exhibit 14e, and does it accurately
3. ly describe the general history, organization and facil-
4. ities in your department?

5. A. Yes sir, it does.

6. Q. When did Harrisonburg first establish a Parks and Recrea-
7. tion Department?

8. A. In the early fifties there was a part-time Parks and
9. Recreation Department established. In 1954 the first
10. full-time Parks and Recreation Department was begun;
11. that's June 1, when I came here.

12. Q. Could you describe very generally the administrative
13. organization of your department?

14. A. Well, under the administrative organization, we have
15. a Director, Assistant Director, we have a Director of
16. Athletics, we have a full-time Aquatics Director, Center
17. Director, a Park Maintenance Director, and National
18. Guard personnel.

19. Q. How many professional recreators do you have in the
20. department?

21. A. We have fourteen professional recreators who hold cer-
22. tificates in recreation or related fields. We have
23. twenty-seven full-time employees, including the fourteen
24. professional people we have.

1. Q. And how many part-time employees do you have?
2. A. We have thirty-eight part-time employees, and at times
3. that could swell to fifty; it just depends.
4. Q. About how many acres of land and facilities used for
5. recreation are owned by the City?
6. A. We have approximately 250 acres of park land in the City
7. of Harrisonburg.
8. Q. Are there recognized standards as to the amount of land
9. a locality should own for recreation purposes?
10. A. Well, the general standard is ten acres of park land per
11. one thousand population. However, when you have athlet-
12. ic areas and active areas, you require more land.
13. Q. Does the City meet that standard?
14. A. Yes sir.
15. Q. Would you refer to Map Exhibit H-15 to your left and
16. briefly describe the physical facilities operated by
17. your department and point out the locations.
18. A. Starting in the southwestern end of the City with Hil-
19. landale Park, this is approximately a seventy-five acre
20. park. I believe the bus ran in this area. Approximately
21. two-thirds of this park is in the County. This park is
22. a fully developed area with water and sewer, and with
23. all park facilities, including shelters, comfort stations
24. and water. Going on down into the western area of the

1. City we run into Westover Park, which is approximately
2. fifty acres. And in that area we have roadways, shelters;
3. another family park. Also situated in that park we have
4. a municipal swimming complex and also the Community Ac-
5. tivities Center, which is located in that park here (in-
6. dicating on map). It's a forty thousand square foot
7. building and it's basically in the center of that area.
8. Going over several blocks we run into a seven acre tract
9. of land, that is the National Guard Armory. The Armory
10. is under our department. And in this building we house
11. most of our physical activities such as your athletic
12. leagues and so forth, using this building very exten-
13. sively. Going to the northwest we have a small neighbor-
14. hood park, Morrison Park, which we passed yesterday, hav-
15. ing tennis courts and other park facilities, athletic
16. facilities. This is adjacent to Waterman School. We
17. have always felt that this park was very important be-
18. cause, as you can see, the department in the City was
19. divided into quadrants, and we needed this western sec-
20. tion up there because of the population in that area of
21. the Waterman School area. Then going on over to the
22. northeast section of the City is Northeast Park. There
23. is a thirteen acre tract of land in there adjacent to
24. an athletic area. This is fully developed and ties back

1. into Simms School, which we're now using as a recreation-
2. al building along with special activities in the schools.
3. Coming back, we have a very small area, the Kiwanis Park.
4. It's located adjacent to public housing and, again, adja-
5. cent to Spotswood Elementary School in this area. This
6. map does not show the Eastover Tennis Courts, but they
7. are also on the other side of Spotswood School. Coming
8. back out into the south portion of the City, approximate-
9. ly forty-two acres, Purcell Park. This is a fully devel-
10. oped area, with tennis facilities in this area, and it's
11. basically where most of our athletic events are held.

12. Q. Could you point out the Westover Park complex again?

13. A. (Witness indicates on map)

14. Q. Is that where we stopped for lunch on the bus tour?

15. A. Yes sir. We stopped here at the Community Activities
16. Center.

17. Q. Could you describe the evolution of that particular
18. facility and indicate the funding that was involved for
19. that complex?

20. A. Well, this building has always been a dream for the City
21. of Harrisonburg. Actually when we bought the park land
22. we developed the swimming pool back in 1970, and even
23. built a hundred thousand dollar bathhouse to go with
24. the swimming facility way back then, thinking possibly

1. that we would be granted this building sometime in the
2. future. In 1975 we applied through the discretionary
3. funds for a block grant through HUD. And in May of that
4. year we were granted \$492,000.00 from HUD to help with
5. this building. At that time the City added a little over
6. six hundred thousand dollars and we put this building out
7. for bid, I believe, in August of 1975. And we moved into
8. this forty thousand square foot area on January 12, 1977.
9. This is a handicap barrier, it does not have one step
10. throughout the building. It was designed for the City
11. residents in the City of Harrisonburg. There was no
12. funds or no intent or through the application . . . I
13. have heard that we have used County resident figures for
14. this application, and at no time in this grant, which we
15. have with us, does it say anywhere in the grant that any
16. population of the County was used for us to receive these
17. funds.

18. Q. You mean in the application you were required to state
19. population figures?

20. A. Right.

21. Q. And did you rely at all on County population figures
22. in the application itself?

23. A. Absolutely not.

24. Q. Does your department also have use of the facilities

1. owned and operated by the City School Board?

2. A. Yes sir. The City School Superintendent and I have been
3. friends for thirty years, and we operate at school facil-
4. ities. They move out at three o'clock and many of the
5. gymnasiums we move into at three o'clock. We have a
6. very unique situation here in the City because much of
7. our facilities, many of our facilities that we own, they
8. share. We felt it was a duplication if the schools built
9. tennis courts when we owned tennis courts, so they use
10. our facilities and we, in turn, exchange with their fa-
11. cilities. And this is done at no cost to each other.
12. A lot of facilities you have to pay lights, water, elec-
13. tricity, but this is not done. It's just done on an
14. equal basis.

15. Q. When you mentioned the acreage figure, the amount of
16. land owned by the City, did that include the acreage
17. owned by the School Board?

18. A. No sir. They have "x" number of acres that are consti-
19. tuted through the state . . . they are mandated through
20. the state to have "x" number of acres for each school.
21. But this does not include that acreage.

22. Q. Does the School Board operate a separate athletic pro-
23. gram, the standard array of school athletic programs?

24. A. Yes sir. They perhaps operate one of the finest athletic

1. programs in the State of Virginia.

2. Q. When you circled the map there and described facilities,
3. did you include any private commercial facilities that
4. are available?

5. A. No sir.

6. Q. Did you include James Madison's facilities?

7. A. No sir.

8. Q. Are those open to the public?

9. A. No sir.

10. Q. Could you briefly describe the scope of organized recrea-
11. tional programs which are offered by your department?

12. A. Well, I'd hate to take the time this morning to go
13. through all the programs this department offers, and I'm
14. not sure the Court wants to hear all that; but basically
15. we have every program available to the youth and adults
16. that we can possibly think of. We start our programs
17. with the preschool age child and carry them through to
18. senior citizens. And we have a standard athletic pro-
19. gram, we have a unique athletic program. Every athletic
20. program we have for the boys or for the men, we try to
21. have the same thing for the girls and women. And this
22. has worked out very nicely in our program over these
23. years.

24. Q. Do you have any special programs for handicapped individ-

1. uals?

2. A. Yes sir. We have programs for the handicapped, we have
3. handicapped swimming in the summer which our facilities
4. carry out. Also throughout the winter we have six or
5. seven handicapped groups that come in either twice a week
6. or on a weekly basis into the center to use all the cen-
7. ter facilities, and sometimes they bring their supervisors
8. and other times we provide supervisors for the handicap-
9. ped using this building.

10. Q. In the past have you had any outside consultants study
11. the needs for recreational and park facilities within
12. Harrisonburg?

13. A. Yes, we have. We started out very small back in the
14. early sixties, and at that time we had the National
15. Parks and Recreation Association out of New York come
16. in and lay out an area for us, in 1964. Then we really
17. started getting into high gear around 1968 so far as
18. purchase of park land, because we knew at that time if
19. we didn't get it then it wouldn't be on the market. And
20. at that time we brought in the Charles Graves Associates
21. out of Atlanta, Georgia who did a master park plan for
22. Hillendale Park and for the swimming facility at West-
23. over Park and for the Community Activities Center. This
24. was done in 1968.

1. Q. Did the City actually adopt a master recreational plan?

2. A. Well, we've had a master parks and recreation plan,
3. which was adopted way back in 1954 and 1955, and it's
4. been upgraded as we went along and purchased more proper-
5. ty. In 1968 a very extensive master parks and recreation
6. plan was adopted by the City, and it did meet all the
7. needs that we felt we had in 1968. And since 1968 we
8. have purchased four pieces of property and all of those
9. pieces of property did fit into the master parks and re-
10. creation plan.

11. Q. Can you tell me what your present budget is for your
12. department?

13. A. Well, we at the present time are very fortunate, we
14. operate at a little over five hundred thousand dollars
15. in parks and recreation for the City of Harrisonburg.

16. Q. Can you tell me what amount of money has been spent by
17. the City on recreation and parks over the past ten years,
18. including all sources of funds?

19. A. Well, in the past ten years the City has spent five mil-
20. lion seven hundred and twenty-six thousand dollars. Out
21. of that amount four million two hundred thousand was
22. local and one million four hundred thousand was from the
23. federal or state, which is about seventy-five percent
24. of local funds.

1. Q. Are some of your present facilities and programs being
2. used by residents within the proposed annexation area
3. and the remainder of the County?

4. A. Yes, they are.

5. Q. And can you estimate what percentage of all persons using
6. certain of these facilities and programs reside in the
7. County in the annexation area?

8. A. Well, we have ways of checking where people are from
9. when they use the various facilities that we have. For
10. example, if you want to use a park facility or a park
11. shelter, you must call in advance. In the larger parks,
12. Hillandale, Westover, Purcell, and Riven Rock Park, you
13. must call in advance to reserve a shelter. And we have
14. found over the last several years fifty or sixty percent
15. of the people who reserve these shelters are from the
16. County. Now, that does not say that fifty or sixty per-
17. cent of the people who use the parks are from the County,
18. because as you go into the parks and you do not want a
19. shelter, if you want to go in and jog or walk the trails
20. or take the children to the playground equipment or what-
21. ever you might have, there is no way for us knowing that;
22. and many of those are not County residents. In many of
23. our other areas, we do try to keep track as best we can,
24. but it's very hard to do so.

1. Q. How about adult classes, have you estimated the percent-
2. age of use there?

3. A. Well, adult classes that we offer in our program is on
4. a breakeven basis, or maybe a little profit back to the
5. City. And I would say approximately thirty to forty
6. percent are from the County there.

7. Q. And how about swimming facilities?

8. A. Well, swimming facilities are pretty hard to estimate.
9. We offer a swim pass, a family swim pass, in the summer.
10. If you want to bring your entire family to swim in our
11. facilities seven days a week in the summer, you can do
12. so for forty dollars a year. Or, if you want to come as
13. an individual and swim, you can do so at fifteen dollars
14. a year. Now, this coming year those fees have been up-
15. ped, I believe, to fifty dollars and twenty dollars, try-
16. ing to create a little more revenue. And I would say
17. approximately fifteen or twenty percent of these people
18. are from the County.

19. Q. Does that include also people who wander in on a daily
20. basis?

21. A. Well, we average somewhere around a thousand people a
22. day in our swimming facilities, just people coming in,
23. and of course that includes these family passes. And it
24. would be rather hard to estimate what number there comes

1. from the County. But the people working there on a daily
2. basis basically know where people are from, and probably
3. fifteen percent, maybe twenty percent, of those people
4. would be from the County.

5. Q. Do you have membership passes at your Westover Park
6. facility, the Community Activities Center?

7. A. The Community Activities Center, yes, we do have. We
8. have tried several ways to help control our usage of the
9. Community Activities Center. This building is a large
10. building and it houses a lot of people, and I do not
11. know the total, the extreme total, that it would handle,
12. because everyone does not use this building at the same
13. time. This building is opened at six o'clock in the morn-
14. ing three mornings a week, and other times it's opened
15. at ten. It stays open seven days a week. And it goes
16. until ten o'clock in the evening. So, at the present
17. time--or, back when we began in 1977, we issued five
18. hundred memberships to the County; just arbitrarily pick-
19. ed out a figure of five hundred memberships to the County.
20. And they were swallowed up in about--well, it was very
21. quick one day, it was the County day, and it was very
22. quick.

23. Q. Did you have more applications?

24. A. We had a great deal many more people standing in line

1. after we took the five hundred.

2. Q. Do you know what that number is?

3. A. It was hard really to say how many we had standing in
4. line. I know we were called everything except a gentle-
5. man by those we left standing in line. But I could see
6. why, because they wanted to use that building, it was a
7. nice building; but unfortunately those five hundred cards
8. that we issued, a lot of those people didn't even use
9. those cards. So, we started reissuing cards or validat-
10. ing and revalidating, and now we have at the present time
11. about 650 County residents holding membership into that
12. building. We have issued about 3,500 City adult member-
13. ships into that building, and then . . .

14. Q. Pardon me, what was that figure?

15. A. About 3,200 to 3,500 the last time I checked it. And
16. every child in the City of Harrisonburg holds a member-
17. ship card to that center, because we go into the school
18. system with the camera and shoot an I.D. of every child
19. in the first grade through the senior high. However,
20. senior high uses this same card for their activities
21. card, so it's a multiple purpose card. But, I don't
22. think that the center is really that crowded. Now,
23. please remember this, that the center up until five
24. o'clock each afternoon, you do not need any type of I.D.

1. Everyone comes in and they don't need any type of I.D.
2. They just check out equipment in the building, and that
3. is another way we find out where people are from, be-
4. cause they usually leave a driver's license or something
5. for a basketball or whatever they check out. But up
6. until five no one has to do this, and at five o'clock we
7. put a limit on it because we were having some problems
8. with J.M.U. students using the center. We do not mind
9. that they use the center, or whoever uses the center,
10. but around three o'clock we get the J.M.U. students out
11. because that is when really our high school and junior
12. high school children come in to start using the building.
13. But basically the other adults can use the building
14. up until five o'clock without any type of I.D.

15. Q. Is that building used by any special education or handi-
16. capped groups?

17. A. Oh, yes, yes. I mentioned back here, we have about five
18. or six handicapped groups that do use that center.

19. Q. And where are they from?

20. A. Well, most of the handicapped groups are from in this
21. area, but we have one handicapped group, the Plgmalion
22. School that comes out of Staunton, they very often use
23. this building.

24. Q. Is there any cost to these particular groups?

1. A. No, absolutely there's no cost at all to the handicapped
2. that use this building.

3. Q. If the annexation of this proposed area is granted, have
4. you developed a proposal for extending certain of your
5. recreational facilities within the proposed annexation
6. area?

7. JUDGE MOON: Let's take a ten minute recess
8. before we start on that.

9. (Recess)

10. Q. Mr. Gilkerson, have you developed a proposal as to how
11. you would extend certain of your facilities into the
12. annexation area if the Court grants annexation?

13. A. I have, sir.

14. Q. Could you refer to Tabular Exhibit 20 and again the large
15. map exhibit and describe what you propose? Are the
16. items under Facilities Exhibit 12 the particular sort
17. of facilities that you would plan to locate in each of
18. these designated locations?

19. A. They are, sir.

20. Q. Would you go to the large map and briefly describe those.

21. A. Well, basically what we'd do, we'd add some more park
22. land throughout the area and some more athletic areas
23. should be added throughout the proposed annexed area.
24. We would basically add about fifty acres or request this

1. area in here. This is approximately fifty acres in
2. small tracts coming off of Westover. And the reason for
3. this would be it's so much cheaper for the City to do
4. this since we have all our facilities, sewer and water,
5. in the area already, to extend them and extend the road-
6. way back into this park area. We would go out into this
7. area (indicating on map), which we feel should be ser-
8. viced, in this area composed of eighty acres. It's a
9. very rocky area, a very wooded area, has a quarry on the
10. area, but we're pretty familiar with quarries because
11. Westover Park had a quarry on it also. Park people
12. really don't get the finest land to develop parks
13. throughout America. And then we would come back down
14. in this area, this is approximately sixty acres, and
15. we own that tract. That is the landfill. And, as some
16. of you may know, what happened to the landfill down at
17. Virginia Beach, they made a park out of it, and this
18. would be exactly what we would propose here; however it
19. would not be a park it would be an athletic complex,
20. which would have four athletic fields, and this would be
21. very definitely needed on account of adults as well as
22. children. And we would add fifteen acres to Purcell
23. Park, which is basically in a floodplain zone, and to
24. tie into Interstate 81. So, actually the proposal into

1. the area would be approximately two hundred acres.

2. Q. Are those generalized locations?

3. A. Just generalized, all together. All except for this
4. location (indicating on map). This is not generalized,
5. we own that tract.

6. Q. If the annexation of this area is granted, would the
7. large Community Activities Center be available to all
8. residents of the proposed area?

9. A. Oh, absolutely. The Community Activities Center, I'm
10. sure, is handling some of these people at the present
11. time. And I believe the population is only around five
12. thousand or so in the proposed annexed area, and I'm
13. sure we could handle a big percentage of those people
14. into that building.

15. Q. Are there presently some limitations on the use of your
16. tennis courts for County residents?

17. A. Well, there are, yes. We have at the present time sixteen
18. tennis courts, and our sixteen tennis courts . . . when
19. we had four, eight, twelve, naturally the demand was
20. greater. And when we go into expanding, sixteen, and
21. probably in the future we'll put them in four or six at
22. a time. But, County residents have used our tennis
23. courts, and we have a ruling now that County residents
24. can use the tennis courts as long as they play with a

1. City resident. And I'm sure that we do not have an ac-
2. curate count of how many County residents are using the
3. tennis facilities, but I do know this, the County--indi-
4. viduals in the County, have put in a great number of
5. tennis courts, so we do not have the demand now that we
6. had maybe a year or so ago.

7. Q. In the event of annexation would that limitation as to
8. County residents in the proposed area be removed?

9. A. Well, right. We feel sure that we could handle the new
10. annexed area. However, if we would go into these pro-
11. posed areas, there would be more tennis courts located
12. in those areas to help house those people in the annexed
13. area.

14. Q. Do you indicate some tennis courts on your Exhibit 20?

15. A. Yes. I would certainly say that six or eight tennis
16. courts would go into the area, the northeast area.

17. Q. What additional number of personnel would be required to
18. carry out your plan?

19. A. Well, we feel again, according to how much and how quick
20. we would get geared up, we feel we could come along with
21. about six people, about three laborers and three more
22. professional people, in our department.

23. Q. In your opinion do the residents of the proposed annexa-
24. tion area have a need for these additional facilities

1. and unrestricted access to your existing facilities?

2. A. Well, I think so. I think there definitely is a need
3. for people in the annexed area for these facilities,
4. especially in the Forest Hills or Ashby Heights subdivis-
5. ions. We teach tennis and teach a woman's tennis league
6. basically in the spring and the fall every year, and
7. many of those people are coming from those areas. So,
8. we definitely feel that there would be a need for it.

9. Q. Have you estimated the cost that would be necessary to
10. make these improvements?

11. A. Well, . . .

12. Q. Could you turn to Exhibit 27, and if you would look at
13. item 4.

14. A. That's the first year. That's what we call minor capi-
15. tal outlay. None of that would be personnel, that would
16. be getting geared up, maybe several vehicles, radio sys-
17. tems, going back into our main system, tools, things of
18. that nature.

19. Q. Would you turn to Exhibit 33, and would you explain
20. line 7 on Exhibit 33?

21. A. Well, over the ten year period we'd spend approximately
22. a million dollars in the parks and recreation system
23. if the annexation was granted. The first four years
24. being \$236,500.00. And basically that is for acquisition

1. of land and other items that may go with acquisition of
2. land, as far as communications, vehicles, construction
3. equipment, and things of this nature. And then as you
4. go over in the next priority, of four to seven years,
5. we'd go back and we'd start developing some of the land
6. that we purchased the first four years. And we continue
7. with this type of basis where we acquire land and then
8. go back and help develop the land.

9. Q. So you would phase in these facilities throughout the
10. ten year period?

11. A. Absolutely.

12. Q. One last question, can you tell me what is the importance
13. of recreational activities today? Are they simply lux-
14. uries?

15. A. No. Recreation today is very essential to any government,
16. municipal or county government. I might say at this point,
17. Your Honor, that we work very closely with the County Re-
18. creation Department. And it's very essential that . . .
19. we see recreation and parks as very important, and really
20. as important as schooling or any other department in any
21. government. Because we feel that by handling preschool-
22. ers, it helps the young mother get that child out of the
23. house, the young married couple after work, the senior
24. citizens. We feel all these people have a need for re-

1. week.

2. Q. Does your store do any business with the City of Harri-
3. sonburg?

4. A. No sir, nor with the School System for the City of Harri-
5. sonburg?

6. Q. Is it doing business with the County?

7. A. Yes sir.

8. Q. In your Exhibit 14e, you have indicated Switzer Dam and
9. Skidmore Lake as recreational areas. They are located
10. outside the City, are they not?

11. A. Absolutely.

12. Q. In the County of Rockingham?

13. A. Yes sir. It's a watershed area for the City, approxi-
14. mately two thousand acres.

15. Q. All right, sir, and Skidmore Lake is a fishing area?

16. A. It was a lake put in as a watershed area with the Soil
17. Conservation and the City of Harrisonburg, and it is used
18. for a fishing area.

19. Q. There are numerous other fishing areas in Rockingham
20. County, aren't there? Trout streams . . .

21. A. Absolutely.

22. Q. And people from the City and the County use those for
23. recreational purposes.

24. A. Absolutely.

1. Q. Now, let's take a look at your Exhibit 20, which indicates
2. approximately between two hundred and two hundred and
3. fifty acres of existing park land. Do you have it there?

4. A. I don't have it, but go ahead, I can follow you. I know
5. it well enough.

6. Q. That is true, isn't it, you have about two hundred and
7. fifty acres of park land.

8. A. Two hundred and fifty acres, and when I went over that
9. I should have pointed out, Mr. Smith, that I believe
10. twenty-odd of those two hundred and fifty acres is in
11. the Riven Rock Park area, and that is outside the City
12. of Harrisonburg, which is under our control. Riven Rock
13. Park is in the west portion of the County, going out in
14. this direction (indicating on map). So, it would be less
15. that amount.

16. Q. Okay, that's listed here, I believe, as twenty-seven
17. acres?

18. A. Right.

19. Q. How about Hillandale? Is part of that in the County?

20. A. Yes sir.

21. Q. Is that counted in those two hundred and fifty acres?

22. A. Yes sir.

23. Q. So, well, how much of it is in the County?

24. A. Well, as you can see here . . .

1. Q. What is that in acres, do you know?

2. A. Well, there's seventy-five acres in there, so I would
3. say two-thirds of it is in the County.

4. Q. All right. Does the present City have any need for ad-
5. ditional park land?

6. A. Yes sir.

7. Q. Why do you say that?

8. A. Well, I believe I stated a few minutes ago that the de-
9. mand for our parks at the present time is a crowded sit-
10. uation, especially on weekends. And we need to expand,
11. we need to expand our park facilities, especially family
12. park facilities, and we definitely need to expand our
13. athletic areas because we've got all our athletic areas
14. at the present time jammed up in a small concentrated
15. area at Purcell Park.

16. Q. Well, you said that this general standard is ten acres
17. per thousand residents.

18. A. That's right, only except in active areas and athletic
19. areas.

20. Q. You said that the present City meets that standard?

21. A. That's right.

22. Q. And I believe if you add up the acreage that you seek
23. to annex and use for parks, that would come to approxi-
24. mately 208 additional acres.

1. A. I said approximately two hundred acres.

2. Q. And you're aware that there are approximately five thou-
3. sand people in that area sought for annexation.

4. A. But I'm also aware, sir, that more than five thousand
5. people could be using those facilities. People from
6. Broadway, Timberville, Elkton and anywhere else could
7. be using those facilities.

8. Q. I think on your direct examination you said that the
9. Northeast Park in the City had thirteen acres. Did you
10. mean something different than that?

11. A. Let me check, sir.

12. Q. Your exhibit says thirty-two on it.

13. A. Okay.

14. Q. I just wanted to make it clear.

15. A. That would be correct. There's approximately twenty
16. acres of developed area in that section and approximately
17. eleven or twelve undeveloped acres in that area around
18. the reservoir which is under our master plan.

19. Q. Now, you said that the Westover Park development began
20. in 1970?

21. A. The park system itself. The swimming pool was construct-
22. ed in 1970.

23. Q. Were all of those City funds that went into the swimming
24. complex or swimming pool?

1. A. Absolutely. A half million dollars.

2. Q. Okay, and you said you had spent money for a bathhouse?

3. A. Yes, that was included in . . .

4. Q. What was the source of that?

5. A. That was City funds.

6. Q. So, the only outside money was the federal money from
7. the HUD grant for four hundred and ninety-two thousand
8. dollars?

9. A. No sir. There was approximately a hundred thousand dol-
10. lars or so spent from federal. The City bought this
11. tract in here, Westover Park, for five thousand dollars
12. an acre, Westover Park, and it was fifty acres, and then
13. we got a grant to help develop the facilities, the road-
14. ways, for picnic facilities in that park. I believe
15. that was a hundred and thirty thousand dollars, as well
16. as I remember, sir.

17. Q. You said that you had your HUD grant application with
18. you?

19. A. Yes sir.

20. Q. Do you mind if I look at that?

21. A. No sir.

22. Q. (Counsel examines document) You indicated on direct
23. that no County population was used. Where is the popu-
24. lation section in here?

1. people, the school age child, also the location of the
2. schools, where they are located; but as far as overall
3. population of the City of Harrisonburg, it does not state
4. in there.

5. Q. You said that you do have programs for the elderly. Are
6. those funded with City funds or some other funds?

7. A. All senior programs in this area are funded through the
8. Valley Program for Aging, which comes out of Waynesboro,
9. in this area. However, the City of Harrisonburg, along
10. with the Rotary Club, as far as I know, has built the
11. only senior citizens center in this part of the state
12. for a total of forty thousand dollars and located it on
13. park property. And at times we take all the seniors into
14. the Community Activity Center and provide recreation for
15. them and send our staff to the center.

16. Q. Well, the V.P.A.S. funds are state funds, aren't they?

17. A. They are state funds.

18. Q. How much in dollars do you get per year for these elder-
19. ly programs?

20. A. I do not know, sir, because we do not handle those funds.
21. They go directly, they even hire their own senior direc-
22. tor.

23. Q. Are these programs available to elderly people in the
24. County and the City?

1. A. They are basically for the City of Harrisonburg, because
2. the County has a number of these same type centers that
3. they use, in churches and other buildings.

4. Q. The County has six of them scattered around the County?

5. A. I believe you're right. I don't know.

6. Q. Are there any County seniors in your program?

7. A. As far as I know, there are not. There could be. I'm
8. not that aware of that program, because we are not a
9. direct agency of it.

10. Q. Are these programs free to any elderly that wants to
11. participate in them?

12. A. Absolutely.

13. Q. Whether it's County or City?

14. A. That's right.

15. Q. And that wouldn't change in the event of annexation,
16. would it?

17. A. No.

18. Q. Or lack of annexation.

19. A. No.

20. Q. You testified about the use of the City schools as re-
21. creational facilities. I assume that means softball
22. fields and tennis courts and things like that?

23. A. No sir. Basically gymnasiums. The City of Harrisonburg
24. has a great number of gymnasiums. We are fortunate. And

1. we staff gymnasiums once the school is closed. We staff
2. gymnasiums with our staff to carry on indoor activities.
3. Most of the outdoor activities are carried on within our
4. own park property.

5. Q. But the use of school facilities for recreational pur-
6. poses is accepted in the recreation business, is it not?

7. A. Oh, yes. We don't care if it's the school or where it
8. is, but everywhere we find a gymnasium we're going to use
9. it.

10. Q. Harrisonburg Junior High School, I think it's called
11. Thomas Harrison, does it have a gym?

12. A. Yes sir.

13. Q. And does the Junior High School have an athletic program,
14. an organized program, during the school year?

15. A. Athletics, right, but they are not in the recreation
16. business.

17. Q. I understand. But they have a basketball team, I assume?

18. A. Yes.

19. Q. And they have various other teams, baseball and football
20. and track?

21. A. Right.

22. Q. Now, the County citizens that use your recreational fa-
23. cilities, tell me what costs are involved to them for
24. the use of your facilities.

1. A. Ten dollars per year per person for a membership card.
2. Q. And that entitles a County resident to use any facility?
3. A. Any facility except for racquetball, and everybody pays
4. the same for racquetball.
5. Q. Including City residents?
6. A. Right.
7. Q. What is the cost to a City resident to use the facilit-
8. ies?
9. A. Two dollars per year.
10. Q. Does that fee entitle anybody to the use of the Communi-
11. ty Activities Center? Or, that's separate, isn't it?
12. A. That's the fee I was speaking of.
13. Q. Do you have any figures on how many County residents
14. are currently paying this fee for use of the City recrea-
15. tion facilities?
16. A. I believe I brought that out. It's around 650.
17. Q. Six hundred and fifty of the County's population?
18. A. Right.
19. Q. You mentioned in one of your exhibits, I think it was
20. 14, that the National Guard Armory is used as one of
21. your recreation facilities?
22. A. That's right, sir.
23. Q. Who owns the National Guard Armory?
24. A. The National Guard Armory is owned by the State of Vir-

1. Q. Where are those located, sir?

2. A. Hillendale Park, purchased January 24, 1968.

3. Q. Is that the part in the City?

4. A. That's the entire tract. I beg your pardon, the entire
5. tract except for this small area right here. It was
6. known as the Sharpes Addition, it was purchased in
7. 1970.

8. Q. What did the City pay for that property?

9. A. The raw land went out at eight hundred dollars an acre,
10. which is all rock; and I believe we paid twelve hundred
11. dollars an acre for that small tract of land there.
12. And then Westover Park was purchased in 1968, and the
13. Northeast Park property, known as the Wilson-Gaines pro-
14. perty, was purchased in 1972.

15. Q. You said, I believe, it was your estimate or some record
16. of yours that people that call you up to reserve some
17. kind of a picnic shelter are fifty or sixty percent
18. County residents?

19. A. Yes sir.

20. Q. Can you tell me what the source of that fifty or sixty
21. percent figure is? Do you have some record of that?

22. A. Absolutely. If you want to come and use a shelter in
23. any of our parks, they are on a reservation basis. It's
24. not a first come, first serve basis in the City of Har-

1. risonburg. If you want to reserve a shelter you call in
2. and reserve a shelter, giving name, address and telephone
3. number. And through that record we established that
4. fifty to sixty percent.

5. Q. What year did you use to establish that?

6. A. Every year since the parks have been open.

7. Q. Is there a charge for that?

8. A. There is as of now. We started that January 1 of this
9. year. We're charging everyone, County, City, or wherever
10. they may be, ten dollars to use a shelter. Because of
11. the trouble it takes to go in and clean up after a group
12. and all, we just felt that we needed more budget dollars
13. in our park system.

14. Q. That's your policy now and that won't change with or
15. without annexation?

16. A. No sir.

17. Q. This HUD grant application refers to the land use plan
18. of Rockingham County of February, 1975. What was that
19. or why was that necessary to be included in that?

20. A. May I see that, please?

21. Q. Yes.

22. A. (Witness examines document) The land use plan is some-
23. thing, Mr. Smith, that somebody else will have to get
24. up here and testify to. I know nothing about the land

1. MR. FITZGERALD: Which was not adopted.

2. MR. SMITH: And that isn't what you have
3. there.

4. MR. COGAR: Well, you disavowed that plan a
5. long time ago as not being yours.

6. Q. If I could get on to your adult classes, Mr. Gilkerson.
7. You said that they're run for profit and everybody pays
8. a fee to use those. What is that fee, sir?

9. A. Well, . . .

10. Q. Would it depend on the course?

11. A. It would depend on what we offered. If I could give you
12. an example. If you came in and took a ten week course
13. and paid twenty dollars, everybody would pay the same;
14. City, County, whoever you may be. Out of that twenty
15. dollars we would take the "x" number of dollars it took
16. to pay the instructor and possibly several dollars would
17. go back into the general fund of the City.

18. Q. For use of the swimming pool you said there was a family
19. swim pass for forty dollars a year?

20. A. Yes sir.

21. Q. And that fifteen to twenty percent of the people who
22. use these facilities are from the County?

23. A. Yes sir.

24. Q. What is the source of that information?

1. A. It would be the address in documents that's on the swim
2. pass that we would issue.

3. Q. Did you count the six hundred County residents who
4. are regular members or regular users of your facility?

5. A. That has nothing to do with the building. This is com-
6. pletely separate, the swimming facilities.

7. Q. Let's take a look at your Exhibit H-15 here, and particu-
8. larly the area to the northeast which is bounded by Route
9. 81 on the west and apparently by a railroad line on the
10. east. Correct?

11. A. Right.

12. Q. You said that was quarry property?

13. A. There is a quarry located on that property.

14. Q. Is that really . . . with an interstate highway on one
15. side and a railroad on the other side, is a park the best
16. use for that piece of land?

17. A. No sir.

18. Q. What is? Industrial?

19. A. Some of your finest farm land you've got would be the
20. greatest park land, but we're not going to be able to
21. afford to buy it in the park system. Somebody else will
22. be able to obtain it. Usually we get what's left. All
23. parks in America is usually found that way. But we
24. thought that this would be the most economical property

trance.

Q. And in your proposal is the extension of Purcell Park within the present City?

A. Yes.

Q. Now, this property down here is also bounded by an interstate highway. The City already owns that you say?

A. Yes sir.

Q. That's the landfill?

A. That's right.

Q. Is that a definite plan to make that into a park after its use as a landfill expires?

A. That's in our master plan.

Q. How many new employees do you anticipate hiring in the event of this annexation?

A. Six.

Q. Is that sufficient for some 208 acres of park that you indicate is proposed on your Exhibit 20?

A. I believe it is, sir, because we have a good park crew now and with the part-time people we would employ . . . we do employ a great number of part-time people, and I believe that we could accomplish this.

Q. And on your Exhibit 27, item 4, you indicate \$18,600.00 is going to be used to equip 208 acres of park.

A. No sir, I did not.

1. Q. Did I misunderstand that?

2. A. That's right. I said this would be the first portion
3. if annexation were granted, immediately or within the
4. first year, just in order for us to get geared up with
5. several pickup trucks that we'd need in this area, sev-
6. eral vehicles, radio communication, and things of this
7. nature.

8. Q. But you would spend that the first year after annexation?

9. A. Yes, immediately.

10. Q. There is a definite plan for that?

11. A. If annexation were to be granted, we would have to have
12. that to get going now.

13. Q. Is there any plan of how much money you would spend the
14. second year?

15. A. Yes sir, Mr. Smith. I think it was all in that one . .
16. what number was that?

17. Q. Is that in Exhibit 33?

18. A. Exhibit 33.

19. Q. That indicates, sir, that the sum of \$236,500.00 would
20. be spent in the first four years.

21. A. Besides the eighteen thousand.

22. Q. Is that money available, is it budgeted?

23. A. No sir.

24. Q. Where is it going to come from?

1. A. From the general tax fund.

2. Q. And I assume the same is true for priority two, for the
3. seven years?

4. A. Yes sir.

5. Q. That money isn't presently available either?

6. A. No sir.

7. Q. And the taxpayers of some area are going to have to
8. pay that. If they're all annexed they're going to help
9. the City residents pay for that, is that right?

10. A. That's right, sir.

11. Q. The City's landfill is going to be a park if you annex
12. that property from the County or not, isn't that true?

13. A. I don't know, sir, if it is or not.

14. Q. You said it's in the master plan.

15. A. It's in the master plan. We've got a whole lot of things
16. in the master plan that I'm not sure of. It's going to
17. depend on the budget, the availability of funds.

18. ~~MR. SMITH: I think that's all.~~

19. ~~MR. GLASS: No further questions.~~

20. ~~JUDGE MOON: Thank you, sir.~~

21. JUDGE TRABUE: Mr. Gilkerson, with regard to
22. Hillandale, what demands on that park have dictated the
23. necessity for an expansion of that park, and how does
24. that relate to annexation or not to annexation?

1. A. With the demand that we have now, sir, we feel, especial-
2. ly on weekends, that by expanding this park and maybe
3. even someday tying the two parks together, it would be
4. very beneficial to the City or to the locality to have
5. this tract of land, because we know what has taken place
6. in here. We have cars backed up through here on weekends
7. using those facilities.

8. JUDGE TRABUE: With regard to the landfill,
9. do you have any utilization studies that would indicate
10. to you the necessity for developing a park at the land-
11. fill because of the subdivisions or the lack of subdivis-
12. ions or population available to it?

13. A. Absolutely. This is dictated by the number of softball
14. teams that there is in this area. We are not able to
15. take care of all of our adult athletic needs within the
16. City of Harrisonburg at the present time. Because we
17. are playing here all the time and on weekends we need
18. to expand this program to this facility here. We are
19. really handicapped on athletic area in the City of Har-
20. risonburg. It looks like we have a great number, but
21. we don't have that many. And I'm sure you're familiar
22. with adult softball, but if you give those people enough
23. area they'd play 365 days a year, I believe.

24. JUDGE TRABUE: Thank you.

JAMES WILLIAM DESKINS,

having been duly sworn, testified as follows:

Direct Examination by Mr. Glass:

Q. Would you state your full name, please.

A. James William Deskins.

Q. Where are you currently employed and what position do you hold?

A. I'm the Executive Director of the Harrisonburg Redevelopment and Housing Authority.

Q. What is the Redevelopment and Housing Authority?

A. We are an agency responsible for the provision of low income housing, and certain economic development activities within the City of Harrisonburg.

Q. Have you had prior to your employment here experience in the area of public housing and redevelopment?

A. Yes, prior to coming to Harrisonburg I was employed by the Housing Authority of the City of Terre Haute, Indiana.

Q. Can you tell me when the Authority was formed in this area?

A. Yes. The Harrisonburg Redevelopment and Housing Authority was formed in accordance with Title 36 of the Code of Virginia on November 8, 1955.

Q. Can a locality itself, can a city own assisted housing

1. projects?

2. A. No sir.

3. Q. What power does the Authority have in that respect?

4. A. The Authority is empowered by Title 36 of the Code of
5. Virginia to own and operate low income assisted housing
6. within a political subdivision.

7. Q. Could you refer to Exhibit 15 in the exhibit book beside
8. you there, and also to the large Map Exhibit H-28 to
9. your left and briefly describe what publicly assisted
10. housing is available in Harrisonburg, and perhaps give
11. a short description of each.

12. A. The first is the hundred units of publicly assisted
13. housing referred to as scattered sites. That is public
14. housing. That is located basically in the northeast
15. quadrant of the City. There are two major concentra-
16. tions in this area and scattered sites dispersed in be-
17. tween those two major concentrations.

18. Q. What color is that?

19. A. It's green.

20. Q. How do those facilities operate?

21. A. The eligible tenants pay twenty-five percent of their
22. monthly adjusted gross income towards rent, excluding
23. utilities along with some other deductions that are taken
24. into consideration. The program is operated by the Hous-

ing Authority with operating subsidies directly from HUD. These operating subsidies allow us to take care of the cost overruns in utilities and in maintenance and operation of those facilities. We also applied to HUD and have received modernization funds to periodically update the quality of those units. We have received just this year a hundred and twenty-five thousand to facilitate new roofs on all hundred units along with the re-vamping of the community center and the office space.

The next . . .

Q. Before you go on, when were those buildings or units built?

A. Those were built in 1960, and that came about through an urban renewal project. The next category of assisted housing indicated in this exhibit is the Section 236 rent supplement housing. That's Harris Gardens, right here in the orange. That is a privately owned assisted housing complex; owned and operated by a firm in Rockville, Maryland. One hundred of those units are not deep subsidy units, but are moderate income housing that allows the construction of those units at cost whereby the developer could afford to maintain the rent at a moderate level. The other hundred units is a 236-21(d)3 piggyback program, whereby they get a deep subsidy. Ten-

1. ants in those hundred units pay twenty-five percent of
2. their income in accordance with the Brook Amendment,
3. the same as applies to public housing. The next housing
4. indicated in this exhibit is 62 units of elderly housing
5. that is owned and operated by the Harrisonburg Redevelop-
6. ment and Housing Authority. It's indicated here in red.
7. A very interesting thing about this particular develop-
8. ment is that it was a cooperative arrangement between
9. the Housing Authority and the City of Harrisonburg. The
10. City of Harrisonburg sold general obligation bonds to
11. finance the construction and permanent financing for this
12. development. Subsequent to that the Authority entered
13. into a thirty-two year annual contributions contract
14. with HUD to repay those bonds, with the realization that
15. there would not be sufficient operating capital to pay
16. the bonds and maintain the project. So, on June 22, 1979
17. the Authority and the City entered into an agreement
18. whereby the City agreed to pay any cost overrun in that
19. project to meet the bond obligation. That's under 11b
20. of the Section 8 Housing Act. The next alluded to here
21. in this exhibit is 112 units of V.H.D.A. rent subsidies.
22. It's known as Mosby Heights. This is a privately owned
23. low income development owned by C.R.I. out of Rockville,
24. Maryland, operated by Crico Management Corporation, a

1. subsidiary of C.R.I. This development is very recent
2. and in accordance with the housing assistance plan of
3. the City of Harrisonburg. This plan sets forth the goals
4. for low income assisted housing in the community. And,
5. as a matter of fact, this particular development allowed
6. the City to exceed its low income housing goal for fami-
7. lies. Not mentioned on this exhibit is fifty units of
8. Section 8 existing houses that are dispersed throughout
9. the City. That is a program managed and operated by
10. the City of Harrisonburg's Redevelopment and Housing
11. Authority. This is a program whereby we pay the differ-
12. ence between twenty-five percent of tenants' gross in-
13. come and the fair market rent of that unit. That's a
14. direct payment directly to the private landlord. This
15. allows the tenant to have safe, decent and sanitary hous-
16. ing at an affordable cost. To my knowledge that's all
17. the programs in the City.

18. Q. With respect to each of those programs, was there appro-
19. priate zoning available within the City to accommodate
20. that type of development?

21. A. In most cases I would say so.

22. Q. Was some rezoning done to accommodate that type of
23. development in some situations?

24. A. Within the City, for instance, the elderly housing, that

1. is downtown in the central business district, and that
2. is allowable type housing. I'm not sure as to whether
3. or not the V.H.D.A. project required a rezoning. That
4. would have to come from either the Director of Planning
5. or the Zoning Administrator of the City.

6. Q. Has the City of Harrisonburg made attempts to revitalize
7. parts of the downtown area?

8. A. Yes, through the Title 36, Redevelopment and Conservation
9. Plan adopted by the City Council of Harrisonburg, Octo-
10. ber 23, 1979, the Harrisonburg Redevelopment and Housing
11. Authority has been charged with the responsibility to
12. try and facilitate economic revitalization of a portion
13. of the central business district bounded by West Eliza-
14. beth Street, Noll Drive to the north, Main Street to
15. the east, and the rear property boundaries are the pro-
16. perties facing on High Street to the west. Within that
17. area we are concentrating such activities as a housing
18. rehabilitation loan program, an acquisition of real pro-
19. perty program, demolition program, and a relocation pro-
20. gram. The elderly housing project is also located with-
21. in that. We've also put in a park and parking facilit-
22. ies in that area.

23. Q. Okay, have you also attempted to locate a developer to
24. place any sort of project there?

1. A. Yes. We have assembled a tract of land, approximately
2. 3.17 acre tract, within that area. We felt that this
3. was a large enough tract of land that we could market
4. it to a large enough developer that it would have sub-
5. stantial economic impact. We assembled the land, we made
6. it known that we would accept proposals, we received a
7. proposal for development in that area, we granted a 180
8. day exclusive right to that developer to get their busi-
9. ness in order and see if the project would be financed
10. or was feasible. We also had applied through the City
11. for 1.8 million dollars through the Community Development
12. Block Grant Program for Small Cities, the discretionary
13. program, to facilitate infrastructure financing for this
14. development along with associated commercial rehabilita-
15. tion and public improvements. We were unsuccessful in
16. receiving that grant. So, the developers have come back
17. and asked for a sixty day extension on their exclusive
18. rights to see if it is financially feasible to move for-
19. ward with that project without the HUD funding.

20. Q. What do you think the prospects are in light of the de-
21. nial of the HUD funding.

22. A. That would be purely speculative and I couldn't answer
23. that.

24. Q. Are all of the facilities which you have identified on

1. the large map exhibit open for occupancy solely to City
2. residents?

3. A. According to federal law they have to be available to
4. any person who would apply, if they meet the eligibility
5. requirements.

6. Q. Is there some geographical limitation on the power of
7. the Authority?

8. A. Yes, the Authority is only allowed to function within
9. the jurisdiction of the City.

10. Q. Have you calculated from the records in your department
11. the actual present number of occupants in certain of
12. these facilities whose last place of residence was in
13. Rockingham County?

14. A. Yes, I have.

15. Q. How did you determine that and what is the number?

16. A. In the J. R. "Polly" Lineweaver Apartments, or the elder-
17. ly housing complex, of a total of 62 units, 13 are occu-
18. pied by former County residents, or 20%.

19. Q. How do you know those were actually former County resi-
20. dents?

21. A. Well, I reviewed the files and in their application they
22. gave their place of residency as a County address. And
23. in the Section 8 existing program, which is the fifty
24. units dispersed around the community, we have 7 former

1. County residents, or 15% utilization of that program.

2. And in the public housing, the 100 units referred to as
3. scattered site public housing, we have approximately 10%
4. are former County residents.

5. Q. Now, when you initially filled those three sets of fa-
6. cilities that you talked about, were there more appli-
7. cants than spaces to fill?

8. A. Let me preempt my answer by saying that the two programs,
9. the Lineweaver apartments and the Section 8 existing, I
10. was directly involved in the initial lease of those.
11. The hundred units of public housing being in 1960, I was
12. not directly involved in the initial lease of that. But
13. in the J. R. "Polly" Lineweaver Apartment building we
14. had a total of 118 applicants. From the County there
15. were 36, which represents 30%.

16. Q. You say 30%, how do you know . . .

17. A. I did an actual count. Now, within that count we did
18. include, and I might correct myself here, we did include
19. all individuals outside the jurisdiction of the City of
20. Harrisonburg in that thirty-six. However, to the best
21. of my recollection, a very few were from outside of the
22. Rockingham County-Harrisonburg area. And logically this
23. would occur because our major outreach program was direct-
24. ed through the local media and also through both County

1. and City Social Service agencies.

2. Q. So, there might be a few . . .

3. A. A few, but it would be an insignificant number. Okay,
4. Section 8 existing, 217 total applicants, 105 from the
5. County or 48%. Again, I reviewed those figures myself.
6. In the public housing, taking into account the present
7. number of applicants that we have, 57 are from the County
8. or 30%.

9. Q. Are the City of Harrisonburg and Rockingham County mem-
10. bers of the Central Shenandoah Planning District Commis-
11. sion?

12. A. Yes sir.

13. Q. Has the Planning Commission prepared a draft comprehen-
14. sive plan which includes a housing study?

15. A. Yes sir.

16. Q. Were you on a committee formed by the Planning Commis-
17. sion to review the accuracy of the housing study?

18. A. Yes sir.

19. Q. And did you, in fact, review and make some suggestions
20. or comments about that report?

21. A. Yes sir.

22. Q. Did that study compute the need for assisted housing
23. within each of the jurisdictions who are members of the
24. Planning Commission?

1. A. Yes, that is correct.

2. Q. And can you tell me on what basis was this need comput-
3. ed?

4. A. The need was computed, and if I might I'll just read
5. right from the plan. It says, "Housing assistance needs
6. are measured in terms of households rather than in hous-
7. ing units. In a planning district households requiring
8. assistance are those households that are financially
9. needy and are currently occupying substandard housing
10. units. According to the criteria set forth by the
11. Department of Housing and Urban Development, households
12. with housing assistance needs are those households with
13. incomes less than 80% of the median family income for
14. the locality and having one of the following character-
15. istics: pay more than twenty-five percent of the rent,
16. lacking complete plumbing facilities, having 1.25 persons
17. per room, and living in a structure built in 1939 or ear-
18. lier."

19. Q. Could you restate that in a few words? What does that
20. mean, what did they really look at?

21. A. They focused in on income and they focused in on the
22. amount of money that the individual was paying towards
23. rent or for their housing, and whether or not they were
24. in an overcrowded unit, and whether or not that unit was

1. substandard or standard.

2. Q. Is that an accepted means of demonstrating need for
3. assisted housing?

4. A. To the best of my knowledge, I would say so.

5. Q. Can you tell me what the report indicated as far as
6. housing.

7. A. I'll only cite two communities or two jurisdictions with-
8. in the report, that being Rockingham County and the City
9. of Harrisonburg. It was indicated that Rockingham County
10. had a total for 1980, 18,900 households, of which 6,804
11. were below moderate income or below 80% of the median
12. income, which represents a total of 25.28%. Assisted
13. housing available in the County today, according to this
14. plan, would be 1,410 units, which would then represent
15. 25.67% of the total housing available. You would sub-
16. tract the assisted housing from the number--the already
17. existing assisted housing from the number of people that
18. are financially eligible for assisted housing, and that
19. would determine your unmet need. In the case of Rocking-
20. ham County, there's a total of 5,394 units or people,
21. or 25.18% of the total population of households. And
22. in Harrisonburg, 7,069 households, and the number of
23. below moderate, below the 80% median income level, was
24. 3,040, or 11.29%. And the total number of assisted hous-

1. ing units was 584 or 10.63%. Showing a total unmet need
2. of 11.47%.

3. Q. Did this particular report also determine for each local-
4. ity a capacity to provide assisted housing?

5. A. Yes, it did.

6. Q. And what does that mean?

7. A. To me capacity, overall capacity to provide assisted
8. housing would mean the ability to do that, to provide
9. assisted housing. And in determining that there are
10. certain criteria that is looked at. Those criteria in-
11. volve the amount . . . let me turn to it to make sure
12. that I do not state anything incorrectly. The criteria
13. for establishing the capacity to accommodate assisted
14. housing, they would look at the vacancy rate within a
15. locality, the availability of water and sewer services,
16. the level of public and social services, the presence of
17. a housing authority, the presence of a qualified public
18. non-profit or private organization engaged in housing
19. activities, a rehabilitation and neighborhood improvement
20. resources, and the area being a growth center. In that
21. rating, with those factors in consideration, the local-
22. ities were given a comparative rating. Rockingham re-
23. ceived out of a total of one maximum, a score of one,
24. Rockingham received 63% and Harrisonburg received 91%

1. capacity, overall capacity rating.

2. Q. What are the significance of those figures in terms of
3. the factors that you just testified to?

4. A. To me that would indicate the ability or capability to
5. deliver housing assistance to a specified area.

6. Q. Okay, the same report also contained an evaluation of
7. the physical condition of dwellings in the various jur-
8. isdictions.

9. A. Yes, it did. Are you interested in those?

10. Q. Yes, please. Describe what the report says in that
11. respect.

12. A. Well, there are numerous types of things that are indi-
13. cated in the report. Let me turn to some of this. Okay,
14. condition of owner occupied housing. In Rockingham County
15. there are 13,631 units of owner occupied housing; 1,911
16. lack some form of plumbing, or 14%; 5,572 of these units
17. were constructed before 1940; 783 of these units or 5.7%
18. are considered deteriorating; 1,128 of these units are
19. suitable for housing rehabilitation. In the City of
20. Harrisonburg there are 2,954 units of owner occupied
21. housing; 125 units lack plumbing facilities, or 4%; 979
22. were pre-1940, or 33%; 41 units are deteriorating, or
23. 1.4%; 84 units are suitable for rehabilitation, or 2.8%.
24. Then in the condition of renter occupied units, Rocking-

1. ham County had 4,304 rental units; 604 lacked some plumb-
2. ing facilities, or 14%; 1,760 were pre-1940, or 41%;
3. 248 were deteriorating, or 5.8%; 356 were suitable for
4. rehabilitation, or 8.2%. In the City of Harrisonburg,
5. 2,620 units; 110 lacking some plumbing facilities, or
6. 4%; 1,237 pre-1940, or 47%; 52 units deteriorating, or
7. 2%; and 58 units suitable for rehabilitation, or 2.2%.

8. Q. Is the Authority presently considering an application
9. for further federal funds to initiate other projects?

10. A. The Authority has instigated an application for Section
11. 8 Substantial Rehabilitation, and that has been submit-
12. ted through V.H.D.A. Also I am to meet next week with
13. a representative of Sheetz Associates, an architectural
14. firm out of Atlanta, Georgia, to discuss the potential
15. of applying for additional public housing units.

16. ~~MR. GLASS: No further questions.~~

17.
18. Cross Examination by Mr. Smith:

19. Q. Mr. Deskins, those percentages and figures that you re-
20. cited from the Shenandoah Planning District's study, did
21. they result from an actual field survey of these homes
22. in Rockingham County and the City of Harrisonburg?

23. A. In part they did. They took into consideration the cen-
24. sus data available at that time along with updates, and

1. a windshield survey.

2. Q. And it's basically done by a formula that's prescribed
3. by HUD, isn't it?

4. A. That is normal procedure.

5. Q. Considering certain percentages of owner occupied homes
6. in both jurisdictions and of the totals the formula tells
7. you how many of these are apt to have plumbing problems,
8. their age, and so on.

9. A. I would agree that there was not a total assessment of
10. the plumbing issue by a door-to-door survey; but I would
11. say that there was a windshield survey that augmented
12. any information that would be available.

13. Q. How would a windshield survey help you in determining
14. if there's a plumbing problem?

15. A. If you could see a privy you would have some idea that
16. there was some lacking of plumbing facilities, and in
17. particular if there was evidence of use.

18. Q. Well, a windshield survey, you're going to sit out there
19. and watch for somebody to go use the privy?

20. A. No, I'm saying I did not do it. I'm saying that in a
21. windshield survey you could note whether or not there
22. was evidence of a privy.

23. Q. But basically this entire study was based on the HUD for-
24. mula and the whole reason for it was to get a HUD grant,

1. A. No sir.

2. Q. So, we really have no way of knowing the accuracy of
3. these figures that you testified to, do we?

4. A. Outside of the fact that they were presented and they
5. were reviewed for accuracy and changes were made to the
6. statistics at that review. I would say to that extent
7. they are accurate.

8. Q. Well, how did you check the accuracy of them?

9. A. Individuals' knowledge of the situations--the persons
10. on the review committee were individuals within the
11. different jurisdictions who had specific responsibilit-
12. ies relating to the information that was contained in
13. the report. Myself being Executive Director of the
14. Housing Authority of the City of Harrisonburg, I had cer-
15. tain knowledge as to certain components of the report.
16. Other directors of housing authorities in the jurisdic-
17. tions, the County's Planning Director, the City's Plan-
18. ning Director, and the City's Building and Zoning Offi-
19. cials, were members of that committee that reviewed it
20. for accuracy.

21. Q. All right, sir. I won't dwell on that anymore. Is it
22. true, Mr. Deskins, that mobile homes fill a need for
23. low or moderate income housing?

24. A. Yes.

1. Q. And you're aware that the City of Harrisonburg's ordi-
2. nance prohibits mobile homes in the City?

3. A. I'm aware of that.

4. Q. And the County of Rockingham does have mobile home parks
5. within the County?

6. A. I'm aware of that.

7. Q. Of the projects listed on your Exhibit 15, which of those
8. are owned by the Authority?

9. A. The Authority owns the hundred units of public housing,
10. the 62 units of elderly housing and is operating fifty
11. units of existing housing that is not mentioned on that
12. report. It's a total of 212 units.

13. Q. Two hundred and twelve units?

14. A. Correct.

15. Q. And those are funded, at least seventy-five percent,
16. by federal funds?

17. A. That's correct.

18. Q. What happens to those units if these federal funds are
19. cut off?

20. A. We have a contractual arrangement that would carry us
21. through the period that we have bond obligations on
22. those individual properties. I would assume that we
23. would be protected by law.

24. Q. You would assume that?

1. A. In any contractual arrangement I would assume there are
2. certain laws that would protect both parties. I am not
3. an attorney and will not speak to the contract laws.

4. Q. Well, suppose the federal law changes regarding the pass-
5. ing out of those funds.

6. A. I am not going to speculate on changes in federal law.

7. Q. All right, sir. Which of these projects are for the
8. elderly, the 62 units here that are listed?

9. A. Well, there are elderly that live in all the projects.
10. Sixty-two units is strictly for elderly, handicapped or
11. disabled. The hundred units, there are a certain amount
12. of elderly individuals living in those; and in the fifty
13. units there are a certain amount of elderly individuals
14. living in those.

15. Q. Are you familiar with Heritage Haven?

16. A. Yes, I am.

17. Q. And that is in the County, the Park View area of the
18. County?

19. A. Yes.

20. Q. Is that a home for the elderly?

21. A. It is an elderly housing facility.

22. Q. Do you know how many units are available there?

23. A. I believe 150, I'm not real sure.

24. Q. Are you familiar with a facility for the elderly in the

1. County called Sunnyside?

2. A. Yes, I'm familiar with that facility.

3. Q. How many units for the elderly are available there?

4. A. I don't know that that's a federally assisted program.

5. Q. All right, sir. As a matter of fact, the developer is a
6. Harrisonburg man who moved to the Home out in the County,
7. isn't he?

8. A. I don't have any knowledge of that.

9. Q. You don't know that?

10. A. No.

11. Q. And you also know that there's a Bridgewater Home for
12. the elderly located in the County?

13. A. I think you need to specify whether these are assisted
14. units or whether they are not assisted units. To my
15. knowledge neither Sunnyside nor the facility in Bridge-
16. water are federally assisted in terms of rental supple-
17. ments.

18. Q. But Heritage Haven is.

19. A. Heritage Haven is a 202 project with a Section 8 assis-
20. tance.

21. Q. And do you have any way of knowing how many City residents
22. are in Heritage Haven?

23. A. I'm not involved in the management and operation of that
24. facility.

1. Q. Are you familiar with a County project called Deer Run?

2. A. I'm familiar with no County projects, sponsored by the
3. County. I think there's a problem with that. I'm famil-
4. iar with a privately developed project that could not
5. be--the development could not be restricted because of
6. already existing applicable zoning regulations. Those
7. developments are private developments that have occurred
8. within the County, but do not have any direct relation-
9. ship to the County government.

10. Q. Well, the point is though that these projects, whether
11. they are privately developed or developed by your Author-
12. ity, are providing a need, and they're located in the
13. City and in the County.

14. A. Deer Run is not available for occupancy at this point.

15. Q. It's under construction, right, 144 units?

16. A. I have no knowledge of that.

17. Q. You have testified to some percentages of former County
18. residents living in the City projects?

19. A. Yes sir.

20. Q. Now, you have no way of knowing if those people moved
21. from the City to the County and back into the City, do
22. you?

23. A. No sir.

24. Q. In your Exhibit 14g, on page 2, you indicate that the

1. Housing Authority was instrumental in developing the
2. Valley Plaza Shopping Center.

3. A. That is correct, through an urban renewal project.

4. Q. Were you involved with the Authority when that was done?

5. A. No sir, I was not.

6. Q. Do you know when that was completed?

7. A. In 1958 to 1961, the Harrisonburg Redevelopment and
8. Housing Authority began two urban renewal projects
9. to revitalize an area in the northeast quadrant of the
10. City. Both of these were very successful projects. It
11. resulted in the development of the Valley Plaza Shopping
12. area along with the extension of Mason Street, and the
13. provision for developable area that eventually developed
14. into a commercial area.

15. Q. How many acres is the Valley Plaza Shopping Center?

16. A. I don't know.

17. Q. But it's got some substantial tenants, doesn't it?

18. A. Yes, it does. And if you're looking at the exhibit,
19. I would indicate here that all of those commercial
20. entities are not located within that one shopping area,
21. but are dispersed throughout both of those urban renewal
22. projects.

23. Q. And these were developed with federal funds?

24. A. Federal funds were used to purchase and clear the land

1. and make it available for development, then the property
2. was marketed to private developers through the Authority.

3. Q. Tell me what the Authority's participation is or was in
4. the building of the City's parking deck.

5. A. It was no direct involvement of the Authority.

6. Q. Did the Authority get federal money to clear that land?

7. A. That land had been cleared initially . . . that's really
8. prior to my employment with the Authority, and I will
9. not speak to that. I cannot speak to that affirmatively
10. or definitely.

11. Q. Now, on page 5 of your Exhibit 14g, you indicate the
12. local objectives to be achieved in the Redevelopment
13. and Conservation Area, the elimination of blight and
14. deterioration and blighting factors. Point out on the
15. map where the blighted areas of the City of Harrisonburg
16. are.

17. A. Let me go back and correct one thing there. That state-
18. ment is that the local objective to be achieved, rather
19. than achieved. To be achieved.

20. Q. Right, to be achieved. That means that there's still
21. some blight out there that you've got to clear up?

22. A. That's what we're working on, correct.

23. Q. Tell us where it is.

24. A. Basically in this area (indicating on map).

1. Q. You're pointing to about four city blocks?

2. A. Approximately.

3. Q. Is there any blight in other areas?

4. A. I can only testify to the area that's been designated
5. a Title 36 Redevelopment and Conservation Area. That
6. is the only area of the City that I have any jurisdic-
7. tion over.

8. Q. And you say a rebuilding of a portion of the central
9. business district is necessary?

10. A. I would think that there would be necessary an attempt
11. to revitalize an area of the central business district.

12. Q. What does that mean, sir?

13. A. To rejuvenate it, to bring it back into a viable condi-
14. tion.

15. Q. And that's clearly within the realm of possibility and
16. probability, isn't it?

17. A. Again, that's a speculative thing. It's very difficult
18. right now to develop anything, with interest rates and
19. other factors that are alive in the marketplace today.
20. I would think that it would be very difficult to facil-
21. itate any kind of major revitalization at this point.

22. Q. Did the Authority recently clear land that formerly was
23. a hotel and store in the Main Street area?

24. A. The Authority purchased cleared land. The Authority did

1. not clear the land.

2. Q. Purchased cleared land. And I believe you said you have
3. an option now with a developer?

4. A. No, I did not. I said that we had granted a developer
5. an exclusive right for development not an option.

6. Q. What kind of development is contemplated for that tract
7. of land?

8. A. The proposal is for a hotel/commercial complex.

9. Q. How large of a hotel?

10. A. Approximately 125 rooms.

11. Q. How many stories would that be?

12. A. How many stories?

13. Q. Yes.

14. A. That is yet to be determined.

15. Q. And you say that a commercial complex is to go with it?

16. A. A commercial complex would be associated with that.

17. And when I say commercial complex I refer to small spe-
18. cialty shops related to the function of the hotel. That
19. could be a hair salon, that could be a ballet, that
20. could be a tobacco shop; no major retail outlets.

21. Q. How many of these commercial establishments do you con-
22. template?

23. A. That has not been specified.

24. ~~MR. SMITH: That's all.~~

Re-Direct Examination by Mr. Glass:

Q. I have a couple more questions. Mr. Deskins, do you have any reason to question the basic accuracy of the figures which you described contained in the Central Shenandoah Planning District?

A. No sir, I do not.

Q. Also with respect to the various projects you mentioned, does the Authority have long-term contracts with HUD to provide subsidies for the operation of those units?

A. Yes, we do. We have contracts for thirty-two years for the Section 8 new construction project known as the Polly Lineweaver, and we have a forty year annual contribution contract for the public housing, which is approximately twenty years old today.

Q. Is there a housing authority in the County?

A. No sir.

Q. If there was, could the authority build low income projects in the County other than for the elderly under the current policy in the County?

A. In what I understand . . .

MR. SMITH: Well, I object to his speculation. If he knows the answer, he knows it; if he's going to speculate, it has no probative value.

A. Can I rephrase that? It has been reported that the

JOHN E. DRIVER,

having been duly sworn, testified as follows:

Direct Examination by Mr. Wickham:

Q. State your name and occupation, please.

A. John E. Driver, Assistant City Manager of the City of Harrisonburg.

Q. What has been your work experience, Mr. Driver?

A. After getting out of high school I managed a three hundred acre dairy farm for my mother until 1952. At that time I went to work for the Virginia Department of Highways.

Q. What did you do with them?

A. I worked on the survey party. I worked in Harrisonburg for two years and then I was promoted and transferred to Fairfax, I was in Fairfax two years. And then in 1956 I came to the City of Harrisonburg.

Q. What position did you first hold with the City of Harrisonburg?

A. Working on the survey party.

Q. Then what was your next position?

A. I came to work for the City in 1956. In 1958 I was made the City Engineer, and along with the City Engineer's duties I also did building inspections.

Q. How long were you the City Engineer?

1. A. Until 1962. In 1962 I was promoted to Director of
2. Public Works.

3. Q. How long did you hold that position?

4. A. Till 1970. I was made Assistant City Manager at that
5. time.

6. Q. Have you been Assistant City Manager ever since?

7. A. Yes sir.

8. Q. What are primarily your duties as Assistant City Manager?

9. A. I work very closely with the City Manager, I work very
10. closely with the department heads within the City.

11. Q. Do you have any city departments or divisions reporting
12. directly to you?

13. A. Yes sir, I do. Most of the departments under the Depart-
14. ment of Public Works work directly with me rather than
15. with the City Manager; although they are under the City
16. Manager, they mainly work with me.

17. Q. I now refer you to Exhibit 14, which I think has been
18. previously referred to, and specifically to 14c which
19. concerns public works.

20. A. Yes sir.

21. Q. Will you name the divisions within that department?

22. A. There are seven divisions. A couple of the divisions are
23. right large and some of them are very small divisions,
24. but the seven divisions are the streets, refuse collec-

1. tion and disposal, street cleaning, street beautifica-
2. tion, traffic engineering. And then the bulletin--or
3. in the exhibit it says central garage, but that includes
4. central storage and central garage. And street lighting.

5. Q. Very briefly describe the purpose of the street division,
6. the duties that are carried on under that division.

7. A. The street division is one of our largest divisions under
8. public works. We do all our own ~~street maintenance~~, we
9. do a lot of our construction work. In fact, we do it all
10. except what's on the primary highways that's contracted
11. out to private contractors. And within the street depart-
12. ment we have a division in the winter time that does
13. snow removal, which is also a big job in the winter time.
14. This unit is composed of--we have three chemical spread-
15. ers which we spread abrasives with. We have nine snow-
16. plows to plow the streets. And when we have a snow we
17. start plowing after receiving about three inches of snow.
18. And after completion, when the snow stops, then we shift
19. all of our equipment to residential sections. And all
20. except the big snow we had in 1962, we are through
21. plowing snow on all of our streets within eight hours
22. after it quits snowing. Now, we have with our nine
23. snowplows, we cover sixty-six miles of streets which is
24. approximately seven miles for each snowplow. The Depart-

1. ment of Highways which does the work for Rockingham
2. County has over a thousand miles of streets and they have
3. fifty-two snowplows, so they have to cover about twenty
4. miles of roadway with each snowplow. And oftentimes
5. they are a full day or two days getting through after
6. it quits snowing.

7. Q. Will you briefly describe the activities of the refuse
8. collection and disposal divisions?

9. A. Yes sir. In our refuse collection system we have a fleet
10. of four packers, the eighteen yard packers. We have a
11. fifth packer for a standby. We also have an open truck.
12. Within this department we have thirteen men that work
13. full-time in that. When we have men in the sanitary
14. department that's off we substitute them with men from
15. the street department, so the departments work very
16. closely together. We pick up four thousand two hundred
17. and seventy-six residential units and five hundred and
18. fifteen business and industrial customers. We work on
19. a task force, the men start at seven o'clock in the
20. morning and they are usually through anywhere from eleven
21. thirty to twelve o'clock. They get paid eight hours
22. for collection time, working time. So we have room to
23. expand some with our present system. But in the proposed
24. annexed area if granted we would purchase two more packer

1. trucks and put on six more men. And we feel like that's
2. sufficient to cover it. And we would have to do very
3. little changing with the schedule.

4. Q. Will you refer now to map H-18.

5. A. Yes sir, but before I start on that I might point out
6. one thing. In our exhibit book, H-18, we have a mistake.
7. This map, the large map, is right. On H-18 we have a
8. transition from Monday to Thursday to Tuesday and Friday,
9. and that should be from Tuesday to Thursday to Monday
10. and Friday.

11. Q. Where is that?

12. A. It's stated right here on this map. The purpose of this
13. map is to show what little change we will have to do to
14. pick up this annexed area. This area in yellow is now
15.. being picked up on Tuesday and Friday. So the only
16. change we will have to make in our present City, we
17. will take this out of the Tuesday and Friday pickup
18. and put it up into the northern section of the City on
19. the Monday and Thursday pickup. We have counted all the
20. homes in the proposed annexed area, and this would be
21. the boundary line which would run here between the north
22. and south. So, it pretty well balances up our schedule,
23. but we wouldn't have any trouble picking them up in those
24. areas.

1. JUDGE ARTHUR: May I ask a question? Is there a
2. charge for trash collection?

3. A. Yes sir, we charge residential customers three dollars
4. a month. We have curb side pickup and we pick up resi-
5. dential twice a week, and we also give them a brush
6. collection on Wednesday. We pick up the entire area
7. of the City on Wednesday with a brush collection. And
8. on commercial, we have a minimum charge of seven dollars
9. per customer, and then it's based on how much garbage
10. he has. It's a prorated thing, it can go on up as high
11. as sixty-five dollars a month for a commercial customer.

12. JUDGE ARTHUR: And this--I digress here for just a
13. moment, it has really nothing to do with your testimony.
14. But the former witness referred to a road down there
15. as you go down toward Dayton as being nonexistent, but
16. it's shown on all these maps, on the west side, right
17. there.

18. A. This one right here?

19. JUDGE ARTHUR: Right there. Is that a street or an
20. easement, or what is it?

21. A. No sir. If you go out there and look you can see a
22. farm lane, a fence and a hedgerow up there. It's never
23. been opened, it's never been dedicated.

24. JUDGE ARTHUR: It's never been a public street or

1. anything?

2. A. No sir.

3. JUDGE ARTHUR: Now, across on the other side, that's
4. Pleasant Valley Road, is it?

5. A. This here?

6. JUDGE ARTHUR: Yes.

7. A. Yes, that's Pleasant Valley Road.

8. JUDGE ARTHUR: All right. I'm sorry, I've interrupted
9. your train of thought there.

10. A. On these maps, while we're talking about the roads,
11. this here road is not opened up either. It might be
12. a paper street on a subdivision or something sometime,
13. but that's not an open roadway.

14. Q. Will you briefly explain the street cleaning operation?

15. A. Yes sir. On street cleaning we have a street sweeper
16. that runs eight hours a day during the spring, summer
17. and winter, during the spring, summer and fall. During
18. the winter we do not operate it because it operates with
19. water and that freezes up. We also have a street flush-
20. er which we use to flush our downtown streets in the
21. downtown section of the City. We also have a small
22. street sweeper which sweeps in the downtown section
23. on the sidewalks and keeps the downtown clean. And
24. then another thing this department does is we have

1. leaf collection. We have a leaf loader. It's a blower
2. that follows along behind the truck and blows the leaves
3. into the truck. We pick up leaves all over the City.
4. The property owner sweeps the leaves to the sidewalk or
5. the curb, whichever they might have, and then we come
6. along and pick them up. And there is no additional
7. charge for this service.

8. Q. What specifically does the street beautification division
9. do?

10. A. The street beautification is mainly our mowing operation.
11. We have two tractor mowers, large tractor mowers. We
12. have two small riding tractor mowers. And then we have
13. several other mowers, just hand mowers that we mow with.
14. During the summer time we average mowing all of our
15. rights-of-way every month or every six weeks. Now, the
16. streets with the median strips on, we maintain the--
17. maintain the median strips about the same as someone
18. would maintain their yard. We will mow that weekly,
19. ten days, two weeks, it depends on the weather and the
20. growing season. So, we do keep our streets and rights-
21. of-ways mowed. We also mow within the alleys. We don't
22. do the alleys monthly, but we run mowers and hand sickles
23. through them, and they are cleaned up at least twice a
24. year. We try to comply with our weed mowing ordinance.

1. We require other people to mow their lots, so we feel
2. that we should also mow our alleys along with our high-
3. ways.

4. Q. Would the services provided by the divisions within the
5. public works department be extended into the proposed
6. annexed territory?

7. A. Yes sir, we would extend the same type of services that
8. we are now providing the citizens of Harrisonburg in
9. the proposed annexed area.

10. Q. Does the City have a traffic engineer?

11. A. No sir, we do not.

12. Q. How does the traffic engineering division operate?

13. A. The Assistant City Manager, which is myself, and the
14. police chief, we more or less provide the traffic engi-
15. neering for the City of Harrisonburg. We take the acci-
16. dent reports and we study those at least twice a year.
17. We also go out on the ground and look at intersections
18. and look at hazardous places. If an intersection has
19. so many accidents, we go and investigate it and see if
20. we can come up with an answer to that. And along with
21. us we have a highway safety and transportation commission
22. and this group of people is appointed by the City Council.
23. And when the City Council gets a complaint from a citi-
24. zen at a Council meeting that we have a bad traffic

1. intersection or we need a traffic light or that type of
2. thing, that is referred to the highway safety commission
3. and then they report back to the City. And if we have
4. intersections within the City after we do this work that
5. continues to have a high accident rate or what-not, then
6. we employ a private consultant to make a study to see if
7. we can get the problem solved.

8. Q. Have there been any accidents involving school children
9. walking to bus stops or to and from school?

10. A. Not to my knowledge, and I knock on wood because I hope
11. it don't happen. I'm superstitious.

12. Q. Will you briefly describe the operation of the central
13. garage?

14. A. The central garage is a department. We have eight mechan-
15. ics and these mechanics do the work for all the City
16. equipment, not only the vehicles but construction work
17. as well, construction equipment as well. This includes
18. police, fire, transportation, and all departments. And
19. altogether, I don't know the number, but we have well
20. over a hundred pieces of equipment that we maintain and
21. we do all our mechanical work on.

22. Q. Who is responsible for the installation and maintenance
23. of the street lights?

24. A. The Harrisonburg Electric Commission.

1. Q. I ask you now to turn to Tab Exhibit 22 which is entitled
2. "Existing and Proposed Street Lights."

3. A. Yes sir.

4. Q. What is the proposed total number of street lights for
5. the annexed area?

6. A. We are proposing seven hundred and sixty-nine street
7. lights within the first three years if awarded annexa-
8. tion.

9. Q. Now, you break that down into the primary or secondary
10. streets?

11. A. Yes sir. This exhibit is worked out with lumens. And
12. what it is, seven thousand lumens is approximately a
13. hundred and seventy-five watt light, and the twenty
14. thousand is approximately a four hundred watt. So the
15. four hundred watts in the number of five hundred and
16. eighty-two we put on what we call our primary highways.
17. We feel like this is necessary to help keep the accident
18. rate down on these streets. Then the smaller units are
19. used in residential sections. And in residential sec-
20. tions we also try to put a street light at every inter-
21. section, every street intersection. And then we have
22. a spacing of probably two hundred and fifty feet within
23. the present City, we have an old policy that we go out
24. and look and use about every other utility pole for the

1. spacing. On the primary routes the light spacing is
2. somewhere around a hundred to a hundred and fifty feet
3. apart. And I might add that when we went to rebuild
4. South Main Street, which you all traveled on Tuesday,
5. one of our newer highways in the City that has five
6. lanes, that was one of the primary requirements that
7. the Department of Highways and Transportation put on
8. us. The mayor and I went to Richmond on that project
9. and they told us down there that to get the project
10. through with that fifth lane in the middle, it would
11. have to be a well lit street, that we would have to do
12. a good job on street lighting. So, we did provide good
13. street lighting on it. If you ever drive out there at
14. night you will be able to see that.

15. JUDGE ARTHUR: You may have stated this, but what's
16. the power of the lights in that area?

17. A. They are four hundred watts.

18. JUDGE ARTHUR: And that translates to . . .

19. A. Twenty thousand lumens.

20. JUDGE ARTHUR: Is that the same in the Court House
21. Square area where you have the yellow type lights? What
22. power are they? What lights are they?

23. A. The ones on Main Street are four hundred, but they are
24. sodium vapor lights. Now, most of our lights in the

1. City of Harrisonburg are mercury vapor and that's where
2. the different color comes in. The City of Harrisonburg
3. also put the row of lights around the Court House inside
4. the square on the sixteen foot poles. I don't know what
5. watt bulb is in them, but they are not a real strong
6. light. They was more for a decorative thing than they
7. was for light.

8. Q. I'll ask you now to briefly point out the highlights on
9. Exhibit H-16 which shows the existing street light system.

10. MR. FITZGERALD: Excuse me, are these exhibits in
11. this book, 16 and 17?

12. MR. WICKHAM: No, they are not, I'm sorry. I should
13. have pointed that out, the two exhibits are not in the
14. small map book.

15. A. What this exhibit here shows, as you can see, practically
16. every street in the City of Harrisonburg has street
17. lights on it. In fact, all streets have street lights
18. on them to the best of my knowledge, because if they
19. don't have street lights they usually call me. In fact,
20. I'll average one or two calls a week for street lights.
21. And the color codes are the different wattage of street
22. lights. The highest wattage is in blue which you can
23. see covers like Route 11, Route 42, Route 33, and also
24. Route 11 north, and Route 42 north. And the main part

1. of the City is colored yellow which are seven thousand
2. lumens, that mainly covers your residential sections of
3. the City. This color right here is your eight thousand
4. and forty-two thousand lumen sodium vapor street lights.
5. And the exhibit is to show that we have street lights
6. all over the City.

7. Q. Will you turn to Exhibit H-17.

8. A. H-17?

9. Q. Right over on your left.

10. A. This exhibit here covers the seven hundred and sixty-nine
11. lights that we propose to put in provided we are granted
12. annexation which will cover 42, Route 11, it will cover
13. the road out to the Industrial Park, it will cover Port
14. Republic Road, Route 33 east out by the Mall. This here
15. is a section that I don't know why the highway department
16. hasn't put lights in long before now because that's
17. dangerous driving out there after night. Now there are
18. some street lights out there, but they are owned by
19. private individuals who put up their own lights. And
20. then the proposed on Route 33 west. And then for the
21. residential, we are proposing the Ashby Heights subdi-
22. vision, the Forest Hills subdivision, Fairway Hills
23. subdivision, and the houses on Circle Drive. Now, that
24. is covering the most heavily developed areas that's in

1. the proposed annexed area at the present time. And
2. after completion of that in three years, we would con-
3. tinue to put up street lights as we got the requests
4. when development occurred.

5. Q. I now ask you to refer to Map H-34 which is in the small
6. map book.

7. MR. COGAR: If your Honor please, while Mr. Wickham,
8. while they are getting that up, it might be of some
9. assistance to the Court if I could call attention to
10. this exhibit book. In the index you will find a page
11. entitled "Index of Large Exhibit Maps". It says,
12. "(Filed with Clerk Only)". If you would turn that page,
13. if you would, please, I would like to point something out
14. which may facilitate reference to these exhibits. We
15. have a map book, the small one which you have. You do
16. not have in the small map book Exhibit . . .

17. JUDGE ARTHUR: What page are you on?

18. MR. COGAR: It does not have a number.

19. JUDGE ARTHUR: I've got it, "Index to Exhibits."

20. MR. COGAR: Well, it's "Index of Large Map Exhibits"
21. is the caption. If you could asterisk or circle the
22. following: H-3, H-7, H-11, H-13, H-16, H-17, H-21, H-23,
23. H-33 and H-35 and 36. Those are the large map exhibits
24. which were filed with the Clerk only. All other large

1. maps have been reproduced in the book, because that
2. title is misleading. And you have--in the map, the map
3. exhibit book which you have, you have an index. I'm
4. sorry for that misleading caption.

5. Q. Mr. Driver, will you briefly describe what H-34 shows.

6. A. Yes sir. H-34 on the large exhibit shows the streets
7. in the City of Harrisonburg that has curb and gutter
8. on them. I would like, Your Honors, if you all would
9. turn to Exhibit H-34 within the small exhibit book,
10. which I think is an exhibit that shows our street system
11. a little better than the large exhibit there.

12. JUDGE ARTHUR: When you're talking, when you say the
13. small book, you're talking about the plat book?

14. A. Yes, the plat book, that's right. It's numbered H-34
15. in there, but it is different from this H-34. In your
16. plat book H-34, you have an orange on your plat, the
17. streets are paved with curb and gutter. It also shows
18. in green the streets that are paved with no curb and
19. gutter. And then on the left side of your map you have
20. two streets, one in Hillandale and one in Westover Park,
21. that are colored blue. They are recreational streets.
22. And then on the right-hand side of your map you have a
23. series of streets that are colored yellow which is on
24. the campus of James Madison University. And then on

1. this map the streets that are not colored at all, they
2. are shown as a street on there but with no color on,
3. are streets that have never been accepted into the system,
4. the street system of the City of Harrisonburg. Now, how
5. that come about, a lot of them are paper streets. They
6. were dedicated many, many years ago, but even back in
7. the year of the City code of 1937 it stated that the
8. City Council would not accept any street unless water
9. and sewer had been installed in the street and the
10. street rough graded. So that's the reason that these
11. streets still remain blank and don't show as being a
12. part of the City street system; that work has never
13. been done. We are a whole lot in the same position
14. as the Department of Highways and Transportation is in.
15. Back many years ago they was subdivisions recorded in
16. the County and they've never approved them in the state
17. system and they don't take them over and maintain them
18. either. So, until they are brought up at least to our
19. 1937 requirements we do not accept them into our system.
20. And on this system showing the curb and gutter, that
21. represents--I think it's eighty-four, let me check to
22. be sure--that represents 84.8% of all the streets in
23. the City of Harrisonburg. And if you exclude our arterial
24. streets, like Route 42, 33 and Route 11, mainly including

1. our residential streets, 88% of them have curb and
2. gutter.

3. Q. What is the City's policy concerning the installation
4. of curb and gutter?

5. A. We install curb and gutter upon what we think is a
6. need and upon request from the citizens. Now, we do
7. not have a special assessment to install curb and gutter.
8. Therefore, our requests for curb and gutter are high.
9. It seems like almost everyone wants curb and gutter.
10. We don't only include the request as we come in and give
11. them curb and gutter, we take into consideration how
12. long the street has been built, how long they have lived
13. on the street, drainage conditions and different things.
14. Curb and gutter is a big plus in the maintenance depart-
15. ment. If you have curb and gutter controlling your
16. shoulders and your water runoff, it really cuts down
17. on maintenance costs.

18. Q. I now refer you to Tabular Exhibit 23A in the small
19. book and ask you to tell the Court exactly what this
20. exhibit indicates.

21. A. This Exhibit 23A shows the City's expenditures on their
22. street system. I'd like to start out by dropping down
23. to the number four item, revenues and transfers. In 1979
24. and 1980 we received \$358,663.00 from the Department

1. six hundred thousand ~~dollars~~ from the general fund to

2. ~~run our street system. I'd like to go back and give a~~

3. little history on that. Back in 1957 the district traf-

4. fic engineer come to Harrisonburg and took the City

5. Manager out on a tour of the streets and threatened to

6. cut off our maintenance money, our streets was in a

7. terrible shape. After that he approached City Council

8. to put up additional funding from the general revenue

9. of the City of Harrisonburg above the maintenance money

10. we had received from the highway department. Our City

11. Council was foresighted enough to give him his addition-

12. al money. And ever since that time the City of Harrison-

13. burg for the street department has appropriated addition-

14. al money for the street system above the revenue received

15. from the highway department. I might go back. Our

16. total expenditure last year, or the year 1979-80, was

17. \$959,000.00. And I talked to the local resident engineer,

18. he has eight hundred and sixty miles of secondary roads

19. in Rockingham County, his total budget is \$951,000.00.

20. So he has to provide for over eight hundred miles of

21. streets in Rockingham County with less money than we are

22. spending on our street system in the City of Harrisonburg.

23. And I might add that with my knowledge in street con-

24. struction and street maintenance, there is no way that

1. the highway department can continue to operate on the
2. basis of street maintenance money with one thousand
3. dollars for every mile of road that's there, there ain't
4. no way you can operate. The only thing they can do is
5. go backwards. In the City of Harrisonburg our three
6. hundred and fifty-eight thousand alone would come up to
7. five thousand dollars a mile. Of course, within our
8. maintenance money we include such things as you see up
9. there, street lighting, street cleaning and traffic
10. engineering, which the department of highways does not
11. have. But there is no way, gentlemen, that they can
12. maintain their street system or road system with one
13. thousand dollars a mile. And I don't know who is going
14. to pay the extra tax money so they can get it, but they
15. are going to need it from somewhere.

16. JUDGE ARTHUR: Does that same formula, the formula I
17. refer to is that used by the state in deciding how much
18. money to pay the locality, is that the same one as a
19. city of second class or first class?

20. A. I do not know if that is the same for a city of first
21. class. I do know that the General Assembly now has
22. this formula on a sliding scale basis. They go to each
23. area of the state and find out what construction costs
24. are and what maintenance costs are, and then the cities

1. are appropriated their money based on that. This past
2. year, which we have been increased to the four thousand
3. and some dollars that I have talked of, that is going to
4. increase our three hundred and fifty-eight thousand dol-
5. lars to approximately four hundred thousand dollars in
6. our next year's budget for the same linear footage of
7. street. But it is on a sliding scale. For the years
8. through the period of late sixties and early seventies,
9. our funding schedule wasn't changed at all and we did
10. get a little bit behind, but we are getting some money
11. now to operate with although it's not sufficient to keep
12. the street system up to A-1 condition. And I think that
13. you can ride the streets of the City of Harrisonburg,
14. on your tour on Tuesday you rode the roughest streets
15. we had and you also rode some of the best streets we
16. had, and I would say that the street system in the City
17. of Harrisonburg is as good as any street system you will
18. find in the state of Virginia.

19. Q. I now ask you to turn to Map Exhibit H-36.

20. JUDGE ARTHUR: Well, let's adjourn for lunch before
21. you go on. We'll adjourn until two o'clock.

22. (Luncheon Recess)
23.
24.

1. 5% of the cost of right of way along with construction
2. costs on the projects that's in the arterial system.
3. So that should be 5% instead of 10%. And that would make
4. very little change in the grand total of the value of
5. these projects because these projects are an estimate,
6. I might say a very rough estimate, without knowing grades,
7. right of ways and that kind of thing. It's hard to work
8. up an estimated cost on it. Even the highway department
9. with information will often miss an estimate by fifteen
10. or twenty percent.

11. Q. Will you state how you arrived at the construction
12. priorities?

13. A. We arrived at construction priorities mainly by the
14. superintendent of the streets and myself driving the
15. roads in the proposed annexed area. And that is just
16. based on what we felt would be the most needed and heav-
17. ily traveled is the way we based that. But take like
18. Route 11, we've already topped one, that's in the first
19. phase. Those plans are completed. That project has
20. been scheduled to be bid. It's been postponed a couple
21. of times due to funds, but hopefully that would be bid
22. before this annexation would ever become effective if
23. it's granted. Circle Drive--I'll just go over the first
24. year--Circle Drive, those people have been down there,

1. like I said, twenty years in those conditions. We feel
2. they need help, and that would be one of the first ones
3. that we would build. And then Route 710 which I pointed
4. out in the pictures here, James Madison University is
5. building a Convocation Center that is going to seat
6. around eight thousand people, and they are building a
7. roadway that's going to put those eight thousand people
8. onto Route 710. And you can see what Route 710 is now,
9. it's going to be a calamity out there when they all
10. hit Route 710 because there isn't any way it can handle
11. it. So, I would say that would also have top priority
12. on it. And based on the same type of things, we went
13. down through the first, second and third stages.

14. Q. All right, thank you. I now ask you to go to Map
15. Exhibit H-39. Will you explain to the Court that exhibit,
16. please. First of all, will you state to the Court what
17. is the Harrisonburg Electric Commission.

18. A. The Harrisonburg Electric Commission is a city owned
19. service. It's a utility, the same as water or sewer.
20. The only thing different about it is that it's set up
21. under a commission which is appointed by the City Council.
22. And this commission employs their own general manager
23. to run and operate the system.

24. Q. All right, now, would you point out the features of that

1. exhibit.

2. A. The Harrisonburg Electric Commission serves all areas
3. within the City limits, and they also serve these areas
4. in green which consists of Park View, this is 33E, it
5. includes the shopping mall and the rock quarry and all
6. that area. And then this is a section here off of Port
7. Republic Road. And this section is to serve the lights
8. that's in our park area, Hillandale. And this is just
9. a small area outside the City.

10. Q. Does the City expect to extend these privileges into
11. the annexed area?

12. A. Yes sir, we do.

13. Q. I now call your attention to Tab Exhibit 28 which is
14. entitled "General Description of the City's Water System."
15. Will you tell the Court the beginnings of the City's
16. water system?

17. A. Yes sir. The City of Harrisonburg's water system began
18. back in the late 1800's. We have approximately a hun-
19. dred and thirty miles of water lines of various sizes
20. within and without the City of Harrisonburg. And as you
21. know, if that was all laid out in a straight line, it
22. would reach from Harrisonburg to beyond Roanoke, which
23. is quite a bit of water lines. We have several sources
24. of supply, which I would like to get into a little later

1. on when we get the area wide water system which I be-
2. lieve I could show the Court . . .

3. Q. Why don't you go on and point to these two map exhibits,
4. H-21 and H-19, and point to the various sources of supply
5. that the City has.

6. A. Yes sir, I can explain the system better with this H-21.
7. The red line is the City of Harrisonburg. This is going
8. west, of course, towards West Virginia. This is going
9. east. We have a--I want to start out at the very begin-
10. ning and bring you to the system. I'd like to bring
11. out, stress on what I'm going to bring out, to prove
12. that Harrisonburg's water system didn't just happen.
13. The system was planned, it's been planned for over a
14. hundred years. We have continuous planning on it, and
15. it ties in well with our slogan, "A City with a Planned
16. Future." Because our City Councils, down through the
17. years, have spent a lot of money on water systems for
18. future planning that they would not have had to have
19. done if they had wanted to have kept the City and the
20. system the same size. Back in 1898 the City of Harri-
21. sonburg laid a water line, a ten inch water line, from
22. the City limits to this point right here. That was in
23. 1898. All that work was done by hand and with pick
24. and shovel. And that's a distance of approximately

1. thirteen miles. At the same time, when that ten inch
2. water line was laid, right here on the corner of Court
3. Square which we are now on they had a spring that was
4. producing close to a million gallons of water a day.
5. They decided not to use that spring. They went for a
6. permanent source of water supply. That system lasted
7. the City of Harrisonburg--now, this was raw water,
8. untreated, it come from the mountain. Out in this area,
9. that green does show as being that large, the City of
10. Harrisonburg owns over two thousand acres of land out
11. in this area. And the U. S. Forest Service owns most
12. of the rest of it. There's maybe only three or four
13. private property owners in this whole area out here,
14. in the whole drainage area. So, we was bringing this
15. plain raw water into the City of Harrisonburg back in
16. 1898, not treated, no chemicals or anything in it. That
17. system lasted until 1922. They began to use more capac-
18. ity than that ten inch line carried, so a twelve inch
19. line was laid in approximately the same location, from
20. the City limits to Rawley. That was in 1922. This area
21. is called Rawley Springs right here. That's where we
22. have a water intake that's just a concrete basin out
23. there that we chlorinate--we used to chlorinate water,
24. we don't anymore because we have a treatment plant.

1. Then after the second water line was laid to this point,
2. the City went out there and built an underground dam.
3. The conditions of that mountain land out there is such
4. that water goes underground very quick and you don't
5. have to be very low until you don't see any water running
6. at all, but underground there is a lot of water running.
7. So by an underground dam I'm talking about a concrete
8. dam that ranges from maybe ten to eighteen feet deep
9. clean across the basin of this ravine out here to pick
10. up all the water that's coming down in that area and
11. then feeds it into the system. And then in the mid-
12. forties the City of Harrisonburg went out here to the
13. Town of Dayton and they purchased Silver Lake. Now,
14. the Town of Dayton has first priority to get water out
15. of Silver Lake, although the City bought it for a reserve
16. water supply when the water was low. In the fall of
17. the year I have seen the water flow at this point,
18. which was about 1967 or 1968, I forget the exact year,
19. but we was down to half a million gallons a day of water
20. flow. So we need the surplus supply in dry weather,
21. so this here was purchased. Then in 1950 we outgrew
22. our system again, so a sixteen inch line was laid from
23. Harrisonburg to Rawley Springs. And about that time
24. is when we started treating the water with chlorine

1. at that area, giving it chlorine treatment to bring it
2. into the City. Then we went to 1969. In 1969 we laid
3. a line from Dayton out to Bridgewater. We are now tak-
4. ing water out of North River, here right below the Town
5. of Bridgewater. We have pumps there that pumps a capac-
6. ity of 5.2 million gallons a day. At the same time we
7. went out there we built a water treatment plant here
8. in Harrisonburg because we couldn't use North River
9. water, it was untreated water, we had to have a treatment
10. plant. At the same time this line was laid we built a
11. water treatment plant which had a capacity of five mil-
12. lion gallons of water a day. But since that time we
13. have approval from the State Health Department that it's
14. been tested, that it's been proven it can be done, we
15. have a capacity of 7.6 million gallons of water in our
16. water treatment plant. So, the next thing that came
17. along that the City Council and the City administration
18. I think made a good decision--well, let me back up a
19. little bit at this time. At the same time, when this
20. treatment plant was being built, it was a big decision
21. to be made by City Council, whether they was to go down
22. to Island Ford, the Island Ford site, which is right
23. here. There was a lot of debate between the citizens
24. of Harrisonburg and the Council of whether the City of

1. Harrisonburg should come to here for a water supply or
2. build a water treatment plant and continue to get the
3. water out of the mountain and go to North River when
4. you didn't have water out there. The decision was final-
5. ly made, which I have stated, to do this. We own twenty-
6. seven acres of land down here and it could be used for
7. future supply someday, but with the supply source that
8. we have now I think it will be a long time before it
9. would ever be needed. In the early seventies the Soil
10. Conservation people started to build Soil Conservation
11. flood control dams up in this green area. They built
12. three dams; they were called Dam 80, 81 and 82. Dam
13. 80 was built on this little leg here, which is called
14. Dry Run. Dry Run doesn't produce a whole lot of water,
15. so it was just used for a flood control dam and nothing
16. else. Their next dam, Dam 81, was up in this area in
17. the blue, what we call Skidmore. The Soil Conservation
18. people come to the City of Harrisonburg and wanted to
19. know if they would participate in a water storage dam
20. in that area. The City of Harrisonburg agreed to do so,
21. so the Soil Conservation people built their flood con-
22. trol dam. The City participated and increased the
23. width of the base of the dam along with additional
24. height for water storage. We spent a million and six

1. hundred thousand dollars on that additional dam. And
2. at that time it wasn't easy, but it showed that while
3. the Soil Conservation was building the dam it would be
4. cheaper and it would be a long range plan to have water
5. storage for the City of Harrisonburg. That dam stores
6. one billion six hundred million gallons of water, and
7. it's full today. That is a little over a year and a
8. half water supply for the City of Harrisonburg. So,
9. the possibilities of the City of Harrisonburg or any
10. outlying area around the City having a shortage of water
11. in the next years is not likely to happen. At the same
12. time--this is Dry Run up here and Dry Run comes down
13. and it's called Dry Run all the way down through the
14. green area. The Soil Conservation people built another
15. flood control dam called Dam 82. The Board of Super-
16. visors was approached to participate in Dam 82 as their
17. water supply to serve the area of Rockingham County
18. around the City of Harrisonburg. They refused to
19. participate in it. Evidently they decided that wells
20. would be a better source of supply and from this water
21. shed out here. And I can tell you that that water that
22. comes out of that watershed is the best water you will
23. find in the state of Virginia. It doesn't have a hard-
24. ness and it's excellent water. It's nothing but wildlife

1. out in that area so it's almost pure water when it comes
2. in.

3. Q. Will you describe briefly the other water systems shown
4. on that area wide map?

5. A. Yes sir. I'll start at the top of the map. All of the
6. seven towns within Rockingham County have their own
7. water system except Mt. Crawford. I don't see Mt. Crawford
8. on here. But this shows Timberville, Broadway,
9. Elkton, Grottoes, Bridgewater and Dayton. Each one of
10. those have a water system, and to my knowledge none of
11. them relies on a well to get their source of supply.
12. Massanutten Village has a water system. This is a
13. recreational area, and also a summer type, second home
14. development. A lot of people are living down there
15. permanently. This is built in what we call the "kettle"
16. in Rockingham County. It's down in the mountain, and
17. they have a water system. The little town of McGaheys-
18. ville has a water system. And then Massanetta Springs
19. has a water system.

20. Q. Now, you have described the distribution system for
21. the City of Harrisonburg, haven't you?

22. A. Yes sir, the City of Harrisonburg . . .

23. Q. Look over at Map H-19.

24. A. A lot of this I have already explained. This is our

1. existing water system. This is the area that is outside
2. the present City limits that we serve water to. We've
3. been out in this area serving Walker Manufacturing for
4. many years, since the early sixties. There is a water
5. tank at Walker Manufacturing that's owned by the City
6. of Harrisonburg. This is our water treatment plant up
7. here. Then on our distribution system we serve County
8. customers all the way back to Rawley Springs where I
9. said we had a ten, twelve and sixteen inch water line.
10. We took the ten inch water line out of the system for
11. raw water and are pumping treated water through the ten
12. inch line all the way back to Rawley Springs. Now, we
13. have quite a few customers between our City limits and
14. Rawley Springs. And to my knowledge, although I have
15. heard some people say they have been refused water con-
16. nections out there, but to my knowledge we have never
17. refused anyone a water connection provided they are
18. within three hundred feet of the line. Now there has
19. been some farmers in the area that their farm is set
20. back five or six hundred feet, we have not permitted a
21. small water service line due to the problems it creates.
22. This up here shows the water tank that's owned by the
23. Park View Sanitary District which is in the County right
24. now. This area here we serve outside the City, which is

1. the Fairway Hills section, subdivision. And we had to
2. put a pumping station there to pump water up into Fairway
3. Hills on account of we didn't have enough pressure for
4. that. This area up here shows our main water storage.
5. We have a six million gallon open concrete reservoir,
6. and we have a fifteen million gallon, a total of twenty-
7. one million gallons in two reservoirs at this area. And
8. the other little dot there is a water storage tank that's
9. in the process of completion. Last week we were filling
10. the tank and I don't know whether the tank is filled as
11. of yet or not. While I am on the water system, this
12. also shows the County water system where they are serving
13. Kroger and K-Mart in here. They are also serving the
14. shopping mall. This is a water storage tank that they
15. have. And they are serving all of Ashby Heights. And
16. it's serving this new subdivision, I can't think of the
17. name of it right now. And also the County has a water
18. system as shown in green in this section here, in the
19. southern end.

20. Q. Mr. Driver, where does the County get its water for its
21. system that you just described on the east?

22. A. All of the water that they presently have at the present
23. time has been purchased from the City of Harrisonburg
24. and it's been provided through master meters. They

1. have a master meter in this area for this system. And
2. I might add that this system here, or the water system,
3. was put in by the developer. Rockingham County bought it
4. off of the developer, and as soon as they got the City
5. water they took the wells that was providing that water
6. out of existence and put City water into the system
7. instead of the wells that they had. I don't know why,
8. but evidently the wells wasn't providing satisfactory
9. service. We have a master meter in this area that
10. serves all of the Park View area, and then we also have
11. a master meter that serves the Donnelley plant out on
12. the north part of the City.

13. JUDGE ARTHUR: Are all of the other connections metered,
14. individual connections, like residences and stores? Does
15. each one have a separate meter within the City or within
16. the County?

17. A. Within the City.

18. JUDGE ARTHUR: Within the City.

19. A. Yes sir, each one has a separate meter, each individual
20. person. I won't say each individual apartment because
21. you can have an apartment house that has one meter and
22. branches off to maybe four apartments or maybe eight
23. apartments or something like that. But everyone has
24. their own individual water meter. We even have Wampler

1. Foods, which is out here on Route 33, it's probably the
2. second largest user of City water that we have which
3. is in Rockingham County. James Madison University is
4. our largest--I pointed wrong, James Madison University
5. is in here. They are our largest water user for the
6. City of Harrisonburg.

7. Q. Do you recall the agreement the City has with K-Mart
8. out on 33 east to provide water for the store, and
9. Kroger?

10. A. Yes sir. K-Mart and Kroger, to my knowledge there was
11. no written agreement. They came to the City of Harrison-
12. burg for water. We had water lines out on Route 33. So
13. K-Mart and Kroger have extended water lines up to their
14. store at their own expense and then turned them over to
15. the City of Harrisonburg for maintenance and operation.
16. And after we got on a contract agreement with Rockingham
17. County to provide them water, this system was turned
18. over to Rockingham County and those lines were given to
19. Rockingham County. We didn't receive anything for them
20. because we didn't pay anything for them. We didn't feel
21. like the County owed us anything for them, so we gave
22. them to the County. The reason K-Mart and Kroger was
23. wanting to go into the County system--I won't say they
24. wanted to go into the County system, but I'll put it this

1. way. We couldn't supply sufficient pressure for K-Mart.
2. and Kroger. They had complained to us a good bit because
3. they couldn't get fire protection. So we had employed
4. our engineers to improve the water system to give pres-
5. sure to K-Mart and Kroger and also to Fairway Hills. We
6. had gone so far as to have design, we talked to property
7. owners about putting a water storage tank out in that
8. area so we could provide pressure for those people. And
9. that in the meantime is when Rockingham County presented
10. a system for the storage tank out here, so there was no
11. point in us putting a storage tank if they was going to
12. build one. So, an agreement was reached to give them
13. Kroger and K-Mart and let them serve it rather than us
14. providing a storage system. We have built a water
15. storage tank up here on Reservoir which is going to
16. help the people out in Fairway Hills, that will boost
17. their pressure a good bit.

18. Q. Where is the County's well located on that map?

19. A. At this point right here just off of Route--I don't
20. know the route number, but it's out in the Pleasant
21. Valley area right adjacent to the Industrial Park.

22. Q. Did the tour pass by that on Tuesday?

23. A. Yes sir, the tour passed that on Tuesday and water was
24. running out of the well. It was being pumped as the

1. tour went by.

2. Q. Are you familiar with the area along Route 11 south of
3. the City?

4. A. This area here?

5. Q. Yes sir.

6. A. Yes.

7. Q. Where do they get their water supply?

8. A. This here?

9. Q. Yes--no along Route 11 there.

10. A. Along this?

11. Q. No, south of that.

12. A. There?

13. Q. Yes.

14. A. They don't have any water supply as yet. The County has
15. built a water line and I think the contractor is probably
16. just completing the water line, but there is no water in
17. the system as of yet.

18. Q. Well, does the City serve south of the City limits along
19. Route 11?

20. A. Yes sir, the City serves all of this area here which
21. goes out to the interchange and then we go out Pleasant
22. Valley Road with water and serve the Industrial Park.

23. Q. Well, do the residences or the businesses located on
24. Route 11, how do they get their water at the present

1. time south of the City?
2. A. South of the interchange they don't have any water
3. storage, they get it from wells.
4. Q. Have there been any problems out there with that source?
5. A. Yes sir, there has. I talked to the owner of Sellers
6. Furniture Store, he says that his well became contami-
7. nated and he had to do away with it. He also told me
8. that the Truck Stop had problems with their well being
9. contaminated and also the well at the State Police head-
10. quarters.
11. Q. How far away are those wells from the County well, do
12. you know what is the distance?
13. A. Oh, roughly speaking I would say two miles at the most,
14. I don't think it's quite that far.
15. Q. Do you know whether the Health Department has approved
16. or issued a permit for the County well?
17. A. No sir.
18. Q. I would ask you now to turn to Tabular Exhibit 28A.
19. A. Yes sir.
20. Q. Will you point out to the Court the customers and the
21. water used both within and without the City in the last
22. ten years?
23. A. Yes, rather than go through that entire schedule I think
24. the last year will be very typical of what's going on.

1. I would just like to use the month of February 1981. We
2. had five thousand two hundred fifty-four customers within
3. the City limits and we had eight hundred ninety-nine out-
4. side the City limits for a total of six thousand a hundred
5. and fifty-three customers. And the water consumption,
6. this is the metered water that's used, within the City
7. of Harrisonburg it's sixty-two million plus gallons per
8. month, and outside the City limits it's twenty-six mil-
9. lion plus per month; for a total of almost eighty-nine
10. million gallons of water per month. And that shows that
11. our consumption is roughly three million gallons a day.
12. That month was down some, some prior months in 1980 it
13. was a little higher than that, but still the total con-
14. sumption is very little over three million gallons a day.
15. And our water treatment plant has a capacity of 7.6 mil-
16. lion, so you can see we can double our capacity of water
17. that we sell. Then down at the bottom of Exhibit 28A
18. is the customer growth. In the City of Harrisonburg it's
19. been 32%, that's in the ten year period, and outside
20. the City it's been 93%. And water consumption growth
21. within the City has been 36% and outside the City 154%.
22. I now ask you to turn to Exhibit 28B which is entitled
23. "Distribution of Customers." How many customers does
24. the City now have within the present boundary?

1. A. That's the same as I stated a couple of times, five
2. thousand a hundred and eighty-three.

3. Q. And how many in the annexed area, the proposed annexed
4. area?

5. A. Four hundred and seventy-eight.

6. Q. Now will you please turn to Exhibit 28C. Will you tell
7. the Court what your estimate is concerning the existing
8. water supply, how long it will last.

9. A. From North River we've got pump capacity and line capacity
10. size to get 5.2 million gallons a day. And from Silver
11. Lake, the third column down, we've got capacity of three
12. million gallons a day. I'd like to explain a little bit
13. on this exhibit. The North River supply and the Silver
14. Lake supply goes through the same lines. And we do not
15. have line capacity for 8.2 million gallons a day. Our
16. line capacity is 5.2 million. So, 11.7 million gallons
17. is not the total capacity we have, it's not that much,
18. it's three million gallons less than that. From Dry
19. River we have a capacity, pipe capacity, of 3.5 million
20. gallons a day. And as I said a while ago, I have seen
21. that flow down to half a million gallons. But since
22. we have Switzer Dam, our flow doesn't get down that low.
23. So, we can bring three and a half million gallons of
24. water a day from Dry River and 5.2, so with our present

1. piping system we now have we have a total capacity of
2. 8.2 million gallons of water, which is a little bit more
3. than what our treatment plant can produce.

4. Q. How long do you estimate that would last under normal
5. conditions?

6. A. Well, that capacity is about double of what we now use.
7. We've been here since the early 1800's and long before
8. that, so really it should be a long time. We have a
9. growth schedule down underneath those capacities. In
10. 1981 we are estimating twenty-five thousand people and
11. a consumption of treated water of 3.3 million gallons.
12. In 1990 we estimated the population at twenty-eight
13. thousand five hundred with a consumption of 3.7 million
14. gallons. In the year of 2000 we are estimating thirty-
15. two thousand population with a consumption of 4.2 million
16. gallons of treated water. And those figures are some-
17. thing I would like to sort of keep in mind when we get
18. to talking about our sewage treatment, our capacity,
19. because sewage treatment flows go along pretty close
20. with the water usage. I'll be coming back to those
21. figures later on when I talk about sewerage.

22. Q. All right, let's turn now to Exhibit 29, which is entitled
23. "General Description of Sewerage Systems." Will you give
24. a brief history of the City's sewerage systems?

1. A. Yes sir. I need my notes for some numbers.
2. Q. Also I think we need Map Exhibits 22 and 23.
3. A. Our sewer system was started about the same time the
4. water system was, it was started back in the late 1800's.
5. This map here shows the lines of the various sizes of
6. the sewer system that we have. We probably have in the
7. neighborhood of seventy-five linear miles in the sewer
8. system underground. It's not near as much as the water
9. lines because a lot of our water lines are running to
10. Rawley Springs out there. But, we do have about seventy-
11. five miles of sewerage in the ground. The City started
12. out in 1915 with the first treatment facility and that
13. was used until the year 1952. Then in 1952 the sewage
14. treatment plant was built for the City at this location
15. right here. It's about a two and a quarter million
16. gallon sewage treatment plant. Our usage out through
17. that plant back in about 1967, the State Water Control
18. Board put a moratorium on us, on additional house con-
19. nections, due to the fact that our system was overflowed
20. in volume. From this sewage treatment plant the flow
21. went to a little stream here known as Blacks Run that
22. runs down through here. So, after that we had our
23. engineers to start designs on enlarging our plant doubl-
24. ing the capacity or going to a new location with a plant.

1. So about 1969 or early 1970 we went to Richmond with
2. our plans trying to get a state and federal grant to
3. help us build that sewage treatment plant. In the mean-
4. time, possibly within the next couple of months, Rock-
5. ingham County also took a plan for a sewage treatment
6. plant to Richmond and they applied for a grant. And at
7. the same time the Town of Bridgewater was under a mor-
8. atorium on additional house connections, there plant
9. was overflowed. And the Town of Dayton only had a
10. lagoon, they didn't even have a treatment plant, and
11. they had a big poultry industry out there by the name
12. of Marval.

13. Q. Let me interrupt you right there. Would you point out
14. the systems that are shown on this area wide map at the
15. present starting with Bridgewater?

16. A. This is the Town of Bridgewater here. They have their
17. own sewerage system. They now pump into the Harrison-
18. burg-Rockingham Regional Sewer Authority treatment plant
19. This is the location.

20. Q. Now, this location is the area wide system at this
21. time?

22. A. Right.

23. Q. Does anybody else have a system, does Dayton have a
24. system?

1. A. Dayton has a sewerage system. Park View up here has a
2. sewerage system. And at the present time Massanetta
3. Springs has a system and Massanutten Village has a
4. system.

5. Q. All right, now, if you will turn to Map H-21 and continue
6. to describe the sewerage system.

7. A. H-21 or H-22?

8. Q. H-22.

9. A. To go back where I started, after all political sub-
10. divisions applied for a grant the State Water Control
11. Board said that all the political subdivisions in this
12. area should get together and decide on what kind of
13. sewerage system they was going to have, that there
14. wouldn't be funding but for one system for all the
15. political subdivisions. So, the Towns of Dayton,
16. Bridgewater and Mt. Crawford and the County of Rockingham
17. and the City of Harrisonburg got together and they
18. agreed to form an authority. And this authority was
19. formed on July 15, 1970. And for the makeup of this
20. authority four members were on the authority from the
21. City of Harrisonburg, one member from Rockingham County
22. and one member from each of the three towns. This
23. authority was approved and they employed an engineer
24. to proceed with plans and they started the design on

1. a regional sewer authority that's now in existence and
2. located right here at this point. To get the authority
3. going, they didn't have any funds, no financing, so in
4. 1970 the authority was able to borrow \$310,000.00 from
5. unsecured bank loans. This was based on participating
6. state and federal grants which they felt would be
7. received by the authority. Then in 1971 the authority
8. received an additional loan of one million dollars. And
9. to get this one million dollars the City of Harrisonburg
10. and the Towns of Dayton and Bridgewater signed a note
11. at the banks so the banks would loan the money to the
12. regional sewer authority. And down through the years
13. until the bonds were issued on the authority, the City
14. of Harrisonburg and the Towns of Dayton and Bridgewater
15. committed themselves to a total of three million three
16. hundred thousand dollars for the authority to operate
17. on. The authority had to pay the contractors prior
18. to receiving money from the grants from the state and
19. federal government, so we had to put up a lot of front
20. end money.

21. Q. Did the County participate in this to any extent?

22. A. Yes sir, they did. In February of 1975 the County
23. loaned the authority \$75,000.00 interest free, there
24. was no interest charged on the money. And that was

1. for a period of ninety days. And then during the months
2. of October, November and December of 1976, Rockingham
3. County loaned the authority a million a hundred and
4. eighty-three thousand at 5% interest. Then the authority,
5. the sewer authority, not the City . . .

6. Q. When was that paid, that money that the County loaned?

7. A. That was repaid when the bonds were sold. And that's
8. what I want to make clear to the Court, that the sewer
9. authority sold these bonds. It wasn't the towns or the
10. City, it was the sewer authority. So when the sewer
11. authority sold the bonds, the bonds were in the amount
12. of four million dollars, the notes at the banks were
13. paid off and Rockingham County's debt was paid off.
14. And these bonds were sold in May of 1977. Now, to do
15. the permanent financing, Rockingham County could not
16. go the bond issue without a referendum. So, they chose
17. to pay the sewer authority a check in the amount of
18. one million a hundred--no, I'm wrong--Rockingham County
19. paid the sewer authority \$1,203,442.00 for their share
20. of debt service. And they also paid \$48,137.00 to the
21. authority for Mt. Crawford's debt service. To make
22. these payments it took quite a few meetings to decide
23. how the payments were going to be made. So, it was
24. finally decided that the political subdivisions would

1. put up money based on the capacity that they received
2. in the plant of the regional sewer authority. Now, this
3. regional sewer authority was built and designed and set
4. up for a capacity of eight million gallons a day. So,
5. they took that eight million and started to divide it
6. up. Rockingham County said they'd like to have a fourth
7. of the capacity, so they agreed to pay a fourth of the
8. debt which was about 5.2 million dollars. Mt. Crawford
9. was 1% of the capacity. So I don't know whether Mt.
10. Crawford didn't have the money to put up the forty-seven
11. thousand, but Rockingham County put their money up for
12. them, so Rockingham County had their one percent, which
13. was a total of 26% of the capacity of the regional
14. sewer authority. Now, the Towns of Bridgewater and
15. Dayton and the City of Harrisonburg went together on
16. the remainder. They have a total of 74% capacity of
17. the plant, 74% of the eight million, which is approxi-
18. mately six million. And that capacity is owned jointly
19. and severally by the Towns of Bridgewater and Dayton
20. and the City of Harrisonburg. Now, also in the bond
21. issue of four million dollars that the sewer authority
22. sold, those bonds had to be guaranteed by these three
23. political subdivisions; so they also guaranteed those
24. bonds jointly and severally between Bridgewater and

1. Dayton and the City of Harrisonburg.

2. Q. Are you presently a member of the authority?

3. A. Yes sir, I was appointed a member of the authority by
4. the City Council in the year of 1975.

5. Q. At any time since the authority has been formed, did
6. the County try to withdraw from it?

7. A. Yes sir. It was back in the early 1970's right after
8. the authority was formed, the Board of Supervisors pass-
9. ed a resolution requesting that they be allowed to with-
10. draw from the authority because they wanted the authority
11. to be a sewer and a water authority. If there couldn't
12. be water added to the sewer authority, they wanted to
13. withdraw. They sent a copy of that resolution to the
14. State Water Control Board and also the people providing
15. the grants and also one to the Central Shenandoah Plan-
16. ning District. I might say, the letter was never pre-
17. sented to the members of the Harrisonburg-Rockingham
18. Regional Sewer Authority. The chairman received the
19. letter but he never did present it.

20. Q. I now hand you a sheet entitled "Harrisonburg-Rockingham
21. Regional Sewer Authority, July 1, 1980 - February 28,
22. 1981," and ask you to further identify that. Will you
23. please identify that sheet?

24. A. Yes sir. This sheet, as a member of the sewer authority,

1. at our--we hold our regular meetings the first Monday of
2. the month. Our meeting was this past Monday, March the
3. 6th. April the 6th. I'll get it right in a minute.
4. This is a chart that the executive director of the sewer
5. authority passed out to us. It shows sewage flow for
6. a period of eight months beginning July 1 and ending
7. February the 28th. The reason these charts are being
8. made up and these figures are being shown, when the
9. regional sewer plant was built there were sixteen meters
10. installed on the system of the regional sewer authority
11. lines and within the plant itself. These meters never
12. would work, so the authority members authorized that all
13. sewer meters be replaced, which they were, at a cost
14. of about thirty thousand dollars. These sewer meters
15. were just put in operation on July 1 of 1980. Now, we
16. have flow figures which shows the discharge from the
17. sewer treatment plant. If you go halfway down the page
18. the sewage treatment plant flows shows four million eight
19. hundred and seventy-seven thousand gallons. Up at the
20. top of the page to the right it shows sewage flow meters
21. average gallon a day. Bridgewater is three hundred
22. seventy-seven thousand, Dayton is a million nineteen,
23. Harrisonburg is two million seven fifty-five, and Rock-
24. ingham County is four hundred and sixty-four thousand;

1. which is a total of four million six hundred and sixteen
2. thousand gallons a day, which is less what the meter
3. at the discharge of the sewage treatment plant shows.
4. Also, in trying to determine whether these sewer meters
5. are fairly accurate or not, we are also getting water
6. consumption from all the political subdivisions and com-
7. paring water consumption with the sewage flow meters.
8. If you go over to the second column from the left-hand
9. side of the page you can see the average daily water
10. consumption of the four political subdivisions. I
11. might say that Mt. Crawford doesn't have any sewage
12. system, they don't have any sewer lines, so they have
13. never been involved in sewage flows in any way. Now
14. this chart here shows that the sewage flow meters are
15. twenty-two percent above the water consumption meters.
16. We don't know as members of the authority today whether
17. that is an accurate figure. We don't know whether these
18. meters are functioning properly at the present time. We
19. feel like some of the meters are probably not correct
20. yet. A sewer meter is something that is awful hard to
21. get to work. And if you have a capacity of less than
22. fifty thousand gallons a day a sewage meter won't work,
23. there is no way that you can measure an accurate flow
24. on it.

1. Q. I will interrupt you there. Does Rockingham County have
2. any meter that measures, for instance, more than fifty
3. thousand?

4. A. They have one meter in the Ashby Heights line that comes
5. from this area out here, it comes into the sewage treat-
6. ment plant, that would probably measure fifty thousand
7. gallons a day. But none of the other meters are really
8. that accurate. The one at the Valley Mall I know is not
9. accurate because in our contract we was going to bill
10. the County for sewage flow going through our sewer sys-
11. tem and it was so far off they refused to pay it and we
12. felt guilty in charging them. So, we charge them at
13. that area on the water consumption, not the sewer flow.
14. So that meter is inaccurate and it's still not in opera-
15. tion as of today.

16. Q. In your opinion what do you think the flow is through
17. the discharge system?

18. A. I would say in this dry period of time with no more
19. rainfall than we have had through the winter and last
20. fall that possibly the sewage flow should be somewhere
21. between ten and fifteen percent above water meter sales.
22. I think that would allow for a fair amount of infiltra-
23. tion during this period of time. There are times when
24. infiltration will far exceed that. But during the period

1. of time this chart was worked up, I feel that would be
2. a fair amount.

3. Q. Again, what was the allocation for Rockingham County?

4. A. Rockingham County's allocation is 26%, roughly two
5. million gallons. I might say that when the contract
6. was drawn up for capacity in this sewer plant, it was
7. stated in the contract that all political subdivisions
8. signed that if one political subdivision did not need
9. their capacity they could transfer it to another polit-
10. ical subdivision that was using their meter.

11. Q. Is it your opinion that the City of Harrisonburg can
12. meet the needs of the proposed annexed area insofar
13. as the allocation of the sewer capacity of the plant?

14. A. Yes sir, I feel that that wouldn't be any problem.
15. With the six million that the two towns and the City
16. has jointly and severally, this is the only known
17. source of volume that's on this paper that we have.
18. We have other figures, but that was before the individ-
19. ual meters was installed. If we would get this proposed
20. annex area, possibly we wouldn't pick up over two hun-
21. dred thousand gallons of additional sewage from Rock-
22. ingham County because the biggest amount of their sew-
23. age is coming from Massanetta Springs which is being
24. pumped back into the authority and also from Belmont

1. Estates, which is a subdivision with probably a hundred
2. houses, it's also pumped back into the authority. There
3. will still remain the capacity of Rockingham County if
4. annexation was granted.

5. Q. How about the Park View area?

6. A. Park View, which again is this area up here, their
7. sewage comes through the City of Harrisonburg, and
8. their volume has been counted against the City of
9. Harrisonburg in this two million seven hundred and
10. fifty-five thousand shown on this chart. So we already
11. are being charged with their volume.

12. Q. Are the lines leading into the authority plant, what
13. are the size of those lines?

14. A. The size of the lines vary depending on how far out you
15. get right at the regional sewer authority. Those lines
16. are designed to carry a capacity of sixteen million.
17. Although the size of the lines, you can flow thirty-two
18. million gallons a day through those lines.

19. Q. Has the authority sought to increase its capacity?

20. A. Yes sir. The authority had started several years ago
21. on increasing its capacity. In fact, they started before
22. they put the plant in operation. Our attorney for the
23. regional sewer authority was led to believe when we made
24. our original application that this capacity could be

1. increased from eight million gallons. So even before we
2. opened up the plant he asked the authority members to pur-
3. sue this additional capacity, which he has written letters
4. to the State Water Control Board on. We were told to put
5. the plant in operation and if we showed that we could do
6. a good job with the plant and keep the BOD and solids
7. down that go into the North River, that it would be con-
8. sidered at that time whether additional capacity could
9. be put on this plant. So, approximately two years ago
10. our attorney was told to proceed to try to get increased
11. capacity. And the reason we asked that, it wasn't due
12. to the fact that we was at our limit, capacity was not
13. a problem at that time when we asked him to do that, we
14. felt that if we could get a ten million or a twelve
15. million discharge flow capacity from that plant, that
16. we could save the citizens of the area a lot of money.
17. Because the more volume we can put through that plant,
18. it would be a longer period of time before we would have
19. to build another plant. And when I say build another
20. plant, the lines and everything was designed for a sixteen
21. million gallon plant. What we built is eight million
22. gallons. We have planned and graded and everything
23. to put another plant right beside it for another eight
24. million gallons using a lot of the same facilities.

1. So, another thing our attorney has talked to the State
2. Water Control Board about is what he calls is a tiered
3. permit. By that he is asking that when the water flow
4. in the river is up they let us put more volume into the
5. river. When the flow is down, then our volume would
6. decrease. It would be based on the river flow. So,
7. if we would get a tiered permit, and he talked like that
8. is extremely possible, that when we have high rates of
9. infiltration we are going to have high water flow in
10. the river. So, I don't see that infiltration is as near
11. a big problem with our sewage treatment plant as BOD
12. and solid flows are when the sewage comes into it.

13. Q. Would this plant capacity be increased then without
14. any capital improvements? Is that what you're saying?

15. A. Yes sir, it's possible. We've been led to believe it's
16. possible to get by the State Water Control Board, that
17. it's possible to get our capacity increased with no
18. capital improvements to the physical plant itself. We
19. would have to do chemical treatment. We have already
20. built chemical treatment buildings, they are on the
21. ground. We would have to add that that would increase
22. our operation and maintenance money because chemicals
23. are very high. And another thing, another method that
24. we might be able to get our capacity increased, would

1. be through the testing of the stream which would take a
2. period of approximately six months. So, it's possible,
3. if our stream standards show as such that we can get
4. increased capacity without chemical treatment.

5. Q. Mr. Driver, one final question. What is the present
6. use of the City's sewage treatment plant?

7. A. The City's sewage treatment plant, the old one, was
8. totally abandoned when we went into the regional sewer

9. authority. It's on a standby. We spend, and we put in
10. our budget a figure, I don't know, it's in the neighbor-
11. hood of twenty or twenty-five thousand dollars a year,
12. to maintain that plant. That plant is kept in top
13. condition. Within a two week period it can be turned
14. on and put in operation. Although I'm sure the State
15. Water Control Board is not going to give us a permit .
16. to treat sewage in it and put it in Blacks Run unless
17. an emergency comes up. But it is on standby and could
18. be put in operation within a two week period.

19. MR. WICKHAM: If the Court please, I'd like to intro-
20. duce this Harrisonburg-Rockingham Sewer Authority infor-
21. mation as Exhibit 55.

22. MR. FITZGERALD: It's certainly pure hearsay, but it's
23. a lot of hearsay going in here already, so I don't guess
24. I have any objection.

1. A. They had a hold of me.
2. Q. All right, but you didn't mean to testify.
3. A. I would have rather not.
4. Q. You are familiar with the report that the commission
5. filed with regard to the sewer situation, aren't you?
6. A. Yes sir.
7. Q. And are you aware that the commission made some inquiries
8. to the State Water Control Board and they referred to
9. that in their report?
10. A. Yes sir.
11. Q. Are you aware that the State Water Control Board disputed
12. the wording of their conversation with the commission
13. report?
14. A. Yes sir, I'm aware that they wrote a letter to Mr.
15. Wilkinson explaining in detail what it took to get a
16. permit.
17. Q. Does that show that Mr. Marvin Milam got a copy of that
18. letter?
19. A. Yes sir.
20. Q. Have you seen it?
21. A. I've seen Mr. Milam's copy, yes sir. Although I might
22. add that at our meeting on Monday of the regional sewer
23. authority, it wasn't presented to us at our meeting.
24. Q. It wasn't presented by the chairman of the authority?

1. A. No sir, it wasn't.

2. Q. But Mr. Milam got a copy of it, all the--the City, the
3. County and the towns got a copy of it, didn't they?

4. A. Yes sir.

5. Q. And that's that letter? Take a look at it.

6. A. Yes, that's it.

7. MR. WICKHAM: May I take a look at it?

8. MR. FITZGERALD: Yes. Your Honors, after Mr. Wickham
9. finishes with that letter, reading it, we would offer it
10. as an exhibit and give it a number, I think it's 101.

11. JUDGE MOON: It's 103.

12. MR. WICKHAM: What are you going to do with it?

13. MR. FITZGERALD: I'm going to offer it into evidence.
14. It's been identified by the witness.

15. MR. WICKHAM: For identification purposes?

16. MR. FITZGERALD: No sir, we offer this into
17. evidence.

18. MR. WICKHAM: If your Honor, please, I would object to
19. the introduction of that letter as hearsay evidence.

20. JUDGE MOON: Well, most of the cross examination is
21. hearsay, so it's hearsay cross examination of hearsay.
22. So it's another exception to the hearsay rule.

23. Q. You mentioned, Mr. Driver, that the old city plant that is
24. closed down, that the State Water Control Board hasn't

1. allowed you to hook up anymore connections to, and you
2. have it on standby.

3. A. Yes sir.

4. Q. And you have money that you are paying, the costs every
5. year, to keep it on standby.

6. A. Yes sir.

7. Q. And then you said that you know that the State Water
8. Control Board wasn't going to let you use it except
9. in some case of emergency.

10. A. That's probably right.

11. Q. And you also know that in your agreement with the sewer
12. authority, that you cannot treat sewage at that plant.

13. A. That's correct. We just feel that we've got a lot of
14. money invested in the plant and the plant is still a
15. good operable plant. The only thing is, we have exceed-
16. ed our volume and we just don't want the plant to run
17. down and disintegrate.

18. Q. You just hate to let that plant go, don't you?

19. A. Yes sir, we do.

20. Q. It's sort of an expensive hobby, isn't it?

21. A. Yes sir, but sometimes it pays off.

22. Q. Now, on the financing of the authority, I tried to
23. follow you pretty closely there. If I'm correct, what
24. the City did was to endorse some short-term borrowing

1. to begin with.
2. A. That's right.
3. Q. Did they endorse the bonds too?
4. A. Yes sir. The four million dollars of bonds that the
5. sewer authority issued were endorsed.
6. Q. Were endorsed by the City and the towns.
7. A. And the two towns, right.
8. Q. But according to what I heard, the City has never put up
9. any money except in its user fees.
10. A. Well, we are putting up money now since we started
11. operation because we have started to pay off our
12. bond indebtedness. We are charging the users a per-
13. centage of the sewage volume for our bond indebtedness.
14. We have paid on that for about three years.
15. Q. That's just a pass through as a user charge.
16. A. Yes sir, from the customer to the sewer authority.
17. Q. Yes. And as I understood, the County is the only one
18. that put up the cold hard cash in advance.
19. A. No sir, they put up a check.
20. Q. A check?
21. A. Yes.
22. Q. It never was cashed?
23. A. No. It was cashed, yes sir.
24. Q. Doesn't that make it cash?

1. A. Cash and a check are different things if you don't know
2. who is putting it up.
3. Q. Is there any doubt about the County's check being good?
4. A. No sir.
5. Q. All right. Well, then I'm right, whether it's check or
6. cash, once a check is cashed it is cash, isn't it?
7. A. Yes sir.
8. Q. And that's what the County put up.
9. A. Yes sir, it put up a check.
10. Q. The map you showed here of the water system and the
11. sewer system that is existing, H-19 and H-22, would
12. you tell the Court whether there is any reason to make
13. this a very small green area that the County serves
14. with water from the large area that the County serves
15. with water?
16. A. No, I don't know of any specific reason why it was done.
17. Q. Do you know that the County can serve water to the extent
18. of its bulk purchases all out in this area?
19. A. Yes sir.
20. Q. And this whole area could be colored green then, couldn't
21. it, if that's a County service area.
22. A. That's the service area, but they don't service it.
23. Q. It's not served now, is it?
24. A. Sir?

1. Q. It's got a line running out along there though, hasn't
2. it?
3. A. Yes.
4. Q. So it can be hooked on.
5. A. Yes sir.
6. Q. You mentioned that the contract or the agreement between
7. the jurisdictions and the authority provides that one
8. jurisdiction can transfer part of its capacity to
9. another one.
10. A. Yes sir.
11. Q. But the key word is "could", but it doesn't have to.
12. A. No sir, it don't have to.
13. Q. You say at one time the County made an effort to put
14. water and sewer on a regional authority basis.
15. A. Yes sir.
16. Q. The City had agreed for sewage to be treated on a
17. regional basis, hadn't it?
18. A. Yes sir.
19. Q. There was no other way to do it, was it?
20. A. Yes, there was another way to do it, but we were required
21. to do it if we wanted federal funding.
22. Q. Well, you still had to get approval from the State
23. Water Control Board to discharge into streams, didn't
24. you?

1. A. We could build, we could remodel and rebuild our own
2. plant with local funds and gotten a permit.
3. Q. Total local funds.
4. A. Yes sir.
5. Q. The City wasn't in a position to do that though, was it,
6. financially?
7. A. I wouldn't say that, no sir.
8. Q. The City had enough money to do it?
9. A. We could have went the bond issue because we have very
10. few bonds out on our water and sewer system. We could
11. have gone to revenue producing bonds.
12. Q. Would it be fair to say that the City determined at
13. that time that it was the best answer to go ahead and
14. go into the regional authority?
15. A. Yes sir.
16. Q. It made more economical sense?
17. A. Yes sir, it does.
18. Q. Why wouldn't it have made good economic sense for the
19. City to agree to put the water on a regional basis?
20. A. We probably could if we could get on an agreement with
21. the County, but we can't agree.
22. Q. You can't agree. You've got the water this time, haven't
23. you?
24. A. The Supervisors and the Council can't agree, it's not

1. I that can't agree.

2. Q. Isn't it a matter that you needed the County for the
3. sewer treatment, but you don't need the County for
4. water?

5. A. No, we didn't need them for the sewer treatment. We
6. could have the plant out there and it could have been
7. financed without the County being involved in it.

8. Q. I understand it could have.

9. A. Yes sir.

10. Q. But you found it beneficial to do it the way it was
11. done.

12. A. I think it's well that it was done that way, yes sir.

13. Q. And you certainly opposed the County withdrawing from
14. the authority, didn't you?

15. A. Yes sir.

16. Q. So you found it beneficial to the City to have the
17. County in insofar as the sewer is concerned, but you
18. don't find it beneficial to have the County in so far
19. as the water is concerned.

20. A. I don't know that it's not beneficial. We've never been
21. able to reach an agreement.

22. Q. As a matter of fact, the City has refused to even dis-
23. cuss it, isn't that true?

24. A. They've discussed it. The Supervisors and Council have

1. discussed water quite a few times.

2. Q. At the various places that the County has been able to
3. purchase it in bulk, and there are some of these, aren't
4. there?

5. A. Yes sir.

6. Q. The City agreed to sell the County bulk water so the
7. County could supply the Mall area, didn't it?

8. A. Yes sir.

9. Q. And it's also used to supply Ashby Heights?

10. A. Yes sir.

11. Q. They didn't want to do it at first though, did they?

12. A. It wasn't they didn't want to do it, we couldn't get
13. together on the price.

14. Q. Was price the thing?

15. A. That was one of the big things, yes sir.

16. Q. It wasn't until the County was made to hook up its own
17. well and build its own tank with well water supplies
18. there that the City finally agreed to sell the water
19. to them, isn't that true?

20. A. I don't know, I don't believe that was the reason that
21. the City Council based their decision on. I can't say
22. that for sure.

23. Q. But you do know that the County, after they had not
24. been able to get an agreement with the City, had gone

1. ahead and was preparing to hook up the wells, a well,
2. to the storage tank when the City agreed.
3. A. Yes sir. And I'll personally say that has been a
4. mistake.
5. Q. It was better for the City to sell the water to the County.
6. A. In my opinion it was, yes.
7. Q. You do sell it to the County, don't you?
8. A. Yes sir.
9. Q. You charge the County for it.
10. A. Yes sir.
11. Q. The area--this is Park View?
12. A. Yes sir, that's Park View.
13. Q. Do you know when that was developed?
14. A. No, I don't know the exact year. It's been a long time
15. ago.
16. Q. It was years ago.
17. A. Yes sir, it was.
18. Q. And do you know that the water system that was installed
19. there was initially by the developer?
20. A. No, I don't know that, but that could be true.
21. Q. Well, do you know that they had water problems there?
22. A. Yes sir.
23. Q. And sewer problems.
24. A. Yes sir.

1. Q. You know that, don't you?
2. A. Yes sir.
3. Q. Do you know that the City made no effort to solve those
4. problems?
5. A. Well, I don't know that it was the City's responsibility
6. to solve them.
7. Q. It wasn't in the City, was it?
8. A. No sir, it wasn't.
9. Q. But the fact of the matter is, the City made no effort
10. to solve that water and sewer problem in Park View.
11. That's true?
12. A. Yes sir, that's right.
13. Q. Now, of course, neither are these other areas in the
14. City, are they?
15. A. No, they're not in the City.
16. Q. The City found some reason for them to supply water.
17. A. Yes.
18. Q. What would those reasons be? Profitable?
19. A. No, I don't know that water sales is that much profit-
20. able. Of course, we charge the County residents a
21. double rate, and I feel like that's a sufficient amount
22. of money.
23. Q. That makes the sale of water considerably more profit-
24. able out in the County than it does in the City, doesn't

1. it?
2. A. That's right.
3. Q. You're charging twice as much for it.
4. A. Yes sir.
5. Q. And if this area is annexed into the City you are going
6. to lose that double rate, aren't you?
7. A. That's right.
8. Q. Do you know what that's going to cost you?
9. A. No, I don't.
10. Q. You haven't thought about that?
11. A. No, I haven't looked that up.
12. Q. You do know that the County set up the sanitary district
13. to alleviate the water and sewer problems in Park View.
14. A. I don't know whether the County did, Park View set up
15. the sanitary district. Now, whether the County is a
16. sanitary district or not, I don't know that.
17. Q. All right, you know that under the laws of the sanitary
18. district that's created, the Board of Supervisors of
19. the County becomes the governing body of the sanitary
20. district.
21. A. Yes sir.
22. Q. And they are the ones that have to administer it, and
23. it has administered it.
24. A. Yes.

1. Q. And for the water supply there the City did agree to
2. sell water to the County.

3. A. Yes sir.

4. Q. The tank which we saw on the hill, the silver tank, the
5. elevated tank, it belongs to the County or that sanitary
6. district of the County.

7. A. Yes sir, that's right.

8. Q. And the County has made improvements to the water and
9. the sewer system in Park View.

10. A. I don't know that.

11. Q. Do you know whether or not there are any customers in
12. the City that are served out of that Park View system?

13. A. I'm not sure, there might be three or four houses on
14. Chicago Avenue that's in the Holiday Hills subdivision
15. that might be served by the Park View system because
16. Park View has a line down Chicago Avenue.

17. Q. Any businesses on Chicago Avenue?

18. A. There might be one. Chicago Avenue is the boundary line
19. between the County and the City. And only the land on
20. the east side of Chicago Avenue or the right side going
21. toward Park View is in the City, and there's a church
22. in there, but I don't think there is a place of business

23. Q. Do you know of any customers on Chicago Avenue that are
24. served by the Park View system that the City bills for

1. water and sewer?
2. A. No, I don't.
3. Q. You don't know of any.
4. A. No sir.
5. Q. Do you know of any request last year to the City to
6. clean out a line where the property owners were told
7. that the City didn't own the line, that it was owned
8. by a private individual and he'd have to clean it up?
9. A. No sir, I don't know anything about that.
10. Q. When you were told by the State Water Control Board that
11. it was not going to consider grants for several sewage
12. treatment plants, that the jurisdictions would have to
13. get together and submit a single application, whose study
14. and plan did you submit with that application?
15. A. I'm not real sure, but I understand that the map,
16. original map, that was drawn that shows the boundaries
17. for the regional sewer authority was drawn by Rockingham
18. County's consultants. I believe it was Johnson and
19. Williams.
20. Q. And the City's plan that it had submitted with its
21. application would not have served as much area as the
22. County's plan would, is that correct?
23. A. That's right. We was going to stop at what's known as
24. Cooks Creek and Blacks Run, where they come together.

1. Q. As a matter of fact, the City's plan could have served
2. all the area that's annexed, couldn't it?

3. A. Yes sir, it would, to Cooks Creek it would have.

4. Q. All of it?

5. A. I would think so. It's well beyond the proposed annex
6. line.

7. Q. In any event, the County's plan serves a much larger
8. drainage area.

9. A. It potentially serves a much larger drainage area, but
10. to my knowledge it's not a customer on that line beyond
11. the Cooks Creek-Blacks Run, where they come together.

12. Q. When you look into the future you have to expect it
13. will be customers on the line, do you not?

14. A. Yes sir.

15. Q. For instance, when the County's water line becomes
16. effective, when the joint Dayton and County water storage
17. tank is constructed, it's likely that there will be
18. sewer service required in that area too, would it not?

19. A. It most likely will be. It's costing us a lot of money
20. to go down to where we did go to make that possibility
21. for the total area because if we would have built our
22. plant at Cooks Creek and Blacks Run we could have put
23. sewage into the sewage treatment plant by gravity flow.
24. Now where we are located we have to pump all sewage up

1. into the sewage treatment plant, and our electricity
2. bill ran two hundred thousand dollars a year to run
3. those pumps.
4. Q. Who do you pay it to?
5. A. For electricity?
6. Q. Yes.
7. A. Shenandoah--no, it's VEPCO.
8. Q. VEPCO?
9. A. Yes sir.
10. Q. On the tour I noticed a lot of--a number of elevated
11. tanks, silver, around the City.
12. A. Yes sir.
13. Q. They are not the City's tanks, are they?
14. A. Only one, the one at Walker Manufacturing. The rest of
15. them are private.
16. Q. Walker Manufacturing's tank, that was mentioned on the
17. tour, that it had Walker's name on it but it belongs
18. to the City.
19. A. Yes sir.
20. Q. Who paid for that tank?
21. A. Walker Manufacturing.
22. Q. Walker Manufacturing did?
23. A. Yes sir.
24. Q. Do you know if the County made any contribution to it?

1. A. Not to my knowledge on the tank, no sir.
2. Q. Did the County make any contribution to bringing the
3. water to the tank?
4. A. I think the County participated in the line from the
5. City limits to Walker Manufacturing back at that time,
6. but I'm not sure of that.
7. Q. Did the City make any expenses?
8. A. Yes sir, we run a main from the vicinity of James
9. Madison University to the corporate limits so it could
10. be extended out to Walker Manufacturing.
11. Q. And the County took it from the corporate limits to
12. Walker Manufacturing?
13. A. I don't know whether the County did or whether Walker
14. Manufacturing paid for it.
15. Q. I thought you just said that you agreed that the County
16. paid for the line.
17. A. I said they could have, I don't know.
18. Q. All right, they could have. Walker Manufacturing paid
19. for the tank. And did the City end up owning all of
20. it, the line, the tank and everything?
21. A. Yes sir.
22. Q. And selling water to Walker.
23. A. Yes sir.
24. Q. That's a pretty good deal, isn't it?

1. A. Yes sir.
2. Q. No wonder Walker wanted to put their name on there, that's
3. little enough you could do for them, wasn't it?
4. A. That's right high to go up and paint.
5. Q. Yes sir. That was part of the agreement you had with
6. them, wasn't it?
7. A. Yes sir.
8. Q. You talk about some wells down on--is it on Route 11?
9. You said that somebody had told you that somebody else
10. had told them they had trouble with the well?
11. A. Yes sir.
12. Q. You are not comparing those individual wells with the
13. well that the County has drilled that is producing close
14. to a million gallons of water a day, are you?
15. A. They are not the same size, they don't have the same
16. capacity, no sir.
17. Q. And they are not drawing water from the same strata.
18. A. No, evidently; or they'd have more capacity.
19. Q. More capacity than a million gallons a day?
20. A. No. Evidently these small wells only have--I don't
21. know--but a small amount of capacity.
22. Q. Yes, and they were relatively shallow wells.
23. A. I don't know the depth.
24. Q. So you don't know what the problem with the wells were.

1. A. No sir, I didn't ask that question.
2. Q. Is there anything wrong with treating well water?
3. A. No sir. There's a lot of water systems built on wells.
4. But I'll tell you, a well is a long way from the supply
5. we've got in the mountain.
6. Q. Yes sir. But you still have to treat that water going
7. out of there, that sweet water coming out of those
8. mountains, don't you?
9. A. We have to treat it, yes.
10. Q. It's got something in it that you can't drink it, or
11. shouldn't.
12. A. Well, we drank it for many years before we treated it,
13. we didn't have a lot of people to die on it.
14. Q. Somebody is telling you to treat it now though, aren't
15. they?
16. A. Yes sir, they are.
17. Q. Why?
18. A. Because we are pumping also from North River. We are
19. not just treating water from the mountain.
20. Q. You pump from North River?
21. A. In fact, the water from the mountain is so pure when it
22. comes into our treatment plant that it takes water from
23. North River to put impurities in it so the water will
24. floc and can have it treated.

1. Q. Now, why do you bring that water in from North River
2. then? Do you need it?

3. A. Yes sir, we don't have enough line capacity from the
4. mountain in to carry the water from the mountain to the
5. treatment plant.

6. Q. What river does the regional sewer authority plant
7. discharge in to?

8. A. North River.

9. Q. And would it be fair to say that the more water you
10. take out of North River the less pollution you've got
11. below there to take care of the effluent of the sewage
12. treatment plant?

13. A. Yes, the more volume you have in the river the easier
14. it is to treat.

15. Q. You get more pollution.

16. A. Right.

17. Q. Well, does that have any effect on how much the State
18. Water Control Board and the Health Department may let
19. you increase the effluent flow to the river?

20. A. The measuring station for North River is right below
21. our treatment plant. And the flow that's going through
22. that measuring station will have a large bearing on what
23. we are allowed to put in it.

24. Q. So the more water you take out, in times of drought it

1. may be a critical factor. If you've got to take water
2. out to sell and they need the water to treat the sewage,
3. you may have a little problem.

4. A. The more we take out the better we will have to treat
5. it, yes sir.

6. Q. One more thing about these wells. When you heard about
7. the trouble with the well down here, has the City made
8. any effort to alleviate the problem?

9. A. No.

10. Q. Now, you mentioned K-Mart and Kroger lines being given
11. to the County. You all had agreed before the development
12. of that to extend the lines.

13. A. Yes sir.

14. Q. And sometime you found out you didn't have enough water
15. pressure.

16. A. Yes sir.

17. Q. To activate their sprinkler systems.

18. A. That's right.

19. Q. That's true?

20. A. Yes sir.

21. Q. And how long has that situation existed?

22. A. It couldn't have been over a couple of years. Kroger
23. and K-Mart haven't been out there any longer than that.

24. Q. All right, for two years anyway.

1. A. It could be.
2. Q. And they were there with sprinklers in the ceiling that
3. didn't work.
4. A. I don't know that they didn't work, but they didn't
5. have sufficient pressure to do what they should do.
6. Q. To meet the test.
7. A. Yes sir.
8. Q. When the City agreed with the developers to extend the
9. line out there, did you know you weren't going to have
10. enough pressure?
11. A. No, we didn't know that when we agreed to extend the
12. lines out.
13. Q. Well, you knew that Forest Hills didn't have enough
14. pressure, didn't you? I mean not Forest Hills, but . . .
15. A. Fairway Hills.
16. Q. Fairway Hills.
17. A. At the time Kroger and K-Mart--they come out there about
18. the same time Fairway Hills did. Now, I'm not sure which
19. was there first. I don't know whether we knew we had
20. a water problem or not.
21. Q. Did Fairway Hills go out there in the early seventies?
22. A. I'm not sure of the date.
23. Q. Well, we drove through that area.
24. A. Yes sir.

1. Q. And the homes looked anywhere to me up to ten years old.
2. A. I don't believe they're that old myself.
3. Q. Were there any areas in the City in need of improved
4. water pressure?
5. A. Not really.
6. Q. Why was that tank that we talked about, that everytime
7. we turned a corner somebody was saying, "Look at the
8. green tank over there, that's the new City tank." Do
9. you know what I'm talking about?
10. A. Yes.
11. Q. Why was that tank built?
12. A. Well, the primary reason was to boost water pressure
13. out in Fairway Hills. It also helps our water pressure
14. within the City. We wasn't having all that much problem
15. but it gives us better water pressure by having it.
16. Q. Well, you certainly would say the tank was needed or
17. you wouldn't have spent all that money.
18. A. Yes, it was needed.
19. Q. And can you tell us in your opinion when it was first
20. needed?
21. A. Well, I'll say it was first needed, when we first became
22. involved is when Kroger and K-Mart built.
23. Q. Or Fairway Hills.
24. A. Yes sir.

1. Q. Whichever came first.
2. A. Right.
3. Q. Well, even before that . . .
4. A. Fairway Hills wasn't giving us the problem that Kroger
5. and K-Mart was giving us.
6. Q. But the people were complaining about the water pressure.
7. A. Yes sir, we had some complaints.
8. Q. But even before that you had some problem with pressure
9. in the City or you wouldn't have had to build that big
10. tank.
11. A. Well, we had some low pressure areas, but it was suffic-
12. ient for the people to get by on.
13. Q. It wasn't sufficient for fire protection, was it?
14. A. Yes, it was.
15. Q. Well, why do you say to get by on?
16. A. Well, you know water pressure can vary from a hundred
17. and fifty pounds to thirty pounds. I don't know of any
18. place in the City of Harrisonburg that we had water
19. pressure under--I don't know, but I'd say thirty or
20. thirty-five pounds of water pressure.
21. Q. Isn't forty pounds the desirable residential pressure?
22. A. Probably so.
23. Q. How long had that situation existed in the City?
24. A. What, not enough water pressure?

1. Q. Yes sir.

2. A. Well, I'm not saying we didn't have enough water pressure.

3. Q. You just said at some places thirty or thirty-five pounds
4. and I asked you if forty pounds wasn't the desired pres-
5. sure, residential pressure, and you said yes. How long
6. had that situation existed?

7. A. A desired pressure and a pressure enough to get by on
8. is two different things. I would desire about sixty-
9. five or seventy pounds of pressure myself.

10. Q. That may be true. Let me ask you this. Do the people
11. pay the same water rates for thirty pounds of pressure
12. as they do for forty pounds of pressure?

13. A. They pay by the volume.

14. Q. Yes sir. And if a person desires to have what is recom-
15. mended for residential pressure, you don't get any
16. complaints if they don't get sufficient pressure?

17. A. If people don't have enough pressure they complain, yes
18. sir.

19. Q. And would it be fair to say that in the years you've
20. been here before--well, that tank still isn't in opera-
21. tion, is it?

22. A. No sir.

23. Q. So the gentleman who was conducting the tour on the
24. bus the other day, when he said, "The tank is now in

1. operation," he was wrong, wasn't he?

2. A. Yes sir.

3. Q. As a matter of fact, . . .

4. A. At least last Friday it was being filled and I don't
5. think it has been put in operation since that time.

6. They might have hooked it up this week, I don't know.

7. Q. Well, aren't there some things you've got to do after
8. you fill that tank before you can start letting that
9. water come out of the tank to alleviate the pressure
10. problem?

11. A. No, the connections are already made to the tank and
12. everything is ready to go.

13. Q. As soon as it gets filled it can be turned loose?

14. A. Yes sir. The tank was disinfected week before last
15. and when it gets filled up it's ready to go.

16. Q. All the valves are in place and everything.

17. A. They are all in place, they might not all work.

18. Q. But so far as you know it's still not in operation
19. yet.

20. A. I don't know that it is, and I don't know that it's
21. not.

22. Q. Did you know that that tank was shown on an exhibit in
23. the 1962 annexation case?

24. A. Yes sir.

1. Q. For improvement.
2. A. It showed improvements in the exhibit which was stated as
3. future construction.
4. Q. To be built when it was needed.
5. A. Yes sir.
6. Q. That's with the water system.
7. A. Yes. We feel like we built it when it was needed.
8. Q. I believe you told me it was needed when you ran the
9. line out to Fairway Hills.
10. A. Well, when you . . .
11. Q. Or K-Mart, whichever came first.
12. A. When you first are short in water pressure, it takes
13. a little while to get it designed and get the con-
14. struction and get everything under way and get it
15. completed.
16. Q. Mr. Driver, be fair. Isn't it true that before you
17. extended the line to Fairway Hills and before you let
18. the developers extend the line to K-Mart you already
19. knew that you had a pressure problem within the City
20. that these lines would connect to?
21. A. We had a pressure problem back in 1962. And on the
22. plans it showed a stand pipe to be built in that area.
23. Instead of building that stand pipe we built a pumping
24. station and put two pumps in and put a high level system

1. in. Our main complaint within the City of Harrisonburg
2. at that time was coming from a street known as Ott Street
3. in the City of Harrisonburg which is one of the higher
4. streets. And by putting this pumping station in, it
5. alleviated that problem, it took care of the pressure
6. problem, and the tank wasn't needed.

7. Q. No sir?

8. A. Not at that time. We feel like . . .

9. Q. Do you know what the pressure was, Mr. Driver?

10. A. We feel like the tank was built when it was needed.

11. Q. Even though you say it was needed for Fairway Hills
12. when you ran the line out there.

13. MR. WICKHAM: Your Honor, please. Counsel is now
14. arguing with the witness and I object.

15. MR. FITZGERALD: Well, I will stop.

16. Q. So when the City finally agreed to sell the water to
17. the County and let it distribute water in that area,
18. the City offered to the County or asked the County to
19. take over Kroger and K-Mart and a couple of other busi-
20. nesses there, and for the County to service those cus-
21. tomers.

22. A. It was just Kroger and K-Mart to my knowledge.

23. Q. Just the two of them?

24. A. Yes sir.

1. Q. And that took that problem off the City's hands.
2. A. Yes sir, but we was planning to take care of it ourselves.
3. Q. Well, you did ask the County to take these customers off
4. your hands, didn't you?
5. A. Not until after they decided, they said they was going
6. to build a water tank and we couldn't build one. Without
7. being able to put a water tank over there, we didn't have
8. no way to supply them sufficient pressure.
9. Q. It was for the benefit of the City at that time, wasn't
10. it?
11. A. I don't know whether it was a benefit.
12. Q. You do remember that the County had agreed to sell you
13. water from its tank to that location and let you keep
14. those customers?
15. A. Yes sir.
16. Q. You mentioned selling water to Wampler.
17. A. Wampler Foods Processing at Hinton.
18. Q. And that's a profitable sale that you make out there,
19. isn't it?
20. A. We feel it is, yes sir.
21. Q. And that's a considerable distance outside the City.
22. A. Probably about seven or eight miles.
23. Q. And you are not seeking to annex that.
24. A. No sir, that's a little too far out.

1. Q. And the water you are selling you do consider to be
2. surplus water. If you didn't sell it, it would just
3. go off somewhere, wouldn't it?
4. A. Well, I don't know, I reckon it would.
5. Q. And you can't save that water, you can't bottle it or
6. stop it up, if you don't sell it it's going to run off
7. somewhere.
8. A. Due to good planning we have a surplus of water, yes sir.
9. Q. My question is, if you don't sell it, you lose it.
10. A. No, what's out in the Switzer Dam, we keep it stored out
11. there, we don't let it out.
12. Q. The same water?
13. A. Yes sir.
14. Q. You keep it bottled up?
15. A. Yes sir.
16. Q. It doesn't stagnate?
17. A. No sir.
18. Q. It stays sweet.
19. A. Yes sir.
20. Q. Do you have any water that runs off of your treatment
21. facilities that's not sold, treated water?
22. A. We have some loss in the lines if that's what you are
23. referring to.
24. Q. About 25% of your treated water is lost?

1. A. In the neighborhood of that, yes sir.

2. Q. Have you ever been able to find out where it goes?

3. A. Well, not anymore than any other city. I think most
4. water systems carry about a 25% loss of treated water,
5. I would say.

6. Q. You were talking about these improvements, street improve-
7. ments. And the City took the Court and all of us down
8. a very poor street called Circle Drive. And you have
9. offered if the area is annexed to make improvements to
10. the street. Are you going to put water and sewer in
11. the street too?

12. A. Water is already in it. But I think you will find in
13. the exhibits presented that also we propose to put
14. sewer lines in the street.

15. Q. Is the City going to do that?

16. A. I think that's on the sewer exhibit, I'm not positive
17. of it, but I think it is. And if it is, the sewer line
18. will be put in before the street is built.

19. Q. Are those lots still owned by the original developer,
20. do you know?

21. A. No sir, I don't, but I think some portion of them is
22. still owned by a guy by the name of Conrad who owned
23. that subdivision. I think he passed away and I think
24. his wife still owns some of the lots.

1. Q. Well, where that road got very bad and almost impassable
2. there were no houses back there at all, were there?
3. A. No sir.
4. Q. Just grown up in woods and weeds.
5. A. Yes sir.
6. Q. And you're going to run that line all around there.
7. A. Yes sir.
8. Q. And pave that road all around there.
9. A. Yes sir.
10. Q. Put curb and gutter all around there.
11. A. I'm not saying we'll put curb and gutter on it, no sir.
12. Q. You aren't putting curb and gutter on the roads you
13. propose to annex.
14. A. Not all of them. A lot of roads we've got the base to
15. start with and then when the time comes for a plant
16. mix surface treatment we come back and put curb and
17. gutter on it.
18. Q. It would be more expensive to do it that way, wouldn't
19. it?
20. A. It's more expensive, but if we get the proposed annexed
21. area we would do more good working on more streets rather
22. than putting curb and gutter on them.
23. Q. So who is going to benefit from that, the developer
24. who still owns those lots?

1. A. The developer will benefit, plus the individual who
2. has bought the lot.

3. Q. But there are no homes back there.

4. A. Yes, there are. Not in that one section, but there's
5. probably about ten homes on that road, on Circle Drive.

6. Q. And all those people have bought those homes or built
7. those homes there knowing what condition the streets
8. were in.

9. A. Yes sir.

10. Q. But you think they out to be baled out.

11. A. Well, that's been our practice in the City of Harrison-
12. burg, we usually bale them out when it gets tough like
13. that.

14. Q. And you don't have that subdivision approved?

15. A. It's never been approved, I don't think.

16. Q. The subdivision has not been approved?

17. A. It's been recorded, but I don't think that the streets--
18. I know the streets haven't been accepted in the highway
19. system.

20. Q. Have the streets in the City been accepted in the street
21. system?

22. A. Within the subdivisions, yes sir, they are.

23. Q. But only a part of that subdivision is in the City,
24. part of it is outside.

1. in and around the City, that the City Engineer approved,
2. portions within and without the City?

3. A. No, I wouldn't say so, no sir.

4. Q. You wouldn't say so. There was another signature on
5. there, wasn't it? The mayor of the City signed it too,
6. didn't he?

7. A. That says William G. Myers, City Engineer, there where
8. you pointed.

9. Q. No, right here, right above it.

10. A. I see "mayor", but I can't see who signed it.

11. MR. ALDHIZER: I think what it shows is that it was
12. put on with the consent of the City subject to the
13. improvement, future improvement by the developer, before
14. any street specs would be brought up to, you know,
15. regular state or City specifications. It specifically
16. says that, but as far as . . .

17. MR. GLASS: We object to his testimony, Your Honor.

18. MR. FITZGERALD: I'll introduce this copy, but we
19. will get the original or a copy that can be read, and
20. I will offer it at a later time, having been identified
21. by this witness.

22. Q. Just as a point of interest. The City is equipped to
23. do what you might call emergency repairs on the streets,
24. aren't they?

1. A. Yes sir, we do that at times.
2. Q. At times?
3. A. Yes sir.
4. Q. Have you done any recently?
5. A. Tuesday morning we did some.
6. Q. Tuesday morning?
7. A. Yes.
8. Q. Would I be presumptuous to say it was done on Bruce
9. Street?
10. A. Yes sir, you're right, sir.
11. Q. Well, tell us how that happened.
12. A. Well, at the last minute Rockingham County changed their
13. tour route. We found out about it Monday evening, so
14. we called out the troops on Tuesday morning and we had
15. the road in good shape within two and a half hours. I
16. think that shows we've got the men and equipment and we
17. can work in the case of an emergency.
18. Q. Did it take the County of Rockingham to call to your
19. attention you had one?
20. A. No sir.
21. Q. How long had that street been in that condition before
22. you did all that work on it?
23. A. That street is a street that is not in our system, but
24. we go up there and we put the motor grader on that

1. street about once a year.

2. Q. And you just sort of overlooked it there for a while?

3. A. No, that yearly time had just come about.

4. Q. Did you look around to see if you had any more like
5. that real fast?

6. A. Well, the tour wasn't marked up for any more, so . . .

7. Q. You just took care of the ones that were marked up on
8. it?

9. A. Yes sir.

10. Q. You talked about the highway maintenance and the pro-
11. vision that calls for how much you got paid from the
12. state. And you didn't mention about highway construction
13. I don't believe. How are the highway improvements on
14. your primary highways that traverse the City, how are
15. they funded, the construction?

16. A. On our primary routes, which is Route 11, 33 and 42, in
17. the City limits, those streets are constructed by the
18. Department of Highways with a combination of state and
19. federal money. Now, when I say constructed by them,
20. there was a time when most of our streets was built we
21. paid 20% of the local cost. When South Main Street out
22. here was built, which you drove on the other day, we paid
23. 10% of that cost.

24. Q. That's the one with five lanes?

1. A. The five lane road, yes sir.

2. Q. When it went into the five lanes you paid 10% of the
3. cost?

4. A. Yes sir. And today the formula has been changed, we
5. only pay 5% of the cost from now on on any construction
6. we get.

7. Q. All right, so that's five lanes through the City . . .

8. A. And when I say 5% and 10%, that is basically our local
9. cost. There are such things that's included, like storm
10. drains. If you have a storm drain that includes another
11. area outside the roadway, we are billed additional costs
12. for that type of thing. So, the 5% is basically true,
13. but it's not the exact amount.

14. Q. And the state and federal government puts up the rest.

15. A. Yes sir.

16. Q. And that's how the construction was done to improve
17. South Main to a five lane road.

18. A. Yes sir. South Main was improved, South High Street
19. was improved, East Market Street has been improved,
20. Central Avenue has been built. We got a good bit of
21. construction from the highway department, we're right
22. proud of it.

23. Q. Now if you annex, whatever construction is done in the
24. City, that's going to siphon off more money from the

1. funds that are available to improve some other roads
2. in the County, isn't it?

3. A. Repeat that, I don't believe I understand that.

4. Q. Well, you told us how the construction is financed in
5. the City with the state and federal government paying
6. anywhere from 90% to 95% of the cost of it.

7. A. Yes.

8. Q. On these major roads.

9. A. Right.

10. Q. Now, if you expand the City, any money that's spent in
11. the City to extend that improvement, it's going to take
12. that money away from somebody else, isn't it? So that
13. would be the surrounding County.

14. A. Yes sir. We feel like if we improve streets and are
15. granted this annexation and take these some thirty-six
16. miles of streets off the state highway department's
17. hands, they will have more money to spend in the rest
18. of the County.

19. Q. Even though they are going to have--any improvements
20. made to those major highways are going to come out of
21. the same funds.

22. A. Yes sir.

23. Q. Did you say in your direct examination that those
24. primary roads, major roads, had less percentage of

1. curb and gutter than your secondary streets?

2. A. Yes sir. None of our, what I call primary highways,
3. which is 11, 33 and 42, takes curb and gutter on them
4. in the beginning. But as we have rebuilt them down
5. through the years curb and gutter has been installed
6. on all of them.

7. Q. Is it still a less percentage of curb and gutter on
8. those roads for all the rebuilding that has been done
9. on them than it is on your other streets?

10. A. No, that's not the way I put the thing. I think the
11. figure was 84.8% of all the streets in the City have
12. curb and gutter. And if you took the primary roads
13. out and didn't count the mileage of the primary roads,
14. 88% of our streets have curb and gutter.

15. Q. Which it has to be then, if you take out the major
16. roads and the percent goes up, they have less curb and
17. gutter than your secondary roads.

18. A. Yes sir.

19. Q. In going through the residential areas of the City I
20. noticed a marked, a very obvious lack of sidewalks. I
21. believe Mr. Milam said the City didn't require developers
22. to put in sidewalks and the City didn't put in sidewalks.

23. A. The City doesn't require a developer to put in sidewalks
24. but the City will build sidewalks upon petition by

1. three-fourths of the property owners within a block
2. providing the property owners agree to pay one-half the
3. cost of the sidewalk.

4. Q. And evidently not many property owners have done that.

5. A. No sir. They all will push curb and gutter which is
6. free, but they don't want to pay for the sidewalks.

7. Q. Where these people don't desire sidewalks you don't
8. put them.

9. A. We have put some in within the close vicinity of our
10. elementary schools. On Central Avenue we have put in
11. about maybe a half a mile of sidewalks. Up at Spotswood
12. School, all along Carlton Street we have put in side-
13. walks to the school building.

14. Q. But comparatively little sidewalk construction has been
15. done.

16. A. Yes sir.

17. Q. And if the people desired it to the extent of wanting
18. to pay for half of it, they would petition to get it
19. done.

20. A. Yes sir.

21. Q. And they haven't done that.

22. A. No sir.

23. Q. Well, what street improvements do you propose in Ashby
24. Heights?

1. A. We propose to put curb and gutter on Westmoreland Drive
2. and Nelson Drive.

3. Q. Suppose those people don't desire that?

4. A. Well, they're going to be different from the rest of
5. the people around here if they don't.

6. Q. Well, sometimes County people are a little different
7. than the City people are.

8. A. It could be, now I haven't noticed it.

9. Q. But haven't you noticed as a rule rather than an exception
10. that going out to the more sparsely settled areas and in
11. the larger lot subdivisions, in most areas you go in you
12. see very little curb and gutter, you see ditch sections
13. and swales and that sort of thing, paved swales. And
14. some people like that, don't they, rather than concrete
15. curb and gutter?"

16. A. I would say, to me in some areas, if I lived in Forest
17. Hills I wouldn't want curb and gutter. And I don't know
18. whether they are going to request curb and gutter, but
19. the highway department says they hope we annex Forest
20. Hills, Ashby Heights and Fairway Hills to get them off
21. their back. They want something out there, I don't know
22. what it is.

23. Q. You are going to have some problems you are going to
24. put on their backs too.

1. A. I've got a lot of them right now I'd like to put on their
2. back.

3. Q. But isn't it true the reason you wouldn't want curb
4. and gutter in places like Forest Hills, if you'd go
5. around installing curb and gutter on some of those
6. houses built on I'd say rather steep sloping land, you
7. are going to create one heck of a runoff problem down
8. below, aren't you?

9. A. Yes sir, they would have trouble putting curb and gutter
10. in Forest Hills. The roads are not wide enough. I don't
11. think the people would want you cutting back in their
12. lawns to widen the road so you could put in curb and
13. gutter. To me it's a better looking subdivision without
14. curb and gutter.

15. Q. Do you have any idea how many miles of streets you've
16. got in the City that are not in the system, not maintain-
17. ed by you?

18. A. No sir, I don't, but I would say possibly we might have
19. two miles of paper streets. We have other streets that
20. we don't have in the highway system that we receive
21. state maintenance money on them because they were built
22. many years ago and they didn't have sufficient width
23. that we could get them in the system; but we maintain
24. them, we have plant mix on them.

1. Q. You may have two miles of what you call paper streets?
2. A. Yes sir.
3. Q. Are they cut streets, graded streets?
4. A. No sir.
5. Q. They are nonexistent streets or platted streets?
6. A. That's right.
7. Q. Would that indicate that there's no development on those
8. streets?
9. A. Yes sir.
10. Q. Your street light exhibit, did I see you plan on ringing
11. Circle Drive with street lights?
12. A. Yes sir.
13. Q. You are going to run those street lights down around
14. those woods around the curve?
15. A. Yes sir.
16. Q. And you mentioned that the area up here on 33 east, east
17. of 81, needs lighting.
18. A. Yes sir.
19. Q. For safety?
20. A. Yes sir.
21. Q. Do you figure that's anymore of a safety problem than
22. young school kids walking down the streets with auto-
23. mobiles passing them and going by them going to school
24. or wherever they might be going?

1. A. Well, I think you're talking about two different things.
2. Q. Both of them are safety problems?
3. A. I can tell you this, there has been more accidents on
4. 33 east than it has been school children hit by a car,
5. by far.
6. Q. Do you agree that it is a safety problem to have young
7. kids walking on the streets?
8. A. I prefer to have them on the sidewalk, yes sir.
9. Q. If I read your exhibit correctly, the present City has
10. approximately two hundred and forty-three street lights
11. per square mile. I'm using six square miles in the
12. present City.
13. A. I've never figured that out, sir.
14. Q. Well, where is your exhibit that shows the street lights?
15. I think it's 22 in the small book.
16. A. We have a total of a thousand four hundred and fifty-nine
17. in the present City.
18. Q. How many?
19. A. A thousand four hundred and fifty-nine.
20. Q. Well, is the City about six square miles?
21. A. Yes sir.
22. Q. Well, if you divide six into that number you get about--
23. I got three hundred and forty-three. Do you agree with
24. that?

1. A. No, I can't figure that in my head. Is that right, Mr.
2. Cogar?
3. Q. Do you have a little piece of paper?
4. A. Mr. Cogar says that's right.
5. Q. Mr. Cogar agrees with it. He must have a machine somewhere.
6. And the way I figure it out here, you plan to put seven
7. hundred and sixty-nine in the area.
8. A. Yes sir.
9. Q. And that's fourteen plus square miles.
10. A. Yes sir.
11. Q. If my division is right that's fifty-five street lights
12. per square mile.
13. A. Well, what it is, you don't light up all the areas with-
14. in the City or outside the City. What we intend to do
15. is light up the streets.
16. Q. Does it indicate to you that . . .
17. A. There's five hundred feet between streets, the area be-
18. tween the streets we don't attempt to light up.
19. Q. And in much of that area it's two or three thousand feet
20. between streets, isn't it?
21. A. Yes sir, it probably is.
22. Q. Wouldn't that indicate to you so far as street lighting
23. is concerned, that there's a vast difference between the
24. existing City and the area sought for annexation insofar

1. as the need for street lights?

2. A. Well, in density, buildings along the roads, yes sir,
3. there is a difference.

4. Q. A vast difference if you've got two hundred and forty-
5. three per square mile in the existing City and you are
6. only proposing fifty-five per square mile in the annexed
7. area.

8. A. Well, that's just what we're going to start out with in
9. the first three years. We are going to put a lot more
10. out there.

11. Q. I'm talking about the conditions as of now to the first
12. of the year you have proposed as being needed fifty-five
13. street lights per square mile.

14. A. That's right.

15. Q. This matter of the highway safety and transportation
16. commission.

17. A. Yes sir.

18. Q. Did I understand you to say that if somebody calls in
19. and says, "We've got a safety problem here, we need a
20. stop sign or a traffic light," or whatever it may be,
21. they are referred to this highway safety commission?

22. A. No sir, that's not exactly right.

23. Q. How does it happen then?

24. A. If a complaint is submitted to City Council, then the

1. Council sends it to the highway safety commission.

2. Q. So if a citizen wants to bring to the attention of some-
3. body in the City to try to get something done that they
4. feel is a safety problem, . . .

5. A. It depends on how major it is. Minor problems, we have
6. two technicians in the traffic engineering department
7. that works full-time, and a minor problem, if we can see
8. a need for it, we go on and take care of it.

9. Q. Is that like installing street lights? That's not a
10. minor problem, is it?

11. A. No sir.

12. Q. So if you want to get a street light installed . . .

13. A. No, now, a traffic light, not a street light.

14. Q. A traffic light. They complain to the City Council
15. who refers it to the commission.

16. A. Yes sir.

17. Q. And then that person has to go present the case to the
18. commission?

19. A. No sir.

20. Q. What happens there?

21. A. The commission makes a study on it and reports back to
22. the City Council.

23. Q. What kind of people are on the commission?

24. A. Well, about half the commission are City employees,

1. department heads, and the other half are citizens of
2. the City.
3. Q. How many do you have on the commission?
4. A. We have--I believe it's eight.
5. Q. Is that four and four?
6. A. On the City side of it, the department heads, I'm on it
7. myself, the police chief is on it, the school superin-
8. tendent is on it.
9. Q. So you've got some expert help there.
10. A. We feel like it is, yes sir.
11. Q. And you all consider it. And what happens if you approve
12. it?
13. A. Then the City Council authorizes to put the light up.
14. Q. You refer it back to the City Council?
15. A. Yes sir.
16. Q. I thought you said then the City Council referred it to
17. the traffic engineer.
18. A. We don't have a traffic engineer.
19. Q. Well, it's not a traffic engineer, but it's some other
20. entity in the City.
21. A. If we make an improvement with the recommendation of the
22. safety commission and the Council makes that improvement,
23. if we still have trouble at that intersection, say if
24. it's a high accident rate intersection, then we call in

1. a consultant to try to help us with it.
2. Q. I see. Does that take quite a length of time to solve
3. a traffic, a safety problem?
4. A. Installing a traffic signal does, because that's not a
5. little problem.
6. Q. This matter of--I believe you said you intend to extend
7. all the services you talked about here.
8. A. Yes sir.
9. Q. And some of those services you talked about was the
10. street cleaning.
11. A.. Yes sir.
12. Q. Are you going to run a street sweeper out over those
13. secondary roads?
14. A. We're not going to take it around Circle Drive, no sir.
15. Q. And you're not going to take it around a lot of those
16. secondary roads in the County either, are you?
17. A. That's right.
18. Q. You're not going to take it around any of the roads
19. that don't have curb and gutter.
20. A. Yes sir, we will. We will take it on Route 33 east, that
21. doesn't have curb and gutter on it. We'll take it on
22. some streets.
23. Q. You are going to take a road sweeper out on the 33 east
24. highway?

1. A. If it gets dirty.
2. Q. Have you ever seen it dirty to the point you need a
3. sweeper out there?
4. A. Well, if you let it go long enough the rain will wash
5. it off.
6. Q. The rain will do it?
7. A. Yes sir, if you let it go long enough.
8. Q. But to the same extent of per mile use you don't have
9. any idea of using a street sweeper out in this area
10. that's sought for annexation that you do in the City,
11. do you?
12. A. No sir.
13. Q. The leaf collection, you will have some problem extending
14. leaf collection out in this area, won't you?
15. A. Yes sir. We'll probably spend weeks in Forest Hills.
16. Q. In one place alone.
17. A. Yes sir.
18. Q. And all those farms . . .
19. A. But we intend to do it.
20. Q. Yes sir. And all those farmers out in that area, they
21. are going to be able to pile their leaves out and let
22. you get those too?
23. A. No, they will mulch their gardens with theirs.
24. Q. Right, it will be no problem with farmers.

1. A. No sir.

2. Q. You've got a lot of area there that you don't have to
3. bother with leaf collection, don't you?

4. A. Yes sir. We have a lot of area within the present City
5. that we don't have to worry with leaf collection.

6. Q. But comparatively speaking there's more area out in the
7. area you seek for annexation that will not receive leaf
8. collection.

9. A. That's right.

10. Q. The trash collection, you have curb side trash collection.

11. A. Yes sir.

12. Q. As we made the tour the other day and on my other visits
13. to the area, I noticed that many of the farm houses are
14. set back a good ways off the road. You are going to
15. serve them too?

16. A. If they bring it out to the main road.

17. Q. From whatever distance they are away from the main road,
18. they are going to have to cart their trash out to the
19. road.

20. A. They are probably doing that with private haulers at
21. the present day.

22. Q. Or they dispose of it somewhere else on their farm.

23. A. Right.

24. Q. Now, would you expect them to keep on disposing of

1. that trash on their farms, to burn it or what?

2. A. No sir, if they bring it out to the road we will gladly
3. pick it up.

4. Q. No sir, but do you anticipate they are going to haul
5. that trash all the way out to the road rather than
6. dispose of it somewhere on their acreage?

7. A. I don't know the answer to that.

8. Q. Does the City have a burning rule?

9. A. Yes sir.

10. Q. You can't burn trash in the City, can you?

11. A. That's right, sir.

12. Q. So if the farmers are out there burning their debris,
13. they are going to have to quit it, aren't they?

14. A. I think that's a state law, that's not only a City
15. law.

16. Q. You think it's a state law?

17. A. Yes sir.

18. Q. Now, the trash collection at the curb side, you've
19. already said that most of these roads in the County
20. don't have curbs. I've seen ditches along most of the
21. roads where these farm driveways come out, or these
22. farm roads. Most of these places don't have any place
23. to set the trash except down in the ditches, do they?

24. A. They can set it at their property line and we'll pick it

1. up.
2. Q. Do you have places in the City that you do not furnish
3. trash collection to?
4. A. No, we have--I don't know of any place we don't furnish
5. it. We have private haulers that haul garbage from
6. within the City of Harrisonburg.
7. Q. That the City does not pick up.
8. A. That's just on commercial and industry refuse. The
9. City picks up all residential.
10. Q. Do you serve Dunham-Bush?
11. A. No, I think they haul their own, I think they have a
12. private hauler that hauls theirs.
13. Q. Do you know why that's so?
14. A. Because they chose that. I don't know why they chose
15. that, but . . .
16. Q. Well, wouldn't you . . .
17. A. We offer it for any commercial, any industrial or any
18. business in the City of Harrisonburg. If we are not
19. doing it, they have chosen for a private enterprise
20. to haul their trash. They probably get a . . .
21. Q. Cheaper rate.
22. A. It could be a cheaper rate. We pick up once a week,
23. this private hauler may even make a special collection
24. for them which we wouldn't do.

1. Q. But don't you know that Dunham-Bush has their own trash
2. pickup?
3. A. Yes sir, I think they do.
4. Q. And you talked about commercial and industrial. Is
5. Harris Gardens a commercial enterprise?
6. A. No, that's residential.
7. Q. Is Mosby Heights commercial?
8. A. No sir.
9. Q. Residential?
10. A. Right.
11. Q. Both in the City?
12. A. Right.
13. Q. How is it you don't pick up trash there?
14. A. Apartment complexes where they all contribute their
15. garbage to one place, they are permitted to get a
16. private enterprise to haul their garbage for them.
17. And the reason they do it is because they do it with
18. a container system. We do not provide a container
19. system.
20. Q. You do not?
21. A. No sir.
22. Q. So you don't pick up from those two places.
23. A. No.
24. Q. Or any other places like it that have containers.

1. A. No, if they've got a container we don't pick it up.
2. Q. James Madison University, do you pick up there?
3. A. They have their own truck.
4. Q. You mentioned the electric commission. Can you tell us
5. why it is that the City doesn't operate the electric
6. utility the same way it operates the water and sewer
7. services through the City's departments?
8. A. Now, that really goes back before my time, and I've been
9. here twenty-five years. The City electric system was
10. in such a rundown condition and they had trouble main-
11. taining it and operating it so the City Council decided
12. to set it up under a commission, operate the utility
13. under a commission.
14. Q. At one time the City did operate it, didn't it?
15. A. Yes sir.
16. Q. And the City ran it in such a fashion that they let the
17. system get in a very bad state of disrepair, didn't it?
18. A. I understand it was. That was before my time.
19. Q. That's pretty common knowledge around here, isn't it?
20. So, to get it back on its feet, they turned it over to
21. a commission.
22. A. Yes sir.
23. Q. And the deal is that the commission has to pay the
24. City a stated amount every year.

1. A. Yes sir.
2. Q. Profits of the system.
3. A. Yes, a percentage.
4. Q. Do you know what that amounts to at this time?
5. A. No, I don't know what the percentage is, but they pay
6. us seven hundred thousand dollars a year.
7. Q. Seven hundred thousand dollars a year?
8. A. Yes sir.
9. Q. Does the commission serve any areas outside the City?
10. A. Yes sir.
11. Q. Does it charge double rates outside?
12. A. I don't know what the rates are inside or outside.
13. Q. But for whatever areas it serves outside the City, do
14. you know how many customers it has?
15. A. No sir.
16. Q. Inside or outside?
17. A. No sir.
18. Q. Well, whatever customers it has outside the City, those
19. customers contribute to that seven hundred thousand
20. dollars a year that is being paid into the City treasury,
21. aren't they?
22. A. I would assume so, yes sir.
23. Q. Does the City pay the expense of the street lights too?
24. A. Yes sir.

1. Q. How much do they pay for the electricity for the street
2. lights?

3. A. It changes every year, but I think last year it was a
4. little over two hundred thousand dollars.

5. Q. That's going to have to go up, isn't it? If you annex
6. this area.

7. A. It's based on the number of street lights, yes sir.

8. Q. Will the payment to the City from the electric commission
9. go up if you annex this area?

10. A. I don't know that it would.

11. Q. It might go down, might it not?

12. A. I hope not.

13. Q. If the commission is charging double rates outside the
14. City . . .

15. A. I don't know that they are charging double rates.

16. Q. You don't know what they are charging, do you?

17. A. No sir.

18. Q. But if they are they would not be . . .

19. MR. COGAR: We object to him being asked to speculate.

20. JUDGE MOON: Sustained.

21. MR. FITZGERALD: I won't ask him to speculate anymore,
22. because he hasn't speculated at all in all his testimony.

23. Q. Everybody gets complaints when you're trying to serve
24. the public, don't you?

1. A. You sure do.

2. Q. And you've had some complaints about your snow removal
3. service?

4. A. Yes sir.

5. Q. Is Ott Street one of the places that you have complaints
6. from?

7. A. I don't know particularly. We have a lot of complaints.
8. You know, it takes us eight hours to plow our streets
9. after it quits snowing. And whoever's is not plowed
10. in the first hour, they are all complaining.

11. Q. Did you ever get stuck on a street when there's snow
12. because the street wasn't plowed in the City of Harri-
13. sonburg?

14. A. Back in 1962 I did.

15. Q. Not since?

16. A. Not to my knowledge.

17. Q. I'll just ask you if you will step up here, this is
18. the original plat recorded in Deed Book 177, page 219,
19. and read this certificate into the record.

20. A. "The Council of the City of Harrisonburg, on May the 2nd
21. 1939, approved this plat of Sunset Heights Division.
22. This approval, however, relates to this plan or survey
23. including the grade and location of proposed streets
24. and the property lines as shown thereon. The City has

1. sewer?

2. A. Yes sir. In 1962 our annexation boundary line was run
3. on the ridge lines or the drainage areas within our
4. drainage system. And that was outside of it, so we
5. didn't attempt to annex it.

6. Q. What has happened since then to permit you to add it
7. to the territory?

8. A. Sewer lines have been installed within possibly, I don't
9. know, five hundred, six hundred feet of this subdivision.

10. Q. By the City?

11. A. Some of them, yes sir.

12. Q. And who else has installed sewer lines that would permit
13. this?

14. A. Part by the regional sewer authority.

15. Q. Did you say, testify that the City paid two hundred
16. thousand dollars for street lights to the commission?

17. A. I think it's a little over two hundred thousand.

18. Q. Exhibit 33 shows a payment of--it says, "The City of
19. Harrisonburg pays annual operation charges of a hundred
20. and ten thousand three hundred and seven dollars." Would
21. that be more correct?

22. A. No, I don't think that's right.

23. Q. That would be wrong?

24. A. Where are you looking at? Let me look at it.

1. Q. I'm looking at Exhibit 33. It's under street light im-
2. provement.

3. A. No, that's not the correct figure. It's a little over
4. two hundred thousand dollars.

5. Q. I'm showing you the auditor's report of the City for
6. the year ending June 30, 1980. Under street lighting
7. it shows an actual expenditure of a hundred sixty-six
8. thousand seven hundred thirty-two dollars. That's wrong
9. too?

10. A. I would say the auditor's report is not wrong. But we
11. have over two hundred thousand budgeted for it.

12. MR. FITZGERALD: That's all.

13.

14. Re-Direct Examination by Mr. Wickham:

15. Q. Mr. Driver, I hand you County Exhibit 103, I believe it
16. is. Who signed that letter?

17. A. Mr. Larry Simmons.

18. Q. Do you know Mr. Simmons?

19. A. I have talked to him, yes.

20. Q. Did you discuss with Mr. Simmons what the commission
21. put in its report?

22. A. Yes sir, I discussed it with Mr. Simmons and also with
23. Mr. Brad Chewning, his boss.

24. JUDGE MOON: I think we're getting into such collateral

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME III

This is to certify that the following is a transcript of the proceedings held before the Honorable Norman K. Moon, R. William Arthur, and Kenneth E. Trabue, in the above styled case on the 10th and 13th days of April, 1981, in the Courtroom of the Circuit Court of Rockingham County, at Harrisonburg, Virginia.

The following was recorded by the undersigned and is certified to be a true and correct transcript of the proceedings according to the best of my knowledge and belief.

Given under my hand this 7th day of May, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

1. MR. WICKHAM: Your Honors please, his qualifi-
2. cations are in the exhibit book.

3. JUDGE MOON: We'll accept them if there's no
4. objection.

5. Q. I ask you to turn to City Map H-25, which is in the
6. small book. Will you explain what that map shows?

7. A. The color is the proposed annexed area. It was put on a
8. map, this is a reproduction of the map that I originally
9. made. It was put on a map by tracing soil breakdowns
10. on an aerial photography. And what it says is that there
11. are three classifications as to soils that are suitable
12. for septic tanks. The green is not on here. And those
13. three colors are similar to your traffic signals. The
14. green means you can go ahead without any problems to
15. amount to anything. The yellow means that you can pro-
16. ceed, but you'd better be cautious, you'd better check
17. it out pretty well. The red, you'd better be very care-
18. ful or you'll have trouble with septic tanks in there.

19. Q. Well, now, will you be more specific starting with the
20. yellow classification?

21. A. All right. In soils mapping, this is for the County
22. report, which will be published sometime soon. This
23. soil survey is made to show the different types of soil,
24. different slopes, they go into a breakdown with the type

1. soil, and erosion. These are the three things that are
2. shown as far as soil classifications are concerned. Then
3. with this, the smallest delineation that is made on
4. those aerial photographs, because it would be too small
5. if they went any lower than that, would be two acres.
6. And soils, in making up soil surveys, it is impossible
7. to take a smaller delineation than two acres and not have
8. some deviations into it. You've got some soils that are
9. just not formed that way. You get some soils in that
10. yellow area included in there that will not take septic
11. tank systems satisfactorily.

12. Q. Mr. Blair, if I owned a half acre in the area colored in
13. yellow, what would be my chances of having a septic tank
14. operate successfully?

15. A. It would be good, but you should not take that as the
16. final word. You would need to . . . the Health Depart-
17. ment is going to run a perk test on it. But if you know
18. the type soil in there, go out there and check that and
19. know the type soil, you're pretty sure of which way you
20. can go on it. Because if it's one of these inclusions
21. on that yellow there, then you'd have rejection on it.
22. If it's a good soil, then chances are a septic tank
23. system would be good.

24. Q. Measured by percent, what percent chance would I have if

1. I had a half acre in the yellow?
2. A. You would have, I'd say, a sixty percent to seventy per-
3. cent chance of it being satisfactory.
4. Q. On a half acre?
5. A. Yes.
6. Q. Now, suppose I owned an acre?
7. A. It wouldn't make any difference.
8. Q. It wouldn't make any difference?
9. A. It wouldn't make any difference even if you only had a
10. quarter acre, if you had enough there to meet the Health
11. Department requirements it would be satisfactory.
12. Q. Now, in the red area, what are the chances in the red
13. area?
14. A. The chances in the red area are very slim that you're
15. going to get a good septic tank. You're going to find
16. some soils up here in the yellow, the better soils in
17. the yellow, in there too. They're just not large enough
18. areas to be delineated. But you might find a hundred
19. acres that you wouldn't find anyplace on it that you
20. could have one.
21. Q. You mean in the red?
22. A. Yes.
23. Q. So, your percentage in the red is what?
24. A. I'd say about fifteen to twenty percent that you'd be

1. able to find satisfactory. That doesn't mean there's
2. not some on there. There's been some put on there in
3. the past in soils that wasn't satisfactory, in years
4. past.

5. ~~MR. WICKHAM: I have no further questions.~~

6.

7. Cross Examination by Mr. Fitzgerald:

8. Q. Mr. Blair, there are throughout the red area some septic
9. tanks operating properly now, aren't there?
10. A. Yes sir.
11. Q. And I believe what you were saying was that within the
12. red area there are areas in there that are perfectly
13. satisfactory, but you just don't bring it down that
14. fine.
15. A. You cannot bring it down that fine on this large a
16. scale.
17. Q. And would you say that you get pretty much the same
18. picture if you spread on out from the area you've shown
19. there in red and yellow? You get red and yellow further
20. on out?
21. A. Oh, yes.
22. Q. And would it follow in about the same pattern as you
23. have there?
24. A. It depends on where you are.

1. Q. Well, within another mile all the way around that area
2. there, would the pattern be about the same?

3. A. Let me think. It wouldn't deviate too much, because
4. beyond this, on the east side, you've got the ridge
5. there. Now, you get beyond the ridge you get into more
6. yellow. To the west you would run into . . . I think
7. you would run into more yellow on part of it, and part
8. of it would be completely red.

9. Q. So there's not much green in it?

10. A. There ain't no green in the County.

11. Q. So, the problems that exist in this area are pretty
12. prevalent all through the County?

13. A. You're exactly right. You'll run into it . . . you'll
14. have these areas that are large on red, and then other
15. areas with maybe more yellow, or similar to it.

16. Q. The possibility of developing commercial enterprises
17. in this area and outside this area without sanitary
18. sewer is very small, isn't it?

19. A. Good possibilities, yes.

20. Q. The fact of the matter is that of the soil that's in
21. the area that you show there, the better or best of that
22. soil is to the east side, isn't it?

23. A. Yes sir.

24. ~~MR. FITZGERALD: That's all.~~

1. MARIE K. ARRINGTON,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Glass:

4. Q. Would you state your full name?

5. A. I'm Mrs. Marie K. Arrington.

6. Q. And what is your present occupation?

7. A. I am Director of Social Services for the City of Harri-
8. sonburg.

9. Q. Could you very briefly describe your education and em-
10. ployment experience in the field of social services?

11. A. I graduated from Madison College, did my graduate work
12. at what is now V.C.U. I have been employed in social
13. services, one way or the other, since 1940. I have been
14. with the City of Harrisonburg since 1946.

15. Q. In a very general sense, what are the functions of your
16. department?

17. A. We provide social services and financial assistance for
18. all of the citizens of the jurisdiction.

19. Q. Have you examined City Exhibit 14h and does it accurately
20. reflect a description of your department?

21. A. Yes.

22. Q. Could you very briefly tell us how your department is
23. organized administratively.

24. A. We have an Administrative Board of three citizens, I

1. am the Director, I have a social service supervisor who
2. supervises the child abuse coordinator, three social
3. workers and a social work aide. And then I have an eli-
4. gibility person who is now a senior eligibility worker
5. who handles food stamps and all financial assistance.
6. Then we have the clerical backup.

7. Q. Could you take a minute or two and explain the general
8. range of programs that are provided, programs for assis-
9. tance through your department.

10. A. We have all of the--which I'm sure everyone knows--we
11. have a state program that is locally administered. And
12. we cover all of the programs that is included in the
13. state plan. This includes a wide variety of services,
14. particularly under Title 20. All the way from protective
15. services for children and adults to various things like
16. adoption, foster care, counseling services, education,
17. recreation, all the way down the line.

18. Q. And does your department meet the needs of Harrisonburg's
19. citizens for welfare and related services?

20. A. We believe so.

21. Q. Was your department reviewed by the State Welfare Depart-
22. ment approximately a year ago?

23. A. Yes sir.

24. Q. What was the purpose of that review?

1. A. To determine how we were functioning and the effective-
2. ness of the program.
3. Q. And were you rated in a number of different areas?
4. A. Yes, we were.
5. Q. What was that rating?
6. A. Well, we were rated all the way across the board, from
7. application and development of policies to work with
8. governing bodies, community planning and use of develop-
9. ment resources, program planning, implementation, organ-
10. izational planning and implementation, directing and
11. coordinating staffing and personnel development, fiscal
12. planning, budgeting operations, accountability, adminis-
13. trative qualities and characteristics.
14. Q. In each of those individual categories were you given a
15. rating?
16. A. Yes, we were.
17. Q. And what was that rating?
18. A. Outstanding performance, far exceeds expectations.
19. Q. Were you also given a total numerical rating?
20. A. Yes, we were.
21. Q. What was that?
22. A. It was the highest that the state could give.
23. Q. If the annexation is granted in the proposed area, have
24. you estimated the number of additional personnel you

1. would need to hire to maintain the same level of services?

2. A. We now have fifteen and a half, and we would anticipate
3. probably nineteen.

4. Q. And in your opinion do you think that would be adequate
5. to serve the needs of the individuals in the proposed
6. annexation area?

7. A. Yes.

8. MR. GLASS: No further questions.

9.

10. Cross Examination by Mr. Smith:

11. Q. Mrs. Arrington, have you made a study of how many welfare
12. cases or social services cases there are in the area
13. proposed to be annexed?

14. A. We had made an estimate, and it was close to what the
15. County has set forth in their format, which is 147.
16. I believe that's right.

17. Q. You need a total of three and a half new people to handle
18. that amount, 147 people?

19. A. Well, actually, after I saw their figures . . . we were
20. estimating nearer 200. We thought there were more out
21. there than there is. So, I may not really need that
22. much.

23. Q. On your Exhibit 14h, you have indicated that your ex-
24. penditures for fiscal year 1979-80 totaled six hundred

1. WAYNE E. KING,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Glass:

4. Q. Please state your name.

5. A. My name is Wayne King.

6. Q. Where are you employed?

7. A. Superintendent of Harrisonburg City Schools.

8. Q. What has been your employment experience in the field of
9. education before you came to Harrisonburg?

10. A. Before I came to Harrisonburg I had served as teacher,
11. principal, director of transportation, general supervis-
12. or, director of instruction, and superintendent.

13. Q. And when did you come to Harrisonburg?

14. A. I came to Harrisonburg in 1963 as Superintendent of
15. Schools, but I had served in the City before, I believe
16. 1952, for two years as a teacher.

17. Q. What generally are your responsibilities as Superinten-
18. dent of Schools?

19. A. As Superintendent of Schools I am chief administrative
20. officer in the school system, and administer the policies
21. of the School Board and the State School Board.

22. Q. Could you turn to City Exhibit 24, and by reference to
23. that exhibit would you briefly describe the administrative
24. organization of the City school system.

1. A. Yes, this is the staff organization. The staff people
2. who answer directly to me would be the coordinator of
3. special projects and services and the director of fi-
4. nances and the visiting teacher. Then there are four
5. basic structures here which report directly to me. We
6. have a director of special services, a director of in-
7. struction, and the principals. Then I have an adminis-
8. trative assistant who acts as assistant superintendent,
9. acts on behalf of the School Board in my absence.

10. Q. Can you tell me if you've examined City Exhibit 14f,
11. and does it accurately describe the various characteris-
12. tics of your school system?

13. A. Yes.

14. Q. Would you refer to the large map exhibit to your left,
15. City Exhibit H-31, and would you point out the various
16. school buildings which are now in use in the City school
17. system and refer to their capacity.

18. A. The City school system is composed of six schools.
19. We have Lucy Simms which is special education, it has
20. some special education classes. I believe we also share
21. this with the Recreation Department. Then the Spotswood
22. Elementary School, which is in the northeast section.
23. It serves the area basically across 33 and north of 11.
24. Waterman Elementary School is in the northwest section,

1. it serves that area of 33 and north on 11. Located
2. almost in the center of the City is the Thomas Harrison
3. Junior High School and the Harrisonburg High School, and
4. they are adjacent to each other. Then almost in the
5. center of the City also is Keister Elementary School,
6. which serves the southern portion of the City. Our
7. elementary schools are K through 6 grade level, the jun-
8. ior high school has 7th and 8th grades in it, and the
9. Harrisonburg High School is 9th through 12th grade. The
10. capacity of each of the elementary schools is approxi-
11. mately 400--well, we classify them as having a capacity
12. of 400. The junior high school has a capacity of 400,
13. the high school has a capacity of 800. We do not really
14. rate the capacity of Simms School, it's used for special
15. services.

16. Q. At your three elementary schools are there any ancillary
17. facilities which have a capacity greater than 400 pupils?

18. A. At the elementary schools? Yes, we do. I think that
19. the capacity for the new library is 600--I don't think,
20. I know that to be a fact. Also, the gymnasium was added
21. and it's a gymnasium that has a regular basketball court
22. in it so that it can be used by the Recreation Depart-
23. ment for their activities, which they use extensively
24. after school. And all the heating units have the capa-

1. bility of producing enough energy for a 600 pupil school.

2. Q. How about your cafeterias?

3. A. The cafeterias will adequately take care of approximately
4. 600 students.

5. Q. Is there also a vocational-technical school within this
6. general area?

7. A. The vocational-technical school, which the City of Harri-
8. sonburg and Rockingham County share, is located in this
9. area here, about two or three miles outside the present
10. City limit. It's located on Pleasant Hill Road. I be-
11. lieve we went by that on the tour. I believe you went
12. by Pleasant Valley Elementary School, and located right
13. below it is the Massanutten Vocational-Technical School.
14. Now, that installation, I believe, was completed in
15. 1972. It was a joint venture of the City and the County.

16. Q. How was it financed?

17. A. It was financed, I believe, the construction cost, the
18. City's portion was based on pupil population at that
19. time, and the City's portion was twenty percent of the
20. total cost. And that's about the way that we've operat-
21. ed since then, on a pupil attendance basis. Each year
22. when we make up the budget they give us the percentage
23. of the City students that attend there. And this is the
24. way we financed it and operate it.

1. Q. That would include your operational cost?

2. A. Operational cost or any other cost related to the opera-
3. tion of that school.

4. Q. Would it also include capital costs?

5. A. Yes. Capital would be based on . . . well, wait a min-
6. ute, let me clarify that. Capital improvements, I be-
7. lieve, is based on a five year A.D.M. period. But the
8. operating cost is based on the previous A.D.M. figures.
9. But the percentages have been running about the same.

10. Q. What is your total school enrollment today approximate-
11. ly?

12. A. About 2,316.

13. Q. What has been the trend of your enrollment over the last
14. ten years approximately?

15. A. Within the City of ~~Harrisburg~~ it has been somewhat
16. stable. I believe over the last ~~ten year~~ period we have
17. lost about 137 pupils, which is not a ~~great~~ loss I
18. don't believe over a ten year period, considering what
19. is happening to schools population-wise all over the
20. U. S. and all over the state.

21. Q. Are you required to provide free public transportation
22. to your school students?

23. A. We are not required to provide public transportation
24. to any of the students in our school system, except the

1. handicapped. We are mandated to provide transportation
2. to them. But we are not mandated and have not since I've
3. been here, the School Board has not provided any trans-
4. portation to any of the other students.

5. Q. Do you know what criterion is used in determining whether
6. a system must provide free public transportation?

7. A. Yes, I think the state statute says if a child is ten
8. years of age and they live two miles from a school, that
9. you must provide transportation within one mile of their
10. home. If you don't, they don't have to go to school.
11. Beyond ten years of age, it is two and a half miles,
12. then it's a mile and a half from their home. You must
13. provide transportation . . . not to the door. Our schools
14. are so situated within the City that we aren't bound by
15. those regulations, and we have not been involved in the
16. transportation business.

17. Q. You mentioned handicapped students. Do you provide the
18. necessary transportation for those students?

19. A. Yes, we do, with some help from the City Transportation
20. Department. We pay them for transporting our handicapped.

21. Q. Do you have what is referred to as an alternative educa-
22. tion program?

23. A. Yes, we have an alternative education program. And that
24. program is one that provides alternatives to youngsters

1. who are having a problem in their regular school pro-
2. gram. As far as that program, transportation is provid-
3. ed to them and paid for out of that grant that supports
4. the alternative education program.

5. Q. Where do you hold that program?

6. A. Beg your pardon?

7. Q. Where is that program held?

8. A. The program is housed in Simms and that is the headquart-
9. ers for it. The program is operated in conjunction with
10. the County. It's a cooperative program, just as we coop-
11. eratively work with in the vocational-technical school.
12. Our program takes care of students up to the age of
13. fifteen. The County has a program which takes care of
14. children over fifteen. So, we send City children to
15. their program and we have some County children in our
16. program.

17. Q. Do you provide the bus transportation for the County
18. children to your program?

19. A. Yes.

20. Q. And does the County provide the bus transportation for
21. your children?

22. A. Yes. And also the County provides bus transportation
23. to our students who attend the vocational-technical
24. school. Their bus comes by our high school and picks

1. them up.

2. Q. Is there, however, some public transportation available
3. to your general school students?

4. A. Yes, the general school population, transportation is
5. available. The figure, I think, was twenty-five cents
6. per trip to students through the City Transit System.

7. Q. Are all of your City schools accredited?

8. A. Yes.

9. Q. By what organization?

10. A. All of ours are accredited by the Southern Association
11. of Colleges and Schools, and have been for the last
12. eight years.

13. Q. What is the procedure to obtain accreditation?

14. A. The Southern Association is an accrediting agency which
15. sets up standards, and if you elect--and it's purely an
16. elective thing, you choose to go into it, it's no mandate
17. that you do it; but you apply to the agency and they will
18. send a committee in after you have studied your school
19. situation for a year, and after you have studied it they
20. will send in a committee and look at your report and ex-
21. amine your schools and recommend whether you be accredi-
22. ed by the Southern Association. Now, we chose to go into
23. it because at that particular time we were looking for
24. some standards to judge our school system by. And going

1. through this process, we thought it had a great deal of
2. value and we have continued to have our schools accredit-
3. ed by the Southern Association. In my opinion it's a
4. mark of distinction and I think it carries weight with
5. colleges. I think our high school was the first one to
6. be accredited in 1932, I believe; one of the first in
7. the state. But it's fairly new that elementary and
8. junior high schools be accredited. I think in only the
9. last eight or ten years have elementaries gone into it
10. with any real zeal.

11. Q. Are all of your teachers college graduates?

12. A. Yes sir, all of our teachers are college graduates and
13. all of them are teaching in their field.

14. Q. Are they all certified by the state?

15. A. All certified by the state, except one speech teacher,
16. and it's a technicality, if we ever get that one out.

17. Q. Do you know what percentage of your teachers hold Master's
18. Degrees?

19. A. I think the last statistics we had was 43%, I believe,
20. had Master's Degrees.

21. Q. Would you turn again to Exhibit 14f, specifically page
22. 14. Could you explain what that page shows?

23. A. The experience of the professional staff. Are we on the
24. same page?

1. Q. Yes sir.

2. A. I just don't want to get confused. The total of 172
3. professional staff that we have, this shows the number
4. of years experience that they have. And I believe that
5. in my opinion this is a chart that we are very proud of,
6. because it shows the holding power of our school system.
7. I believe if you start at the years of experience number
8. nine, where the twelve is, and go down to sixteen years
9. and over, that represents 106 of our teachers who have
10. been with us twelve years and over. And, of course, the
11. sixteen and over years, fifty of our teachers have that
12. much experience.

13. Q. Do you have an in-service program for your teachers?

14. A. Yes. We have a very, I think, very good and very strong
15. in-service program.

16. Q. Would you define what that term means?

17. A. In-service program is when you set up courses, seminars
18. and training sessions for your professional staff. Gen-
19. erally you will take some segment of your school system
20. and have your staff become involved in it. Generally
21. they are of a short term duration. I say we have a
22. strong one, and again we share this with Rockingham
23. County. It's a cooperative effort on our part, and when
24. our people in the City get together with the people in

1. Rockingham County, they plan the seminars or the courses
2. of study that we want the teachers to engage in. So,
3. again, this is a shared thing, but it is a very strong
4. one and we feel like both of the school systems are in-
5. volved in it heavily and it's of great value.
6. Q. Do many of your teachers participate in the program?
7. A. Well, we had about 77% that participated last year out
8. of a staff of those who would be eligible of about 206.
9. We have wide participation.
10. Q. Do you know when the State of Virginia first required
11. kindergarten in local school systems?
12. A. I think it was about six years ago. I'm not sure which
13. S.O.Q. it was at this time. About six years ago.
14. Q. How long has your system had kindergarten?
15. A. I think it's since 1909, I believe, that the City has
16. had kindergarten.
17. Q. Do you provide education for handicapped children?
18. A. Yes, we do, as do all school divisions. It's pretty
19. extensive.
20. Q. Could you explain generally your overall program for
21. special education? First, where is it held? You men-
22. tioned Simms, I think, already.
23. A. Part of it is held in Simms School. There are preschool
24. handicapped classes at Simms School, then we have what's

1. called a severely and profound handicapped class. These
2. are students who need a great deal of help to get into
3. the transportation, also need a lot of help to get into
4. the school, into the Simms School when they are brought
5. there each morning. Then we have a physical handicapped
6. class, which is held in Keister Elementary School. Then
7. we have T.M.R. classes, which is a trainable mentally
8. retarded class, which is in Spotswood. If you'll bear
9. with me a minute, I have a listing here of all of it.
10. It's pretty difficult for me to remember them all, they
11. have a lot of technical terms. (Witness secures informa-
12. tion) I have mentioned the S.P.A.M. class, and I have
13. mentioned the severely profound and multihandicapped
14. class, which is held at Simms School. Then we provide
15. for the hearing impaired, learning disabilities or L.D.
16. students, emotionally disturbed; and I believe I have
17. mentioned all of the programs that we offer in the area
18. of special education. I believe that we are providing
19. for all known children of handicaps that we have.

20. Q. Would you turn again to Exhibit 14f, page 11 of that
21. exhibit, entitled "Courses Offered at Harrisonburg High
22. School". Could you explain what that exhibit shows?

23. A. Well, you have a listing before you of the courses that
24. are offered at Harrisonburg High School. In the first

1. table, I think, it lists the number of units. And this
2. means that the youngster, he needs eighteen in our school
3. system to graduate. Eleven of these are mandatory, man-
4. dated by the state, and the others he gets to choose
5. from this list, related to where he might go to college
6. and what he might want to major in in college.

7. Q. Does the state require you to offer a certain minimal
8. number of units?

9. A. The state does require that you offer a minimum number
10. of units. Eleven, I believe, is the number. And you
11. need eighteen to graduate, so a youngster has seven he
12. can select.

13. Q. Does your offering exceed the state requirements?

14. A. Our offering exceeds greatly the state requirements.
15. And I would call your attention to the offerings down
16. in the lower right-hand corner, which are vocational
17. offerings. Then on the next page I'd call your attention
18. to the number of units that are offered at the Massanut-
19. ten Vocational-Technical School, which we share with
20. Rockingham County.

21. Q. Is this a typical high school curriculum in city school
22. systems across the state?

23. A. I think basically that it is. Probably if you looked
24. across the state you would find very similar sets of

1. offerings. It may be less in some instances, it may be
2. more. But I would think probably this would represent
3. the basic curriculum of the high schools.

4. Q. Does your system offer an adult education program?

5. A. Yes, we have an adult evening program. We have one
6. which is conducted at our local high school. And, of
7. course, the vocational-technical school has an extensive
8. adult educational program which we share.

9. Q. Does your system also offer a summer program?

10. A. Yes sir, we have regular summer school.

11. Q. Could you turn now once again to Exhibit 14f, page 16.

12. What was the source of the various statistics that are
13. printed on this page and the following page?

14. A. On page 15?

15. Q. Sixteen.

16. A. Sixteen, excuse me. Okay, those are statistics that
17. came out of the January Facing Up, which is the publica-
18. tion of the State Department of Education.

19. Q. Can you tell me what significance, if any, there is
20. in the pupil/teacher ratio and the average class size
21. in judging the quality of an educational program?

22. A. I think there are many, many factors that you need to
23. consider relating to your programs and whether your sys-
24. tem is effective or not. And I think class size is prob-

1. ably one of the key factors. I think if you give a
2. teacher a number of pupils which she can manage well,
3. I think that she can do a better job. I would think that
4. that would be a very significant thing about your pupil/
5. teacher ratio. As is shown, I think we have a very fine
6. pupil/teacher ratio.

7. Q. Do you know how that compares to the state average over-
8. all?

9. A. The state average is 17.5 and the City's average is
10. 15.2. Statewide the secondary average is 14.7 and ours
11. is 12.0. The total pupil/teacher ratio in the state is
12. 16.13 and ours for 1979-80 was 13.8.

13. Q. For average class size you have listed only three grades
14. there, why is that?

15. A. I think now the state is only looking at the average
16. class size in three grades plus kindergarten; but the
17. kindergarten one is mandated, I think, on the standard
18. of quality.

19. Q. Do those three grades have any particular significance?

20. A. Well, I would think again that your class size--you be-
21. gin with your pupil/teacher ratio, and if you've got a
22. good pupil/teacher ratio it's going to have bearing on
23. your class size. The difference between the two is
24. you can have a low pupil/teacher ratio, but in instruc-

1. tion and in setting up the instruction program, some
2. of your classes could be larger than others for instruc-
3. tive purposes.

4. Q. How do you actually calculate the teacher/pupil ratio?

5. A. Well, you take the number of students that you have and
6. divide it by the number of personnel who will be working
7. with those students. If you have a hundred students and
8. you've got five teachers, if you divide the five into
9. the hundred I think it will give you twenty. That's
10. the twenty to one teacher ratio. But if you take that
11. same hundred pupils and you have five classes, but one
12. of them could have twenty-five in it and one of them
13. could have fifteen in it, but your total would still be
14. a hundred, that would give you some latitude in setting
15. up instruction programs. You might want twenty-five in
16. one and fifteen in another for instructional purposes.

17. Q. With reference to the average class size, do you happen
18. to know how your figures compare to the state average?

19. A. Class size in grade 1 is 22.8, in grade 2 it's 23.1, and
20. in grade 3 it's 24.

21. Q. Can you tell me, is there any significance in the aver-
22. age salaries paid teachers in judging the quality of the
23. school system?

24. A. Well, again, I think this is another factor that would

1. contribute to your having an effective school system.

2. If you have good personnel and pay them adequately, I
3. think that that is definitely a factor. You're able to
4. attract and hold good teaching personnel.

5. Q. Can you state what percentage of City students continue
6. on to college or otherwise continue their formal educa-
7. tion?

8. A. They show in the chart those attending two year colleges;
9. of the 163 that graduate, 25.8%.

10. Q. Where is that figure shown on page 16?

11. A. Down at the bottom, the number of graduates, including
12. summer school.

13. Q. Could you briefly explain those various categories?

14. A. The percent attending two-year colleges is 25.8%. The
15. percent attending four-year colleges is 49.1%. And the
16. percent continuing education in other environs, it might
17. be a vocational school or some other installation of this
18. type, would be 4.3%. And that's an overall average of
19. those who would be continuing their education of about
20. 79.1%. Now, I might say that I know since I've been
21. here, the City children who finish in the high school
22. here, we have always had a pretty high percent who were
23. attending four year colleges. That percent has remained
24. around fifty percent since I've been here. And I believe

1. our course offering would reflect that we do have a good
2. number who go on for four year college training.

3. Q. What percentage was it there for Rockingham County?

4. A. Eight percent, two years, and 22.6% for four years, 7%
5. for continuing education, for an overall 38%.

6. Q. For that reason would you characterize your system some-
7. what more college oriented?

8. A. I think ours is more college oriented. Yes.

9. Q. Does your system offer any agriculture education courses?

10. A. No sir, we do not. We do not offer any agricultural
11. units at all.

12. Q. Would you turn to the next page, page 17. Could you ex-
13. plain the category at the top of page 17?

14. A. The State Board of Education has become acutely aware
15. of youngsters that were coming out of the public schools
16. who did not have any skills that they could sell to some-
17. body immediately so they set up a program whereby a
18. youngster who comes out of the high school will have
19. some type of skill that he can use to earn a living
20. maybe or make money. I think I need to say that when
21. we talk . . . a youngster could have a typing class,
22. and that's a skill that's acquired, so it gets in that
23. area. It also gets to the other extreme where a young-
24. ster who attends a vocational-technical school might

1. have gained six units of credit in auto mechanics, so
2. naturally he's got a skill. So, it's a wide range of
3. skills that they judge. And using their criteria, all
4. of ours who came out, that 163, had marketable skills.
5. I just wanted to show you there is a range that they
6. count as being a skill.

7. Q. Does your City school system have a standardized testing
8. program?

9. A. Yes.

10. Q. Could you explain the statistics that are listed?

11. A. Well, that's the grade 4 standardized test that all
12. school systems are exposed to. The grade 4 STEA is a
13. test of ability. Then the SRA assessment survey is given
14. and there is a relationship between the ability and then
15. the SRA assessment, and if you look at grade 4, we have
16. a 66 ability. And then the SRA assessment shows in read-
17. ing that we are 73 and 70 and 67. And I think the sig-
18. nificant thing here is that we have achieved up to and
19. above the ability level of the students. And really this
20. is what this test is supposed to show.

21. Q. Does that indicate whether you're doing a good job or
22. not?

23. A. Well, it does to me. I think you would need to be con-
24. cerned if your ability level was 66 and you fell below

1. that. That would indicate that you needed to look at
2. what was happening in your instructional program. And
3. that is what these tests are supposed to help you do.
4. It indicates that we're being fairly successful.

5. Q. Does it indicate the same conclusions to the County?

6. A. Yes. I think you need to look at it in ability, what
7. the ability shows.

8. Q. Could you turn briefly to Exhibit 25, which is in the
9. other exhibit book. Would you explain what this exhibit
10. shows.

11. A. This is "Per Pupil Costs of Public Education in Average
12. Daily Membership". That is what you spend from your
13. public funds in those particular years for each student.
14. That figure represents all of your expenditures, I don't
15. think it represents your capital outlay and debt service,
16. but your operating cost expense. And involved in that
17. figure is teachers' salaries, administrative salaries,
18. and all the facets of the operation of the schools.

19. MR. SMITH: Excuse me, what exhibit are you
20. on?

21. MR. GLASS: Exhibit 25 in the large exhibit
22. book.

23. Q. Do you exceed the mean for the State of Virginia in
24. per pupil expenditures?

1. A. I think this chart indicates that we have.

2. Q. Do you think there's any correlation at all between the
3. amount of money spent per pupil and the quality of pub-
4. lic education?

5. A. I think, to repeat myself, when I said before I think
6. teachers' salaries, that's involved in it, what you pay
7. teachers. If you pay them well, then that figure should
8. be up. You need money to pay salaries. You need money
9. to give a low pupil/teacher ratio. You need money to
10. supply teachers with supplies that they need to teach.
11. And I think that's why that figure is significant. And
12. I think the City has done well by the pupils in the Har-
13. risonburg system, as this chart indicates.

14. Q. Can you tell me if there are any county residents who
15. presently attend the City schools?

16. A. Yes, there are.

17. Q. Do you know approximately how many?

18. A. About 211, I think, from the County are now attending
19. City schools.

20. Q. Do you have the number of City residents that are present-
21. ly attending County schools?

22. A. We have some City residents who are attending County
23. schools, 42 of them.

24. Q. Could you refer to Map Exhibit H-35, which is behind

1. your basic school exhibit there? Could you explain what
2. that shows?

3. A. I think this is the location of the students who attend
4. our schools that live in the proposed annexed area.

5. Q. And do you know approximately how many are shown living
6. within the proposed annexation area?

7. A. I believe there's seventy-nine.

8. Q. Could you point out where they're concentrated?

9. A. They're concentrated in Ashby Heights and Forest Hills--
10. this is the Ashby Heights-Forest Hills area; and I be-
11. lieve this is Fairway Hills. There are some concentrat-
12. ed in this area (indicating on map). The biggest concen-
13. tration is right here.

14. Q. Have you developed a plan to educate the additional
15. children residing in the proposed annexation area should
16. annexation be granted?

17. A. I have developed a plan.

18. Q. Can you tell me when you developed the details of the
19. plan, and by that I mean the numbers of classrooms and
20. actual general assignment of pupils?

21. A. I believe it was in the fall right before we appeared
22. before the Commission on Local Government.

23. MR. SMITH: Could you speak up a little bit?
24. I'm having trouble hearing you.

1. A. Yes sir, I will.
2. Q. My question was, when approximately did you develop . . .
3. A. I think I said I developed it in the fall sometime be-
4. fore we met with the Virginia Commission on Local Govern-
5. ment.
6. Q. Prior to that date did you have any specific figures
7. as to the number of students residing in the proposed
8. annexation area?
9. A. Prior to when?
10. Q. Last fall.
11. A. Not definite. I think we started with one set of fig-
12. ures which was speculation, and then later we got some
13. more accurate figures. I believe that's the sequence
14. of events.
15. Q. At about that time, last fall, did you receive informa-
16. tion concerning the number of students in the area?
17. A. Yes.
18. Q. Through the use of court interrogatories?
19. A. Yes.
20. Q. And would you now turn to City Exhibit 26. which is
21. again in the large exhibit book, To accommodate the
22. additional children now residing in the proposed annexa-
23. tion area. will you have to construct some additional
24. classrooms?

1. A. We would have to construct some additional classroom
2. space, yes.
3. Q. And why is that? What unused capacity do you have
4. approximately now?
5. A. Well, our schools are about at capacity. If we take in,
6. anymore students, we'll have to provide housing for them.
7. Q. Okay, could you describe generally what does the City
8. propose to do in terms of construction?
9. A. Well, I think the first assumption is that the County
10. will retain the Pleasant Valley Elementary School.
11. Q. Why do you make that assumption?
12. A. Well, because I think it has been stated, I think even
13. by their school board, that they would like to retain
14. that Pleasant Valley Elementary School. I think Mr.
15. Dishner has mentioned to me that he would like to keep
16. that Pleasant Valley Elementary School.
17. Q. Was a resolution from the County School Board presented
18. to the Commission on Local Government?
19. A. Yes, a resolution was presented.
20. Q. What did the resolution say? Not word for word, but . . .
21. A. Yes, they said that they wanted to retain Pleasant Valley
22. School. That was the essence of that resolution, as I
23. remember it.
24. Q. Does your City school system desire to utilize the Plea-

1. sant Valley Elementary School?

2. A. No. Our plan is not based on utilizing the Pleasant
3. Valley Elementary School.

4. Q. Now, if you'd describe generally what construction would
5. be necessary to accommodate the children.

6. A. Well, the City schools would have to construct twenty-
7. four classrooms to accommodate the approximately 525
8. children who would be coming in from the proposed annex-
9. ation area. And . . .

10. Q. Where would those classrooms be located?

11. A. We would locate the classrooms at the three elementary
12. schools. It would increase their size to six hundred
13. capacity.

14. Q. Do you have sufficient space at your junior high and
15. high school?

16. A. We do not have sufficient space and that's somewhat of
17. a problem. There's only twelve hundred capacity over
18. there, and with the 122 plus 42 eighth graders that would
19. have to go in there, that would--if we tried to house
20. them there, that would increase their enrollment to
21. about thirteen hundred and some, which would be a hundred
22. and ~~thirty~~-some over capacity.

23. Q. So, what do you propose to do because of that problem?

24. A. Well, we propose at this point to add eight classrooms

1. to each of the elementary schools, which I said would
2. increase their capacity to 600. And house in these
3. eight classrooms all the seventh grade pupils in the City
4. which is now housed at the complex, the junior high and
5. high school complex. Now, if we move the seventh grade
6. from the junior high school, that will give us space
7. enough to house the eight through twelve pupils in the
8. new proposed enlarged City.

9. Q. Do you propose any other construction?

10. A. We do. To follow through with it, and I think it's part
11. of the total plan, we would construct a junior high
12. school which would house seventh and eighth grade stu-
13. dents. Since if we go to the eight classrooms that we
14. add to each of the elementary schools we are putting the
15. seventh grade youngsters there, we would hope to go back
16. to our original grade structure, which is K-6, 7-8, and
17. 9-12.

18. Q. And on what time frame are you speaking about? When are
19. you proposing to have this new junior high school com-
20. pleted?

21. A. I believe the junior high school is supposed to be com-
22. pleted within a six year period of the effective date of
23. any annexation decision that is rendered.

24. Q. To make it clear as to the grade structure. What is your

1. present grade structure?

2. A. Our grade structure is K-6 which is housed at the three
3. elementary schools, we have the 7th and 8th grades at
4. the junior high school which is adjacent to the high
5. school, and we have 9th through 12 in the high school.
6. That's our present grade structure.

7. Q. Now, when you complete the elementary classrooms, the
8. grade structure will be changed how?

9. A. The grade structure will go to K-7 at our present ele-
10. mentary schools, 8-12 at the high school site.

11. Q. That high school site, would that be a single school
12. complex?

13. A. That will become a single unit operation for grades
14. nine through twelve. There would be no . . .

15. Q. Excuse me, you said nine through twelve?

16. A. Eight through twelve, excuse me. There would be no
17. junior high school.

18. Q. And you would operate that single unit in two buildings?

19. A. In the two buildings, yes. In all probability that
20. space now that the seventh and eighth grades occupy over
21. there would probably be occupied by the eighth and ninth
22. grades under the new arrangement.

23. Q. Now, upon completion of the proposed junior high school,
24. what would happen to the grade structure?

1. A. Repeat that?
2. Q. When your proposed new junior high school is completed,
3. what would be the grade structure?
4. A. When it is completed we will go back with the present
5. structure now. K-6, 7-8 into the new junior high school,
6. and that site over there would revert back to a 9-12 unit.
7. Q. Has the City School Board had plans for some time to ex-
8. pand its elementary schools and build a new junior high
9. school?
10. A. Yes, there have been plans in existence since 1972 or
11. 1973 that we would expand those elementary schools when
12. the pupils were there.
13. Q. And had you initiated that plan? And by that I'm refer-
14. ring to you mentioned the ancillary facilities at the
15. elementary schools, why were those built?
16. A. That was part of the plan. And I did initiate them.
17. We have added, I believe, . . . the year that we added
18. the libraries, I think the first one was at Waterman
19. School in 1975, and then the following year we added
20. libraries and gymnasiums to Keister and the other elemen-
21. tary school.
22. Q. To accommodate the additional elementary children.
23. A. To accommodate any number of children up to six hundred.
24. Q. But in order to accommodate these children at the ele-

1. mentary schools you will not have to build a gymnasium
2. or library?

3. A. No, they exist.

4. Q. Will you have to build a cafeteria, an enlarged cafeteria?
5.

6. A. No. I think all the facilities there are there to take
7. care of six hundred pupils, except the classrooms.

8. Q. Just to backtrack, I guess, could you explain, could
9. you go through the chart here, starting with Roman Numer-
10. al--with capital B, and explain this basic data regard-
11. ing number of children and proceed through the other two
12. sections which deal with assignment of pupils presently
13. and within the proposed enlarged city.

14. A. There are 873 children of school age population located
15. in the proposed annexed area. Now, out of that group
16. there are 319 K-7 students. In high school grades 8-12
17. there are 174. For a total of 493. Now, the figure
18. number 3, that 493 becomes 525 because there are 32
19. students in Anthony Seeger School that reside in that
20. proposed annexed area.

21. Q. Could you go through capital C now, the assignment of
22. pupils within the existing City.

23. A. All right, as I said, Spotswood Elementary, Keister Ele-
24. mentary and Waterman Elementary are K-6 grade structures

1. and have a present capacity of four hundred, and then
2. you see the present enrollment in each of those schools.
3. And then we have an unused capacity of twenty-nine stu-
4. dents. The intermediate school, grades 7-8, four hundred
5. capacity, they have 385, and there's an unused capacity
6. of fifteen. The high school, grade structure 9-12, the
7. capacity if eight hundred, they have presently 760 enroll-
8. ed, they have an unused capacity of forty. And I think
9. a grand total will show that we have an unused capacity
10. of about eighty-four.

11. Q. Now, before turning to capital D, I notice that there
12. are a couple of columns which refer to Anthony Seeger.
13. Can you tell me, have you proposed to add additional
14. classrooms since you testified before the Commission on
15. Local Government?

16. A. I think at that particular time . . . didn't we have
17. twenty-two? I believe we've got twenty-four in this.
18. I think I'm correct.

19. Q. Since the hearing before the Commission on Local Govern-
20. ment, has there been some change in the situation with
21. respect to Anthony Seeger?

22. A. Yes, there is a definite change.

23. JUDGE ARTHUR: Where do we see Anthony Seeger?

24. MR. GLASS: This is a heading on one of the

1. vertical columns, the seventh and eighth columns.

2. JUDGE ARTHUR: All right.

3. Q. At the time of the hearing before the Commission on
4. Local Government, did you anticipate that Anthony Seeger
5. would be in operation indefinitely?

6. A. No, I think at that time there was a lot of speculation
7. as to whether Anthony Seeger would operate anymore after
8. the present budget. And I think that's been firmly es-
9. tablished now, that it will go out of existence after
10. next year.

11. Q. Since the Commission hearings you've officially heard
12. that it will be going out of existence?

13. A. Yes.

14. Q. Have you now made provision for those additional students?

15. A. We have made provisions now for those from our City
16. who go there, plus there are thirty-two that are County
17. residents in the proposed area that go. We have made
18. provisions for them.

19. Q. Would you run quickly through that table and explain
20. it?

21. A. Okay, assignment of pupils for enlarged city. As I
22. said before, the school, Spotswood would become a K-7
23. structure. We would add the eight classrooms and give
24. it a new capacity of 600. That lists the present enroll-

1. ment. Then the seventh grade from Thomas Harrison, a
2. City school, there's a total enrollment of 195 and we
3. just gave a third of each one of them to each of the
4. three elementary schools. And then grades 1-6 from
5. Anthony Seeger, of City children, we assigned those to
6. the three elementary schools. And then the annexed area
7. membership, including Anthony Seeger School, is 351,
8. which is the figure that appears above in B.3., we assign-
9. ed those to each of the three elementary schools. Then
10. you have a new total enlarged City enrollment for the
11. three schools. And then that is related to the new capa-
12. city, and there is a slight bit of unused space, about
13. fourteen. That briefly is what we have done with the
14. new structure of K-7.

15. Q. Upon completion of the new proposed junior high school,
16. would you have additional capacity within those three
17. elementary schools?

18. A. Yes, we would.

19. Q. Why is that?

20. A. Well, if you're going to put eight classrooms there
21. and then you would remove the seventh grade, you're re-
22. moving enough pupils which might be equivalent to two
23. to three classrooms. So, you would have technically some
24. unused space if and when you moved that out.

1. Q. How generally did you estimate the number of additional
2. classrooms that you would need for the elementary stu-
3. dents?

4. A. Well, we took the number of elementary pupils and divided
5. by twenty-five and got the number of classrooms.

6. Q. Do you know roughly what the attendance zones might be
7. upon annexation with your elementary schools?

8. A. No, I don't know, because I don't have any definite loca-
9. tion of pupils. I don't know where they might be con-
10. centrated or where they may not be concentrated.

11. Q. Would your southernmost school . . .

12. A. I would say that that would be the way that I would
13. answer your question. I would think that if most of
14. them are located in the southern portion, then Keister
15. would probably be the one that would receive those. And
16. then to balance out the population of each of the schools
17. probably would require some redistricting of lines. But
18. I don't really know where their homes are, where they
19. live. That's the best I could react at this point.

20. Q. Will provisions be made for special education students?

21. A. Yes. But I think the information we have now . . . when
22. we had this information there was one that was shown,
23. but since then we have information, I think, that there
24. is more than that in this area; probably in the area of

1. fifty-six, fifty-two or fifty-six. I have a letter from
2. somebody saying that. But that poses a problem at this
3. point in time because I don't know what type they are,
4. what services they would need. But that could be final-
5. ized . . . we will make provisions for them.
6. Q. Do you actually know that there are that number out in
7. the annexation area?
8. A. Well, I have a letter to that effect.
9. Q. Do you know that that's accurate?
10. A. No, I don't know that it's accurate.
11. Q. Did the County School Superintendent indicate during
12. his testimony before the Commission on Local Government
13. what number he thought were out there?
14. A. Yeah, he indicated a lesser number than that.
15. Q. Do you know approximately how many?
16. A. I think the figure five or six was used. I forget.
17. That was the figure, I believe, that was used.
18. Q. So, will you make any necessary adjustments to this plan
19. once you get an accurate number in that area?
20. A. Yes.
21. Q. Will you provide free public transportation to students
22. upon annexation?
23. A. That is the last statement that's shown under the as-
24. sumptions. The City will provide transportation to all

1. the students in the new enlarged City.
2. Q. Would that include the existing City?
3. A. Yes. All the students in the enlarged City; the exist-
4. ing students and students that we take in.
5. Q. Have you estimated how many buses you would need?
6. A. We estimated eleven buses. I believe the City has four
7. that they use which we would have access to. So, we
8. figured on fifteen buses.
9. Q. Do you have the facilities to provide the maintenance
10. for those buses?
11. A. Those buses will be maintained by the City's garage.
12. Q. And is it proposed to hire additional mechanics for that
13. operation?
14. A. Yes, I think it has been budgeted for additional mechan-
15. ics.
16. Q. Do you know approximately how many students residing in
17. the annexation area now are enrolled in some sort of
18. agriculture education course?
19. A. Yes. Fifty-seven was the figure that was given to me
20. that is enrolled in agriculture.
21. Q. What do you propose to do as to those students within
22. that number who wish to continue that sort of education?
23. A. I propose to ~~sit~~ with Mr. Dishner and ~~see~~ if the County
24. would not continue to educate those children. If it's

1. fifty-seven of them, and I would think that that would
2. be the first solution to the problem since we don't of-
3. fer agriculture.

4. Q. Have you spoken with him about the possibility of having
5. the County provide that education on a tuition basis?

6. A. Yes.

7. Q. And what was his reaction?

8. A. I think he would accept them. I think he's interested
9. in educating children.

10. MR. SMITH: I object. This is pure specula-
11. tion. We're going to have Mr. Dishner here to say what
12. his position is.

13. JUDGE MOON: Sustained.

14. MR. GLASS: Judge, the School Superintendent
15. is an agent of the County and that's admissible as . . .

16. JUDGE MOON: Well, the School Board would
17. have to act on anything like that. It is speculation.

18. Q. If the County was not willing to provide this type of
19. education, what would you propose?

20. A. Well, the first thing I might propose is to find another
21. county who has an agriculture program. And if that
22. didn't work, we'd just set up a program. That would be
23. the only way I'd know to handle the situation.

24. Q. As residential, commercial and industrial development

1. continues within the proposed annexation area, do you
2. anticipate that number of students to remain constant
3. or decrease or what?

4. A. I would think probably that they would decrease because
5. of the development of the area. I think they'll probably
6. become urbanized.

7. Q. Now, you have referred to the temporary change in the
8. grade structure. Could you explain how that would ac-
9. tually work in terms of operation of the combined com-
10. plex that you referred to?

11. A. How it would operate if we combined Thomas Harrison
12. and Harrisonburg High School into one unit?

13. Q. Would you continue to offer the same academic, the same
14. courses of instruction?

15. A. Yes. We have not made any provisions to change even
16. the seventh grade curriculum. They will be having the
17. same course of study in the seventh grade if they're
18. located in the elementary schools, and we will have the
19. same curriculum for the eighth grade that would be locat-
20. ed at the high school. We don't anticipate any changes
21. in the curriculum.

22. Q. And how about the seventh graders that you said would
23. be housed in the elementary schools on a temporary basis?
24. Would their course of instruction be changed?

1. A. No, I think we would try to keep it basically what it is
2. now. We'll try to operate it in those schools as near
3. as possible to what it is now. And I think we would be
4. able to do that.

5. Q. Tell me, are there other school systems around the state
6. using this sort of grade structure?

7. A. Yes, there are other school systems using this type of
8. grade structure. I believe if you'll look at it, there
9. are many different structures in many different school
10. divisions, but there are those that have the K-7 and the
11. 9-12. Covington. Galax. Newport News are some that I
12. know that have gone to this structure.

13. Q. Are your seventh graders already going to the elementary
14. school sites for certain purposes presently?

15. A. Yes, they use the gyms for athletic purposes, and go
16. from the junior high school over to the elementary schools.
17. Yes.

18. Q. And in your opinion would there be any substantial adverse
19. impact on students as a result of changing the grade
20. structure?

21. A. No substantial adverse effect, no. But I think you could
22. not in all honesty say that there wouldn't be some ef-
23. fect. They'll be in a different environment, and they
24. will have to adjust to it. But I don't think it would

1. be anything drastic at all.

2. Q. What would be the impact as far as academically, the
3. course of instruction that would be followed?

4. A. I don't think it would have that great an impact. I
5. think you'd have a period of adjustment though. See,
6. we're not talking about picking up students and taking
7. them out of the school to the elementary school. What
8. we're talking about is a seventh grade student will stay
9. right at that school one more year. It's not like we're
10. going to pick them up and move them out. So, I think
11. under that type of situation the impact is lessened.

12. Q. Could you explain what the timing would be for implemen-
13. ting this program? If annexation were effective on
14. December 31, 1981, for example, when do you think the
15. additions to the elementary schools would be ready for
16. occupancy?

17. A. We've talked in terms of having them ready for occupancy
18. by the time the school systems open for the 1982-83 school
19. year. If we started immediately, early in January with
20. plans and get them to the . . . have the architect fin-
21. ish them and get them bid, we figure in terms of nine
22. months.

23. Q. From what date?

24. A. From early January.

1. Q. When you testified before the Commission on Local Govern-
2. ment, what sort of time frame . . .

3. A. It was much longer than that. I think I made the state-
4. ment it would be about a year and a half or sixteen
5. months.

6. Q. Why have you changed your mind?

7. A. Well, I've gone to architects and have letters of sup-
8. port saying that they think because of this type of
9. construction . . .

10. MR. SMITH: I object to this hearsay.

11. JUDGE MOON: Overruled. I mean, you can
12. state your opinion.

13. Q. Is it your opinion that you can now complete construc-
14. tion, have construction completed, by the September fol-
15. lowing the effective date of annexation?

16. A. That's my opinion, that we can.

17. Q. Do you already have generalized plans with respect to
18. the additions that would be necessary?

19. A. We already have generalized plans, yes. And we have
20. had them since we constructed the libraries and the gyms.
21. At that time it was laid out where we could add class-
22. rooms.

23. Q. What do you propose to do in the interim period, between
24. the effective date of annexation and the following fall

1. or a year later if there was a problem with the construc-
2. tion?

3. A. I suppose that, again, we would work with the County
4. and have them continue to educate the children until
5. we could house them in our system.

6. Q. And would you propose to pay tuition to the County for
7. that purpose?

8. A. I'm sure that we would have to pay the County the cost
9. of educating the children, sure, if they were ours.

10. Q. If some County teachers were laid off as a result of
11. the proposed annexation, would you give any sort of
12. preference to those teachers in your hiring process?

13. A. Yes, we would give some preference in interviews and
14. that sort of thing. And if everything was equal, we
15. would employ them. Yes.

16. Q. Have you estimated approximately how many new teachers
17. you would need?

18. A. Yes, I think we have in the budget set up for twenty-
19. four additional classroom teachers.

20. Q. Could you turn to the second page of Exhibit 26. Have
21. you estimated the cost that would be necessary in order
22. to carry out the various improvements that you're speak-
23. ing about?

24. A. Yes, I think you see the cost before you, the cost of the

1. elementary classrooms, the purchase of the site for the
2. new junior high school, and the completion of the junior
3. high school.

4. Q. Could you take, for example, number two, the elementary
5. classrooms, and could you give some breakdown of that
6. 1.6 million dollar figure?

7. A. I think in that figure that we estimated, I believe,
8. twelve hundred square feet per classroom, and it was
9. going to cost us fifty dollars a square foot. Let me
10. get that figure. I believe that total came to one mil-
11. lion four hundred and forty thousand dollars. And then
12. there was two hundred thousand dollars allotted for the
13. furniture and equipment. And that represents that one
14. million six hundred thousand dollars. I can tell you
15. accurately if you'll give me one minute.

16. Q. Certainly.

17. JUDGE MOON: While you're looking for it,
18. let's take a recess.

19. (Recess)

20. Q. Mr. King, would you turn your attention again to Exhibit
21. 26, the second page, and I had directed your attention
22. to item number two, the amount for the elementary class-
23. rooms. Would you indicate what that figure includes?

24. A. There is one million and sixty-six thousand and six hun-

1. dred and seventy dollars that's allotted for two-thirds
2. of the financing of the additions to be made to the ele-
3. mentary schools, and that's in the 1981-82 school year.
4. And then the balance of four hundred and forty-five thou-
5. sand three hundred and thirty is in the next school per-
6. iod, and I believe that's that total of one million six
7. hundred thousand. That's for the eight classrooms and
8. the equipment.

9. Q. Okay, item number three, can you indicate what the five
10. hundred and sixty-five thousand dollars would include?

11. A. Five hundred thousand dollars of this amount is allotted
12. to purchase of site, and then the other sixty-five thou-
13. sand dollars is to develop . . . money towards developing
14. the site and plans for the new junior high.

15. Q. I forgot to ask you earlier, but have you considered a
16. general location for the site of the new junior high
17. school?

18. A. Yes, we have considered a general location.

19. Q. Would you point that out?

20. A. I think it was the area on Route 11, approximately this
21. area right here (indicating on map). I think it was
22. down below, if you recall, the driving range and on the
23. right.

24. Q. Could you indicate the location with a red pencil on

1. there?

2. A. Okay.

3. MR. COGAR: Draw a circle and put an "x" in
4. it on Exhibit H-35, the generalized location.

5. A. (Witness marks on exhibit)

6. Q. Would you please explain item number five now, what is
7. included in the three million dollars.

8. A. In the three million dollars there is architect fees of
9. seventy-five thousand dollars, construction money of al-
10. most a million dollars, actually nine hundred and twenty-
11. five thousand dollars; and the seventy-five thousand
12. dollars would be in the 1985-86 plans and then two mil-
13. lion dollars is in the next budget year, and I believe
14. those figures will give you that three million dollar
15. figure.

16. Q. Can you tell me, will you be able to use any state lit-
17. erary loans to finance some of this construction?

18. A. Yes, we are planning to use literary money. I believe
19. that we'd use literary money at each of the three ele-
20. mentary sites to erect the classrooms. I think we would
21. be eligible to borrow a million dollars for each of those
22. sites, but we don't anticipate it will take that much.
23. We'll probably use literary money for the junior high
24. school; probably a million dollars.

1. Q. Can you tell me whether you believe there will be any
2. reduction in travel time for students within the propos-
3. ed annexation area if annexation is granted?

4. A. Since I really don't know where they're located, I don't
5. know how to react positively to that. It may be for
6. some who are located near Keister or Spotswood, it would
7. be less travel time. But that's about as much as I would
8. speculate on that.

9. Q. Can you tell me whether the School Board has informally
10. given their approval to this plan?

11. A. Yes, the School Board has given and asked me to proceed
12. with this plan.

13. MR. GLASS: No further questions.

14. JUDGE TRABUE: Mr. King, the County has pre-
15. pared an exhibit, Exhibit 27, and without anticipating
16. that, has the City prepared a school enrollment summary
17. for the last ten years?

18. A. I thought we had one in the interrogatories that were
19. given to them.

20. JUDGE TRABUE: Well, we haven't seen the
21. interrogatories. Over the last ten years has the en-
22. rollment in your three elementary schools increased,
23. and what is your projection for the next six years in
24. your elementary school enrollment if it were not for the

1. annexation?

2. A. If it were not for annexation, we had to base it on what
3. had happened to us in the previous ten years, and it
4. would be about the same. I would say we would have
5. approximately ten years from now a hundred more or a
6. hundred less, because this has been the history of our
7. City school population over the ten years.

8. JUDGE ARTHUR: The school population is pro-
9. jected to decrease in the next few years, is it not?

10. A. Well, I think now, if I can interpret the information
11. correctly, the school population has been decreasing for
12. the past few years but it's bottomed out. It's predict-
13. ed now in the next two or three years that it will prob-
14. ably go up again.

15. JUDGE ARTHUR: I wasn't aware of that. I
16. thought because of birth patterns that the graph was
17. going on down for another few years.

18. A. I was reading . . .

19. JUDGE ARTHUR: Maybe I'm wrong in that.

20. JUDGE TRABUE: I realize that there's other
21. evidence coming, but it just seems like what you're talk-
22. ing about is taking ~~six~~ hundred shares and moving them
23. out of the County into the City at approximately ten
24. thousand ~~dollars~~ per share or per child. Is there any

1. other alternative available if annexation were granted
2. in this area, such as contracting between the City school
3. system and the County school system for services without
4. the necessity of constructing the five and a quarter mil-
5. lion dollars worth of construction?

6. A. I think that's very probable, yes.

7. JUDGE ARTHUR: I understand your testimony
8. is that the City is prepared to do these things that you
9. have outlined, the School Board is, if it becomes neces-
10. sary. Is that right?

11. A. Yes sir.

12. JUDGE TRABUE: Has ~~there been any exploration~~
13. of ~~the potential~~ of contracting for services between the
14. two governments. rather than building the new facilities?

15. A. There has been no real discussion of it, no sir. Not
16. on my part with Mr. Dishner. We have discussed a lot
17. of other things, a lot of other cooperative programs, but
18. I have not sat with him really formally talking about
19. five hundred and twenty-five students, contracting some
20. type of arrangement to educate them. I think his indi-
21. cations are, and I think he has so stated, that he
22. thought we could work this thing out.

23. JUDGE TRABUE: So, what the City is proposing
24. here isn't the only solution?

1. A. What I have proposed is the solution that if we get
2. these pupils, we could house them.

3. JUDGE TRABUE: Thank you.

4. MR. COGAR: May I just speak to that one mo-
5. ment, Judge Trabue? Everyone would probably accept the
6. fact that in every city and county budget the largest
7. element that you have is school enrollment, and I believe
8. that if you annex these children and put their parents
9. on our tax rolls, and deprive them of one of the most
10. expensive services and leave the children in the County
11. schools, would in and of itself be counter to the commun-
12. ity of interest concept. You just would not be bringing
13. them into your community if you left them in another
14. jurisdiction's schools.

15. MR. FITZGERALD: May I state the County's
16. position at this time, since there seems to be . . .

17. JUDGE MOON: Well, we're assuming that no one
18. is in a position or has been authorized to negotiate
19. surrender terms at this point.

20. MR. FITZGERALD: Yes, and I think it ought to
21. be said at this time that the County is not only not in-
22. terested in providing further educational services to
23. City students if this annexation is granted; but the most
24. important thing, if the annexation is granted, we feel

1. the evidence will show that the County is going to have
2. to use every resource it has and every energy it has to
3. provide for the remaining County. And it cannot be using
4. its facilities and its planning processes in tying up
5. its energies in further providing services for the City.

6.

7. Cross Examination by Mr. Smith:

8. Q. Mr. King, you said that you had been division superinten-
9. dent since 1968 in the City of Harrisonburg?

10. A. Yes sir.

11. Q. Have you ever built a school in the City during that
12. period of time?

13. A. No sir.

14. Q. So, you really have no experience in building schools?

15. A. The only experience that I have is we've gone through
16. major additions for the schools, and I think that's the
17. same process.

18. Q. All right, sir, let's take a look at your Exhibit 24.
19. That purports to be the organizational chart for the City
20. school system?

21. A. Yes sir.

22. Q. I count on there twelve secretarial positions. Is that
23. normal on an organizational chart, to show all those
24. secretarial people?

1. A. Is it normal to show them?

2. Q. Yes. It's really a personnel chart, isn't it?

3. A. Yes.

4. Q. You testified about the Massanutten Vocational-Technical
5. School. I believe you said that that was run on a coop-
6. erative basis with the County?

7. A. Yes sir.

8. Q. And the City's participation was based on the number of
9. City students who attended there?

10. A. Yes.

11. Q. What is the approximate amount, is that about twenty per-
12. cent of the cost of operating that school?

13. A. It varies. I believe the last percentage that was used
14. was 17% in the operating. I think it was 17%. But it
15. has varied; it varies 17%, 18%, 20%.

16. Q. What was the percentage of the City's contribution to
17. the construction of the school?

18. A. That was twenty percent, as I recall. And it was based
19. on not A.D.M., but it was based on total school enroll-
20. ment when it was under construction.

21. Q. Who devises the curriculum for that school, the programs
22. that are taught there?

23. A. Who devises them?

24. Q. Yes sir.

1. A. I think the principal down there has a big part, but I
2. think he in turn answers to the administrative head who
3. in turn answers to the Committee for Control. And that
4. Committee for Control is a board which has the same,
5. in essence, comparison duties as a regular school board.
6. So, it is administered in that manner.

7. Q. You mentioned the principal there, is he employed by the
8. County of Rockingham?

9. A. He's employed by the Committee for Control that operates
10. the Massanutten Vocational School.

11. Q. Is that the same for all the teaching personnel at that
12. school?

13. A. Yes sir.

14. Q. You testified regarding transportation. You said that
15. the City presently is not required to provide school
16. transportation?

17. A. No sir, it is not required at present. The location
18. of schools, they fall within that parameter which doesn't
19. require that we provide school children transportation.

20. Q. Tell me what school buses the City School Board owns
21. at the present time.

22. A. We don't own any school buses. They are all owned by
23. the City Transportation Department.

24. Q. All right, sir. And how many buses does the City have?

1. A. How many?
2. Q. Yes.
3. A. I am not sure what the total number is.
4. Q. All right, how many buses does the City have that are
5. in use for transporting school children?
6. A. Four.
7. Q. How many do you transport?
8. A. I'm not sure I understand.
9. Q. Well, the City does it, right?
10. A. Yes.
11. Q. The City School Board doesn't do it.
12. A. No. I believe that the statistics were given to you
13. by Mr. Smith yesterday. I don't recall that number of
14. children that he hauls each day. We don't keep any re-
15. cord of it and we don't really get involved in it.
16. Q. Well, if our notes are correct, I believe he said sixty-
17. six of them are transported. Does that sound like an
18. accurate number to you?
19. A. That he transports from their homes to our schools?
20. Q. Yes.
21. A. I would think it would be higher than that, but I don't
22. know.
23. Q. You have no information regarding that?
24. A. No sir.

1. Q. Is there a charge to these students or their parents for
2. taking them to school and back?
3. A. Twenty-five cents, yes sir.
4. Q. Each way?
5. A. Each way. That's my understanding, yes sir.
6. Q. And the County of Rockingham provides transportation to
7. all of its students for free, does it not?
8. A. Yes sir, to my knowledge.
9. Q. You testified that you had an alternative education
10. program for problem students?
11. A. Yes sir, I said we have an alternative education pro-
12. gram. I don't know about . . .
13. Q. And the County also has that program, does it not?
14. A. Yes sir. We have the one for ages up to fifteen, and
15. they have the one for fifteen and beyond. They have our
16. students in their program, and we have their students in
17. our program.
18. Q. In regard to Exhibit 14f, on page 14, showing the exper-
19. ience of your teachers . . .
20. A. Yes sir.
21. Q. You testified that they were all certified. Can a
22. teacher be certified with no years of experience?
23. A. They can get a teacher's certificate with no years of
24. experience, yes.

1. Q. And that's what you're referring to when you say they are
2. certified by the state?

3. A. Yes.

4. Q. You get that when you get a job . . .

5. A. Yes sir, you have to have a license.

6. Q. And that doesn't really reflect on their teaching abil-
7. ity.

8. A. No sir.

9. Q. It reflects that you've gotten a college degree some-
10. where.

11. A. And you have met all the criteria and you get a teaching
12. certificate, yes sir.

13. Q. And one other question on that chart on page 14, the
14. experience of teachers really has no direct reflection
15. on the quality of education, does it?

16. A. Well, I think it does.

17. Q. You think it does?

18. A. Yes.

19. Q. All right, sir. You said the in-service training pro-
20. gram was a cooperative program with the County?

21. A. Yes sir.

22. Q. Who administers that program?

23. A. Well, I think it's done jointly. Our director of in-
24. struction represents us and I think their director of

1. instruction meets with ours, and they decide on what
2. types of programs they want to have.
3. Q. And you mentioned the fact that approximately 77% of
4. your teachers participate. Do you know what percent of
5. County teachers participate in that?
6. A. No sir, I don't.
7. Q. But you know that they do participate?
8. A. Yes sir, I know that they do.
9. Q. The County has a kindergarten program, does it not?
10. A. Yes sir.
11. Q. It also has a program of education for handicapped stu-
12. dents?
13. A. Yes sir.
14. Q. And it also transports handicapped students?
15. A. Yes sir.
16. Q. Your curriculum exhibit on page 11 of Exhibit 14f indi-
17. cates the curriculum taught in Harrisonburg City Schools?
18. A. Yes sir.
19. Q. And you said that you don't teach any agriculture courses
20. in the City schools?
21. A. No sir.
22. Q. Do none of the City students go out and get jobs in agri-
23. culturally oriented functions or poultry processing and
24. things like that?

1. A. I don't know how to react to that. I don't have any
2. statistics to say that they do, so I really don't know.
3. Q. You know that the County teaches a vast array of agricul-
4. tural courses at Turner Ashby and the other high schools
5. in the County?
6. A. I know they have a very fine agriculture program. Yes,
7. I do.
8. Q. It even extends down to the junior high school, doesn't
9. it?
10. A. Yes sir, I understand that they have exploratory courses
11. in agriculture in the junior high.
12. Q. Do you know how many students in this area you seek to
13. annex are taking agricultural courses in the County
14. schools at the present time?
15. A. Fifty-seven.
16. Q. Fifty-seven?
17. A. Yes, but I don't know what grade levels. I know there
18. are fifty-seven.
19. Q. You haven't made any independent investigation of that?
20. A. No, I talked with Ryland Dishner on one occasion, and he
21. said there was fifty-seven. And that was about the ex-
22. tent of the conversation.
23. Q. And do I understand that your plan is that you're not
24. going to teach any agriculture in your school system?

1. A. Yes sir. I said that was our plan. If we could get
2. someone else to handle it, because of the few number, we
3. would handle it in that manner. Yes sir.

4. Q. You would want these children then totally educated by
5. somebody else, either Rockingham County or some other
6. county, I think you said.

7. A. Yes sir.

8. JUDGE MOON: Is agriculture a major in the
9. schools, such as a major in business or an academic de-
10. gree, an academic program?

11. A. Yes sir, I think you take agriculture four years, Agri-
12. culture 1, 2, 3, 4 and 5, like you do maybe a business
13. curriculum that you would pursue. Now, that was . . . I
14. say that because that's the way it worked in the last
15. rural school system I taught in where we had agriculture.
16. But that's been a little while, and it might have chang-
17. ed a little bit. But basically I think what I'm saying
18. to you is correct.

19. JUDGE ARTHUR: Is agriculture taught at the
20. Massanutten school?

21. A. No sir, no sir. That curriculum is reserved for the
22. home base high school. You know, the students go to
23. Massanutten Vo-Tech from a home base school. They take
24. their academic subjects there and then go down to the

1. Vo-Tech either in the morning or afternoon. And those
2. programs are reserved for the home base school.

3. JUDGE ARTHUR: So, they don't teach any ag-
4. riculture, they just teach how to repair an engine or
5. something.

6. A. They teach some related courses, but not agriculture
7. per se, like mechanics and that sort of thing which
8. would be related to that.

9. Q. Direct your attention to page 16 of your Exhibit 14f
10. which sets out the pupil/teacher ratios in your school
11. system.

12. A. Yes sir.

13. Q. As a matter of fact, this entire exhibit purports to be
14. a comparison of your school system with the County's,
15. does it not?

16. A. Yes sir, that's what it is, comparative statistics, yes
17. sir.

18. Q. There's really nothing wrong with the County's pupil/
19. teacher ratio, is there?

20. A. No sir, and I don't think I alluded to anything being
21. wrong with it..

22. Q. You don't intend for this Court to get that impression
23. from your testimony?

24. A. No. It was my intention to focus on the City of Harrison-

1. burg.

2. Q. And the average class size for grades 1, 2, 3, what was
3. the significance of using just 1, 2 and 3?

4. A. That's the way the state in the Facing Up print it. They
5. print only grades 1, 2 and 3, and it was lifted from
6. there. They used to print it a little different, I
7. think they've changed the format.

8. Q. You're aware that there are a number of Mennonite famil-
9. ies on these farms in the annexation area?

10. A. I'm aware that there are Mennonites in the area, yes,
11. but I don't know where they are.

12. Q. Are you aware that a number of those families will send
13. their students to public schools for a few years and
14. then transfer them to their own high school?

15. A. Yes sir, or not send them to school at all; yes sir.

16. Q. And that would reflect in the County's numbers here,
17. would it not?

18. A. Yes sir. I believe in those numbers, we started off with
19. eight hundred and some, and we've accounted for most of
20. them, but there's a lot of them we haven't accounted for.
21. They're either in other schools or in private schools.

22. Q. Do you know the number of County students in private
23. schools?

24. A. No sir, I don't.

1. Q. From this area?

2. A. No sir, I don't.

3. Q. You haven't made any study of that?

4. A. No sir.

5. Q. What did you say the marketable skills criteria was?

6. A. I said there was a range of them. The youngster who
7. goes to Vo-Tech and has six units of credit in auto
8. mechanics, which I would think would give him skills
9. related to a youngster that might have taken a typing
10. course. As I said, there's a range, I think, which the
11. state counts as a marketable skill. I was just trying
12. to make the point it was a broad range.

13. Q. Well, that's really a pretty vague criteria, isn't it?

14. A. It's pretty vague, but it's one that the state says we
15. have to follow, so we have to try to make provisions
16. to do it.

17. Q. Well, a farm worker, a young fellow who gets out of Turn-
18. er Ashby High School in the County and goes to work on
19. a farm has a marketable skill.

20. A. Yes sir.

21. Q. And if he goes out of there and goes to work at Marval
22. and works as a poultry processor of some kind, he's got
23. a marketable skill.

24. A. He's got a marketable skill if he got that skill from

1. Turner Ashby. If he went through a course that would
2. count toward him having that skill, yes sir.

3. Q. And a student from your system who wanted to be a teacher
4. and graduated next June, wouldn't have a marketable skill,
5. would he? He's got to go onto college four more years.

6. A. We're speaking about coming out of high school. If I
7. interpret your question right, not what they intend to
8. do. You must have acquired that skill when you graduate
9. from high school.

10. Q. How does the City compare with the County in the stand-
11. ards of quality index? Do you have those figures?

12. A. The S.O.Q.?

13. Q. Yes.

14. A. In what way?

15. Q. In any way, sir.

16. A. I really don't know how to react to that. Since the
17. standards of quality are set up in an arbitrary figure on
18. which the state gives you money, I think that we probably--
19. I know we get less money from the state.

20. Q. Pardon me, sir?

21. A. We get less money from the state under the state formu-
22. la which is ~~applied to the standard~~ of quality. The
23. County receives more state funds than we do, because
24. of the way the formula is set up.

1. Q. Now, you said that there were some County students in
2. the school system in the City?

3. A. Yes sir.

4. Q. You said that there were seventy-nine students in the
5. annexation area?

6. A. Yes sir, that attend City schools.

7. Q. That's different than it was at the time of the Commis-
8. sion hearing? Didn't you say that there were eighty-five
9. at that time?

10. A. No, I thought we said seventy . . . seventy-nine is the
11. figure that I have.

12. Q. All right, sir. How did you get that figure?

13. A. Those students pay tuition and they give us an address,
14. and we have a list of them.

15. Q. How much tuition do they pay to go to City schools?

16. A. A hundred dollars a year; fifty dollars a semester.

17. Q. Are the majority of these students children of City
18. employees or perhaps children of teachers in your school
19. system?

20. A. We have thirty-six . . . well, I don't know the number
21. of that seventy-nine that are children of our employees.
22. I don't have that breakdown.

23. Q. Do they also pay the tuition?

24. A. They don't pay tuition, no. Any employee that lives in

1. the County can bring their child to school at no tuition.
2. That's the policy of the School Board and has been for
3. as long as I've been here.

4. Q. There are City students in the County schools also.

5. A. Yes sir.

6. Q. Do you know how many of those there are?

7. A. Forty-two.

8. JUDGE MOON: Excuse me. How many students
9. did you say from the County are in the City schools?

10. A. I said seventy-nine in the proposed annexed area, but
11. there are 211 all total.

12. JUDGE MOON: All right.

13. Q. What is the total number of City students in the County
14. schools?

15. A. The total number is forty-two.

16. Q. Isn't that from the annexation area?

17. A. No, I think that's the total number. I think that's a
18. total number.

19. Q. Total number?

20. A. Yes.

21. Q. And the County doesn't charge any tuition to the City
22. students that want to go to school in the County, do
23. they?

24. A. Not to my knowledge. I don't think they do. I think

1. Mr. Dishner made a statement to that effect, that they
2. did not charge tuition.

3. Q. Let's move on then to your plan for educating the stu-
4. dents. You said that you developed this plan last fall?

5. A. Yes sir, that's the statement that I made.

6. Q. You hadn't given any thought to it before that time?

7. A. I think I also made the statement that some of the
8. essence of this plan, even back in 1974 we had planned
9. to make our elementary schools 600 pupil schools; even
10. as early as 1973 and 1974. I believe I made that state-
11. ment.

12. Q. Wasn't the reason for that a contemplated annexation
13. of County students?

14. A. No sir. The reason that triggered it, about that time
15. the standards of quality said each school division will
16. draw up a five year plan, and I believe that was the
17. year we had to submit them to the state. I believe it
18. was 1973 and 1974, or 1974. That's when we first came
19. up with the idea if we had to expand, and we also had
20. other things in that plan other than just what you would
21. do if you had additional pupils.

22. Q. Were you contemplating that kind of growth in the City
23. school system?

24. A. No sir. It was just an anticipation type thing, if we

1. do grow. You know, there's a lot of statistics around
2. about the City, I think a study was made by the school
3. in 1965 or something, and they said in 1966 and 1967 the
4. City would have twenty-four hundred and some pupils.
5. Here it is 1981 and we haven't reached that figure yet.
6. But if you use statistics like that to plan, I think it
7. is in order that you do so.

8. Q. You just can't rely on all those studies, can you?

9. A. Sir?

10. Q. You just can't rely on all those studies, can you?

11. A. No sir.

12. Q. You said that you developed the plan last fall. Who
13. helped you in evolving this plan?

14. A. I think we used the staff and myself.

15. Q. Did anybody from Wiley and Wilson participate in that?

16. A. Yes, they participated after they looked at it and help-
17. ed refine it and that sort of thing.

18. Q. Your Exhibit 26, Section A, has various assumptions to
19. it. The first one being that the County retains the
20. Pleasant Valley School.

21. A. Yes sir.

22. Q. Are you aware that seventy percent of the students in
23. that school come from beyond the annexation area?

24. A. I'm not aware of where they come from. I really don't

1. have that information. I think I alluded to that, that
2. I don't know where they are located.

3. Q. In devising your plan, what studies did you make of
4. the annexation area?

5. A. The only real studies I've made has been of the figures
6. that have been given me. And this plan, I think, would
7. be further refined when we have further information.
8. I could draw the geographical boundaries and that sort
9. of thing if I know exactly where these 319 or 351 ele-
10. mentary children were located.

11. Q. But you didn't make any study of, one, how many children
12. you're going to have and, two, where they live. Is that
13. a fair statement?

14. A. I haven't made any study of where they live, but some-
15. body gave me the figure of how many we're going to have,
16. and by grade level.

17. JUDGE ARTHUR: Are you gentlemen just refer-
18. ring to Turner Ashby or to Pleasant Valley School? When
19. you mentioned that "x" number come from other parts of
20. the County, which school were you referring to?

21. MR. SMITH: Pleasant Valley.

22. JUDGE ARTHUR: Now, Turner Ashby is outside
23. the annexation area, isn't it?

24. A. Yes sir.

1. JUDGE ARTHUR: And it's down in the Dayton
2. area?

3. A. Yes sir.

4. JUDGE ARTHUR: Thank you.

5. Q. All right, sir, let's get down to your plan to construct
6. your new classrooms. You said, I believe, that you're
7. going to construct how many at each elementary school?

8. A. It would be eight, twenty-four total; eight each.

9. Q. And you said that you would be able to do that in the
10. period of time between January 1 of the year the annexa-
11. tion goes into effect and the beginning of school in Sep-
12. tember?

13. A. That would be our aim, yes sir.

14. Q. Do you have any detailed plans for these additions at
15. the present time?

16. A. I don't have any detailed plans, no sir.

17. Q. How long would it take to secure detailed plans?

18. A. I'm really not sure of that. But I think I've made the
19. statement that what we'd need to do is add the eight
20. classrooms, and it's not as involved as if you had to
21. build a school. And I think this could be done fairly
22. quickly. I would hesitate to give you, I'm really not . . .

23. Q. Well, let's see if it could be done fairly quickly, what-
24. ever that means. You don't have any plans and you don't

1. know how long it would take to get the plans, but when
2. you do what's the next step? Don't they have to go to
3. Richmond to the State Board of Education?
4. A. That's part of the architect's procedure. They certainly
5. do, yes sir.
6. Q. All right, and they are subject to revisions by the
7. State Board of Education.
8. A. They certainly are.
9. Q. And when those revisions are made by the State, they
10. have to go back to the architect.
11. A. That's true.
12. Q. And he's got to correct them or make whatever changes
13. were suggested by the State.
14. A. Yes sir.
15. Q. And then it goes back to the State again to see if he
16. made the right changes, doesn't it?
17. A. That's correct.
18. Q. How long does that period of time take?
19. A. I don't know. It depends, I think, on several factors.
20. You know, if the original plans have followed the state
21. manual and they're in real good shape, you can probably
22. get them through in a hurry.
23. Q. How long is a hurry? We don't know that, do we?
24. A. No. I think we can have it done in a month or so, prob-

1. ably.
2. Q. You think you can have it done in a month?
3. A. Yes.
4. Q. Develop the plans, send them to the state, have the
5. state make revisions, then have the architect make re-
6. visions and send them back to the state?
7. A. Yes, I think so, because we're not . . . in my opinion
8. we're not talking about a complicated plan. We're talk-
9. ing about, you know, eight classrooms attached to them.
10. And I just think it could be done, yes sir, because of
11. the nature of the additions.
12. Q. All right, sir, after they are finally approved, then
13. you put it out to bid, right?
14. A. Yes.
15. Q. What period of time do the contractors have to bid on
16. it?
17. A. Whatever you stipulate; thirty days or whatever.
18. Q. What is a customary time? It's more than thirty days,
19. isn't it?
20. A. I don't know whether this could be confined to thirty
21. days because it's not a project of that magnitude.
22. Q. And after that then the construction period.
23. A. Yes sir.
24. Q. You've indicated the cost of those classrooms to be

1. a million six?
2. A. Yes sir.
3. Q. Does the City have that money at the present time?
4. A. Does the City have it in hand?
5. Q. Yes.
6. A. I don't really know.
7. Q. Isn't that a pretty important part of this plan?
8. A. I would think that the City has in the overall plan,
9. and probably somebody is going to testify to that.
10. Q. But you have no knowledge of that whatsoever?
11. A. I can't say for sure, no.
12. Q. You've never requested any of it in your budget?
13. A. Yes sir. You see, my six year plan has gone into the
14. City Manager with these figures in it.
15. Q. Has any of it been funded?
16. A. I haven't gotten it back yet.
17. Q. So, there isn't any money put aside for those projects
18. yet, is there?
19. A. Well, I don't know how to react to that, because I think
20. that when you get some final decision from this annexa-
21. tion proceeding we're going to go write for a literary
22. loan. We'll use literary money. And at that time that
23. will be the time that we go for it.
24. Q. Is there that much available to Harrisonburg?

1. A. Well, you're eligible for each one of those projects up
2. to a million dollars. Each one of them in round numbers
3. is going to be four fifty. I think we'll be eligible for
4. literary money on all three of them. We'll be eligible
5. for a million dollars of literary money for the junior
6. high school.

7. Q. All right. Now, you contemplate getting into the trans-
8. portation business on a full scale.

9. A. Yes sir.

10. Q. And you're really not in the transportation business at
11. all at the present time?

12. A. No sir.

13. Q. So, you have no experience with that.

14. A. I have had some experience with it, yes sir.

15. Q. But not with Harrisonburg City schools?

16. A. No.

17. Q. Do you anticipate any problems with getting into the
18. school transportation business?

19. A. I would anticipate that we would have some challenges.

20. Q. What sort of challenges?

21. A. Some problems.

22. Q. What type of problems?

23. A. Well, I think first you have to secure the buses, and I
24. think you have to hire the drivers, you have to train the

1. drivers, you have to set up the bus routes and then you
2. have to solidify the bus routes.

3. Q. And you have none of this at the present time, do you?

4. A. No sir, only what I've mentioned to you.

5. Q. How long would it take you to get into the transportation
6. business, so to speak?

7. A. I really don't know how to react to that in point of
8. time. But if we started at the same time with trans-
9. portation as we started with the other, I think we could
10. have the routes set up and I think we could have it com-
11. pleted by the time we had the classrooms completed.

12. Q. Are you saying from the first of January until school
13. started in September?

14. A. If that would be the Court's decision time, yes.

15. Q. How long does it take to acquire all those buses? You
16. said you needed fifteen buses and you had to buy, what,
17. twelve of them?

18. A. Yes.

19. Q. How long does it take to acquire them?

20. A. I would . . . the best information that I have and know
21. of would be what would come from the state and whatever
22. the supplier said. And I don't know, it varies, ninety
23. days to sixty days.

24. Q. All right, sir. You said these eleven buses were going

1. to cost the City School Board a hundred and ninety-eight
2. thousand dollars?
3. A. Yes sir.
4. Q. And is any of that money available at the present time?
5. A. I think somebody is going to react to that. That's the
6. request that I made, and I think that portion would be
7. supplied to us, yes.
8. Q. All I'm asking for is your reaction to it at the present
9. time. You don't have that money at the present time?
10. A. I think I answered awhile ago about the money, that I
11. wasn't sure, and I'll have to stick to that.
12. Q. All right, sir. Now, you're going to change the scheme
13. of your present school system by eliminating your junior
14. high school.
15. A. Temporarily, yes sir.
16. Q. Temporarily. Is it desirable to a school system to have
17. a junior high school?
18. A. It's desirable that we have one, yes sir.
19. Q. So, it's going to be disruptive to your system for the
20. period of time that you're without it, isn't it?
21. A. I don't really like the word "disruptive", but it's going
22. to interfere with our basic structure, yes sir.
23. Q. And that interference, that disruption, is going to last
24. for how long?

1. A. A five year period, I believe. We hope in the sixth
2. year to have the junior high school completed.

3. Q. Well, you're not going to start building it until the
4. fourth year.

5. A. Sir?

6. Q. You're not going to start building it until the fourth
7. year, are you?

8. A. I believe it's the third or fourth. I'll look at the
9. schedule. We will begin some of it in 1982 and 1983,
10. 1983 and 1984.

11. Q. You've got Exhibit 33 there?

12. A. Yes sir.

13. Q. I don't want to put you to a lot of trouble, Mr. King,
14. but this exhibit says that that school is priority two,
15. which begins four to seven years after the annexation.

16. A. Yes, but I was referring, I think, to the purchase of the
17. site for it would be in 1983 and 1984.

18. Q. We're talking about the construction.

19. A. The construction of the junior high school.

20. Q. Right. Your system isn't going to get back to normal
21. until it's built and the doors are opened and your stu-
22. dents are in it.

23. A. That's true, yes sir.

24. Q. So, how long is that going to be?

1. A. I think we said that the junior high school would be com-
2. pleted at the beginning of the 1986-87 school year, which
3. would make it six years.

4. Q. Six years?

5. A. Yes sir.

6. Q. You also said it was going to cost three million dollars?

7. A. Yes.

8. Q. Now, if you don't start it for four years, you have no
9. way of knowing if you can build it for that amount of
10. money. You're talking about present cost, aren't you?

11. A. Yes sir, that's true.

12. Q. You don't have a site for the new junior high school.

13. A. No sir, not definite, no sir.

14. Q. You're estimating what the land cost will be, five
15. hundred and sixty-five thousand.

16. A. Yes sir.

17. Q. How much land does the state require you to have for a
18. junior high school?

19. A. I believe for a junior high school you have to start
20. with ten acres, that's the basic. And then for every
21. one hundred pupils you have, you have to have another
22. acre.

23. Q. And you're going to have how many pupils?

24. A. We said seven hundred.

1. Q. Seven hundred. So, you're going to have to have seven-
2. teen acres?
3. A. I would hope we'd have more. That's the state minimum.
4. Q. Is it desirable to have more than that?
5. A. I would think it's desirable, if you're going to have a
6. lot of physical activities. I think it's desirable that
7. you have more.
8. Q. What do you think would be the best amount of acreage
9. for you?
10. A. Somewhere in the area of thirty.
11. Q. Thirty acres?
12. A. Yes sir.
13. Q. Have you checked any of this area where you say you
14. want to put it to see what the land would really cost?
15. A. No, but I think we got some figures from people who have
16. some knowledge in that area and would, you know, say we
17. think it would be this much. No, I haven't gone out and
18. priced it, no sir.
19. Q. Well, are you aware that some of that land down there
20. is selling for thirty thousand for one acre?
21. A. No, not really.
22. Q. You're not aware of that?
23. A. No. I hadn't heard that figure.
24. Q. Your figures here on Exhibit 26, page 1, indicate that

1. after you built your additional classrooms you'd still
2. only have in your elementary schools, you're only going
3. to have five unused capacity, five spaces in Spotswood,
4. four in Keister, and five in Waterman.

5. A. Yes sir.

6. Q. And that's for a period of at least six years, true?
7. Until you get your junior high school.

8. A. Yes.

9. Q. Aren't you anticipating any growth, any more students
10. coming out of all this area?

11. A. We really don't know. I would think that the growth in
12. there would give us more pupils, but I don't know for
13. sure.

14. Q. Well, where are you going to put them in your schools
15. if it does?

16. A. My first reaction to that would be we'd do the same
17. thing we're doing now with these we're getting. If we
18. needed to add more classrooms, we would, or we'd make
19. preparations for a new elementary school.

20. Q. You haven't accounted for it though in this plan of yours.

21. A. No, we just used these basic figures based on this number
22. here that we would anticipate. I'm not even sure we're
23. going to get that number.

24. Q. If you get the annexation and some developer goes out

1. there and builds a subdivision with a hundred and fifty
2. homes in it, that's going to increase your school child-
3. ren, isn't it?

4. A. Well, that's debatable. I can name you four or five
5. real subdivisions that have been in the City and we're
6. still at the same number. I believe I answered the ques-
7. tion awhile ago, about our ten year growth period, with
8. all the building that has taken place we still remain
9. about the same.

10. Q. All I'm really asking you, Mr. King, is that your plan
11. doesn't account for any growth at all for a six year
12. period, true?

13. A. True, yes. I said, we based this plan on exactly the
14. number that we've got here.

15. Q. As a matter of fact, you're going to be worse off than
16. you are now. In your elementary schools right now you've
17. got in Spotswood unused capacity of thirteen, Keister
18. nineteen, and in Waterman you've got too many children
19. now. But in total right now you've got twenty-nine
20. vacancies in your elementary schools, and after annexa-
21. tion you're going to have fourteen.

22. A. That's right.

23. Q. So you're going to be worse off.

24. A. Fifteen difference.

1. Q. Your plan doesn't include any proposed attendance zones
2. for the area you seek to annex?

3. A. No.

4. Q. The parents of those children out there have no way of
5. knowing where those kids are going to go to school if
6. they become a part of the City.

7. A. Not at this particular time, but when I know where they
8. are located I think then we can tell them where they
9. would go to school, which school they would attend.

10. Q. So, your plan here in the exhibits doesn't show it,
11. but I assume from what you say that you want Rockingham
12. County to keep on educating these students that you're
13. going to annex.

14. A. Until we can provide housing for them, yes sir.

15. Q. How long a period of time do you expect the County or
16. do you want the County to keep on educating them?

17. A. I believe the plan says a period of about nine months,
18. or if there's some extenuating circumstance to extend
19. that.

20. Q. Well, you're not being very definite and it would seem
21. to me if the County is ordered to do this or if it agrees
22. to do this ought to have some idea of what its obligations
23. are.

24. A. I think we'd start with what I said, nine months. We'd

1. start at that point.

2. Q. Would you pay tuition?

3. A. Yes sir, we would expect to pay.

4. Q. How much tuition would you expect to pay? Based on what
5. factors?

6. A. I would base it on whatever factors that the persons
7. who we're going to pay the tuition to . . . I would think
8. that we would sit down and be able to agree on it.

9. Q. Well, it wouldn't be just operating cost, would it?

10. A. I don't really know what factors we would want to con-
11. sider. I just read in some of the testimony it would
12. probably cost four or five hundred dollars. Now, I don't
13. know how valid that is.

14. Q. Wouldn't it have to include capital outlay and debt ser-
15. vice?

16. MR. COGAR: I object, Your Honor please, I
17. believe there is a statute which covers the cost of the
18. education of children from one jurisdiction to another.
19. And that's what we propose to do.

20. JUDGE MOON: Well, isn't it a legal question?
21. He doesn't know and we're not going to get anywhere to
22. pursue it at this point.

23. Q. You said some of these children you're seeking to annex
24. would be closer to City schools.

1. A. I said there is that possibility. What I was referring
2. to is the youngsters that go to Pleasant Valley from
3. this area, they might be closer to Keister. I don't
4. really know where they live, but I said it was that pos-
5. sibility.

6. Q. Well, it's possible it's going to be a further distance
7. for some of the City students too, isn't it?

8. A. Very much a possibility. There might be, if you rear-
9. range the geographical line, it might be that there will
10. be.

11. Q. Well, it certainly is if you build that new junior high
12. school down there, true?

13. A. Yes sir.

14. MR. SMITH: That's all.

15.

16. Re-Direct Examination by Mr. Glass:

17. Q. Mr. King, can you tell me, has the proposed junior high
18. school which you described been in the capital improve-
19. ments plan for a number of years?

20. A. Yes, it has.

21. Q. Approximately how long?

22. A. I believe since 1974.

23. Q. Was that before this annexation suit was filed?

24. A. Yes sir.

1. Q. Is it in your present capital improvements plan?

2. A. Yes, it's in the plan.

3. Q. Do you have some space limitations at your present
4. junior high and high school complex?

5. A. That's true. The complex over there, I believe we have
6. nineteen acres, and it will house twelve hundred stu-
7. dents. And I believe I mentioned before in this annexa-
8. tion, if we kept the same pattern that complex would go
9. to thirteen hundred and seventy-some. And that was the
10. reason we wanted to use this method to stay within the
11. capacity of that unit over there.

12. Q. Even without this annexation, do you anticipate that you
13. would construct that new junior high school?

14. A. Yes sir. But I must qualify it by saying, we need pupils
15. to justify it. But we would, that's been our plan since
16. 1974, that this was the basic way we would go.

17. Q. Could you point out where the Pleasant Valley Elementary
18. School is located?

19. A. (Witness indicates on map).

20. Q. Could you mark it with a red pencil?

21. A. (Witness marks on map).

22. MR. COGAR: That's on Exhibit H-35.

23. Q. And could you indicate where your southernmost school
24. is indicated, your elementary school?

1. A. That's a shorter distance.
2. Q. Could you also do the same thing with this subdivision
3. in that area? Could you identify that area for the re-
4. cord?
5. A. It's located west of Keister Elementary School.
6. Q. Would you show the distance again with the ruler?
7. To Pleasant Valley first.
8. A. (Witness measures distance with pointer).
9. Q. Would you hold that up?
10. A. (Witness indicates with pointer).
11. Q. Would you do the same from that subdivision to into
12. your elementary school?
13. A. (Witness measures distance with pointer).
14. Q. About how long is that?
15. A. (Witness indicates with pointer).
16. Q. Mr. King, have you had general plans already drawn for
17. your elementary school additions? And by that I mean
18. showing the general location of the classrooms, the num-
19. ber and so forth?
20. A. Yes, to repeat, we've had general plans when we added
21. the libraries, the architectural layout, the general
22. plans where we would locate classrooms.
23. Q. Do you know what grade structure the County school sys-
24. tem uses?

1. A. On the secondary level . . .

2. MR. SMITH: Is this rebuttal of some kind?

3. MR. GLASS: You referred to the different grade
4. structures, and I think this is rebuttal to that.

5. MR. SMITH: I didn't say anything about the
6. County's, and neither did he. I'll withdraw the objec-
7. tion

8. JUDGE MOON: Go ahead and answer the question.

9. A. I think they have high schools that are 9-12, except the
10. new high school I think is 10, 11 and 12.

11. Q. How about intermediate schools?

12. A. They have intermediate schools, I think they have 7, 8
13. and 9, and 7 and 8. I believe that is their structure.
14. And they have elementaries K-5 and elementaries K-6.

15. MR. GLASS: I have no further questions.

16.
17. Re-Cross Examination by Mr. Smith:

18. Q. Just two. If you've had that new junior high school in
19. your capital improvement plan since 1973 or 1974, how
20. come you haven't taken any action to purchase a site?
21. The costs have been going up every year since then.

22. A. I don't really know how to react to that. We haven't
23. done it, I'll put it that way.

24. Q. One last thing, we'll play the stick game one more time.

1. GEORGE FREEMAN,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Cogar:

4. Q. State your name, please, sir.

5. A. My name is George Freeman.

6. Q. By whom are you employed, Mr. Freeman?

7. A. I am employed by the City of Harrisonburg in the Commis-
8. sioner of Revenue's office. I'm the City Appraiser.

9. Q. Do you conduct the biannual appraisals of the City?

10. A. No sir, I do not. The reassessment is usually done by
11. contract with a private firm or the State Department of
12. Taxation.

13. Q. What other duties do you have?

14. A. We maintain the files for the reassessment, I do the
15. appraisals for the new construction or anytime there's
16. been a transfer, pick up the assessments at that time.

17. Q. Some days ago at my request did you check certain recent
18. sales of unimproved land within the annexation area?

19. A. Yes sir, I did.

20. Q. When did you do that?

21. A. A couple of weeks before the hearing started, sir.

22. Q. For the purposes of obtaining the information that I
23. requested, you checked the records in the Courthouse?

24. A. Yes sir, I checked in the Clerk of the Court. I also

1. checked with the private appraisal firm, Blue Ridge Ap-
2. praisal Company, who is doing the reassessment in the
3. County as of today.
4. Q. You went to the actual deed books?
5. A. Yes sir, I did, the public records.
6. Q. Have you ascertained the values of certain unimproved
7. real estate that has been sold or transferred within
8. the annexation area within the last couple of years?
9. A. Yes sir, I did.
10. Q. You have some locations indicated on the map you have
11. with you?
12. A. Yes sir, I do.
13. Q. Would you put that up.
14. A. (Witness puts up map).
15. Q. Will you tell the Court what this map before you purports
16. to show?
17. A. Yes sir. These are sales that have occurred in the pro-
18. posed area of the annexation. These are sales that are
19. indication of what vacant land or raw land has been sell-
20. ing for.
21. Q. Did you check more sales than those shown on the map
22. before you?
23. A. Yes sir, I did. Because there were quite a few sales
24. and I could not distinguish whether they were vacant or

1. improved. So, I had to sort through several sales to
2. find this out, to verify it.

3. Q. And at my request initially did I ask you to look for
4. unimproved land sales at the extremities of the annexa-
5. tion area?

6. A. Yes sir. These sales are at the outer fringes of the
7. proposed area.

8. Q. And did you select the sites to be shown on the map be-
9. fore you?

10. A. Yes sir.

11. Q. Tell the Court the dates of the transactions shown, the
12. amounts and the amounts of acreage. And, again, these
13. were all unimproved at the time of these sales, is that
14. correct?

15. A. That's correct, yes sir. The sales I have indicated
16. here on this map . . .

17. JUDGE MOON: Excuse me. Does that have a
18. number?

19. MR. COGAR: No. I was going to offer it.

20. A. I'll start with the southern area on Route 11.

21. MR. COGAR: Could this be marked as Exhibit
22. 56 for identification at this time?

23. MR. FITZGERALD: Is this one of the prefiled
24. exhibits?

1. MR. COGAR: No, it is not.

2. MR. FITZGERALD: The first time we've seen
3. that is today, is that correct?

4. MR. COGAR: The first time . . . I saw it yes-
5. terday for the first time.

6. JUDGE MOON: For identification it will be 56.

7. A. This is in the area of Route 11, this is the area I be-
8. lieve that when we took the tour we went by and someone
9. described this as an area that's being cleared now for
10. the Walker warehouse. This is a sale indicated by number
11. 1, it's a thirteen acre tract, sale price was ninety-five
12. thousand, this was 3/14/79. This sale indicates per
13. acre approximately seven thousand three hundred dollars.
14. This was bought by, the grantee, Robert Plecker . . .

15. Q. It really isn't necessary to go into that, unless they
16. want that.

17. A. Sale number two is adjoining the new Truck and Equipment
18. Company. It's improved now with the Scotland Yard Res-
19. taurant and Night Club. This was done 3/30/79, it was
20. a two acre tract, sold for seventy-nine thousand five
21. hundred dollars. Sale three is near the Pleasant Valley
22. Elementary School. This is agricultural zoning. Marval
23. purchased this for future expansion. This is a 19.8 acre
24. tract, it sold for a hundred and fifty thousand, 4/19/79.

1. In the same area, in the Pleasant Valley Industrial area,
2. it . .

3. Q. Excuse me. With respect to each of these would you give
4. the average price per acre?

5. A. Yes sir. Sale two of Scotland Yard indicates a per acre
6. value of thirty-nine thousand five hundred. It's a two
7. acre tract. Sale three near the Pleasant Valley Elementary
8. School indicates seven thousand five hundred and
9. fifty dollars; these are approximate, rounded off figures.
10. Sale four in the industrial area which is zoned
11. agriculture is 8.28 acres, per acre value is estimated
12. at twelve thousand five hundred. It sold for a hundred
13. thousand dollars, December 12, 1979. This area here is
14. on the 33 East at the City corporate limits and this is
15. near Martin's Fine Furniture. It was on the right as
16. you all went out to the Spotswood Country Club area.
17. This is about a half mile beyond the plaza, the shopping
18. mall. This is an eight acre site, it has a zoning of
19. general business and also R-3, which is the multi-family
20. units. It's an eight acre tract, it sold for a hundred
21. thousand dollars, price per acre is twelve thousand five
22. hundred.

23. Q. Do you know the intended use of that site?

24. A. Yes sir. This was bought by a dealer, an automobile

1. dealer from the Staunton area.

2. JUDGE ARTHUR: What was that date?

3. A. The date is the 21st day of September, 1980. Sale six
4. is in the area also of the shopping center. It's on
5. Route 33 east, on the north side of 33. This is the
6. area bought by Rockingham Savings and Loan. They pur-
7. chased 2.2 acres, it was in a two parcel tract, they
8. purchased that for three hundred and seventy-five thou-
9. sand, 3/11/79. This is an indicate of a hundred and sixty-
10. eight thousand nine hundred and twenty dollars per acre.
11. Sale seven is a forty acre tract north of the City.
12. This is agriculture zoning

13. MR. SMITH: How large a tract is that?

14. A. This is a forty acre tract. It sold for two hundred and
15. eleven thousand one hundred and two dollars. The price
16. per acre is five thousand two hundred forty-nine or
17. five thousand two hundred fifty dollars. This was done
18. the 4th day of January, 1979. I also have another tract,
19. which is sale eight, it's in the western part of the
20. proposed area. This was a sixteen acre tract sold the
21. 11th day of October, 1979 for thirty-eight thousand.
22. It indicated a value per acre of two thousand three hun-
23. dred and thirty dollars.

24. Q. Do you know the intended use of that property?

1. A. Yes sir, this is for a residence, a single family home.

2. Q. One residence?

3. A. Yes sir, one residence.

4. MR. COGAR: You may examine.

5.

6. Cross Examination by Mr. Fitzgerald:

7. Q. When did you make that map?

8. A. I didn't make the map. This map was used as a . . .

9. Q. I mean draw the lines. Somebody put some red splotches
10. on there, who did that?

11. A. I did that last week.

12. Q. When were you asked to do it?

13. A. Oh, about two weeks ago.

14. Q. What were you asked to do?

15. A. To show sales in the area of the proposed annexation
16. area.

17. Q. To show all the sales?

18. A. No sir, just the vacant lots.

19. Q. And you're saying in the last two years this is the
20. only vacant land sold in that area?

21. MR. COGAR: He did not say that.

22. MR. FITZGERALD: I'm asking him.

23. MR. COGAR: Well, I object.

24. JUDGE MOON: Gentlemen, let's not . . . he

1. Q. One in 1980?

2. A. Yes sir.

3. Q. And all the rest are in 1979?

4. A. Yes sir.

5. Q. Did you find anymore in 1980?

6. A. Yes sir.

7. Q. And you discarded those?

8. A. Yes sir.

9. MR. FITZGERALD: That's all.

10.

11. Re-Direct Examination by Mr. Cogar:

12. Q. How many sales did you check altogether?

13. A. I would say, just an estimate, I don't know really,
14. about five hundred sales. But I've only used sales
15. that really occurred in the boundaries of the proposed
16. area.

17. Q. And of the five hundred that you checked, some of them
18. were beyond the annexation area?

19. A. Yes sir.

20. Q. How many?

21. A. Well, the majority of them were outside the annexation
22. area, or proposed area, and I would guess probably about
23. ninety percent of them, of the sales.

24. Q. That left you with approximately fifty within the area

1. after your search?

2. A. Yes sir.

3. Q. And of those what percentage had improvements on them?

4. A. I would probably say about, of that area, about forty
5. percent of them.

6. Q. Now, did you come up on any tracts larger than the forty
7. acre tracts in the annexation area?

8. A. No sir, I did not.

9. JUDGE MOON: Now, this was over a two year
10. period?

11. A. Yes sir.

12. JUDGE MOON: From what date, beginning date?

13. A. Well, the sales were taken from 1979 and 1980. I did
14. look at . . . I think there was one sale in 1981. But
15. this was an improved sale.

16. JUDGE MOON: You're saying there were only
17. fifty sales of property in the area to be annexed?

18. A. I'm saying that's approximately. I don't know, I didn't
19. count the sales.

20. JUDGE MOON: What is the average value of
21. farm land in this area?

22. A. Well, . . .

23. JUDGE MOON: I mean farm land that is bought
24. and sold to be used as farm land, not for some other spe-

1. culative value. If you know.

2. A. I don't really know. The only thing I can say, this has
3. indicated that they are selling for approximately twenty-
4. five hundred an acre.

5. JUDGE MOON: Twenty-five hundred?

6. A. Yes sir.

7. Q. So you had the one in corn, barley or rye or something
8. growing on it up there?

9. A. Yes sir. I think it's alfalfa, I'm not positive.

10. Q. Alfalfa?

11. A. Yes sir.

12. Q. And what was the average value of that?

13. A. Fifty-five hundred.

14. JUDGE MOON: Who bought that?

15. A. Rockingham Publishing Company bought that.

16. JUDGE MOON: That wouldn't necessarily be
17. bought for farm use, would it?

18. A. No sir, I wouldn't think so, not at that value.

19. JUDGE MOON: Do you have any other questions?

20. MR. FITZGERALD: No sir.

21. JUDGE MOON: We will adjourn today then and
22. begin at 10:00 A.M. on Monday morning.

23. (End of Day's Proceedings)

24.

1. (Discussion Regarding Order of Testimony)

2.

3. JOHN B. STEADMAN,

4. having been duly sworn, testified as follows:

5. Direct Examination by Mr. Wickham:

6. Q. Would you state your name and your present occupation?

7. A. I'm John B. Steadman, Professional Engineer, with Wiley
8. and Wilson, Incorporated, engineers, architects and plan-
9. ners, in Lynchburg, Virginia.

10. Q. And what is your present position with Wiley and Wilson?

11. A. I am an Associate and a Project Manager in the firm with
12. responsibilities in the area of governmental, state,
13. federal and local government, public works projects,
14. planning reports, water and sewer planning, comprehensive
15. plans, and work as a consultant in city annexation cases.

16. Q. Are your qualifications correctly set forth in the City's
17. tab exhibit book in Q-4?

18. A. Yes sir.

19. MR. WICKHAM: I assume there's no objection
20. to his qualifications.

21. Q. I ask you now to turn to City Map Exhibit 24, and that
22. map is also reproduced without color in the map book
23. with one correction on it. Would you point out that
24. correction for the Court?

1. A. The correction, Your Honors, is in the Dry Fork drainage
2. shed right here northeast of the City. We've marked
3. that on the small map.

4. (Maps given to the Court)

5. Q. Now, will you tell the Court what this H-24 shows?

6. A. H-24, entitled "Major Drainage Areas". Color coded on
7. the map are the various drainage areas designated by
8. color, and the blue lines designate the major streams
9. that drain those drainage areas. This map, H-24, comple-
10. ments H-23, which gives you a broader, a very wide per-
11. spective. In Harrisonburg and immediately surrounding
12. Harrisonburg the major drainage shed you see is Black's
13. Run, some 19.9 square miles, that drains south through
14. the center of the City on down to Cook's Creek. Refer-
15. ring to Map H-23, you can see how Black's Run drainage
16. shed goes down and joins into Cook's Creek, then flows
17. down to the North River. The yellow line on this map
18. indicates the proposed annexation area. The red line
19. indicates the existing corporate limits of the City of
20. Harrisonburg. Within the North River drainage shed,
21. which is a tributary to the South Fork of the Shenandoah,
22. basically we have the area of Black's Run, which is
23. shown as a blue color, we've got Cook's Creek on the
24. west out here at Park View, swinging around through Circle

1. Drive, and on down just to the east of Route 42. Within
2. Cook's Creek there's a small area, this Hillandale sub-area,
3. and that area generally follows somewhat the proposed
4. annexation line. You can see the stream flows through
5. and on down and ties into the North River. Up to the
6. northwest we have in the flesh tone the Linville Creek
7. area, and that flows north, to the northwest. Again re-
8. ferring to H-23 you see Linville Creek right at the top
9. of the map and that flows off to the northwest and ulti-
10. mately flows into the North Fork of the Shenandoah. The
11. North Fork and the South Fork join to form the Shenandoah
12. and that's a tributary to the Potomac River. Off to the
13. northeast we have Dry Fork, which is the light blue col-
14. or. And, as you see here, we made a correction. This
15. small area is somewhat of a basin and is awfully hard to
16. define, but it does drain out and eventually work its
17. way around to Dry Fork. But it's sort of a basin area
18. right here and the annexation line basically is the di-
19. viding line. Over to the east we have Cub Run and Cong-
20. er's Creek, and then in the green we have Pleasant Run.
21. This is about nineteen square miles before it gets to
22. Cook's Creek which has a drainage area of about forty-
23. four square miles.
24. Q. Will you now turn to Map Exhibit H-22 and point out to

1. the Court the systems that belong to the City and the
2. County and to the Authority?

3. A. All right, sir, on H-22 entitled, "Existing Sewer Systems"
4. we have indicated the sewer lines shown in a black line
5. for the City of Harrisonburg, in Rockingham County we
6. have a dashed line. The service areas that encompass
7. those lines for the City are shown in blue, and for Rock-
8. ingham County in green. From where you're sitting it's
9. hard to see, but underneath these colors we have the lay-
10. out of the existing systems. This we'll discuss to com-
11. plement H-23 to show these systems on a broader regional
12. basis. Also we have in a yellow color or orange the
13. major interceptors of the Harrisonburg-Rockingham Region-
14. al Sewer Authority. On the west we have Division F, what
15. is known as Division F in the Authority contract, which
16. is the Hillandale interceptor. That then becomes the
17. upper Cook's Creek interceptor referring to Map H-23.
18. That's the lines you see right here, it's known as Divis-
19. ion F. And as it leaves the proposed annexation line it
20. becomes upper Cook's Creek and flows on down to the North
21. River. Referring to H-23, that next line is Division G,
22. which is known as the Belle Meade-Holiday Inn line. And
23. then we have the Black's Run interceptor. And over to
24. the east coming from the Ashby Heights area, we have

1. the Authority's Ashby Heights interceptor.

2. Q. Who built those three lines or those three divisions,
3. Mr. Steadman, starting with Division F?

4. A. Division F is an Authority line. The federal government
5. in a grant contributed seventy-five or eighty percent of
6. that. The local share, the remaining share, was paid
7. jointly, fifty/fifty, by Rockingham County and the City
8. of Harrisonburg, pending the outcome of this annexation
9. proceeding. Whoever the area is awarded to will pay the
10. other party their half. This is Division F. Division
11. G we discussed over here, coming down the interstate and
12. over to the Pleasant Valley area. And then Division H . . .

13. Q. Do you have the same agreement as far as Division G is
14. concerned?

15. A. Yes sir. Division F and Division G are fifty/fifty
16. local share.

17. Q. What happens in the event of annexation?

18. A. In the event of annexation the party awarded the area
19. would compensate the other party for their portion of
20. the local share. We'll discuss the dollars on that lat-
21. er.

22. Q. So you have the same type of agreement for Division G
23. as you have for Division F, is that correct?

24. A. Yes sir. Division H is the Ashby Heights interceptor,

1. and then we have the Black's Run interceptor going out
2. through the Pleasant Valley area and down to the sewer-
3. age plant. On this map we have the yellow line as the
4. proposed annexation boundary and the red as the existing
5. City of Harrisonburg limits. I might point out one
6. other factor is that although this is shown as the City
7. line, from this point this interceptor traverses down
8. to its connection with the Black's Run interceptor here,
9. this is a City line that's in a transition over a twenty
10. year basis. The Authority is acquiring that line from
11. the City.

12. Q. Will you point out which of the County lines drain into
13. the City's system?

14. A. Okay, again, the County's systems are green. To the
15. north we have the Donnelley Printing Company and that
16. sewer line flows south down to the existing City at this
17. point. We have the Park View Sanitary District, which
18. we'll discuss the details on later, but that has always
19. discharged into the City coming down through these lines.
20. Then to the west we have the Belmont Estates Subdivision
21. just beyond the western proposed limits. That is pumped
22. over the drainage line at this point and then goes into
23. our gravity line and flows into the Division F intercep-
24. tor. Over to the east we have service by Rockingham County

1. to the Valley Mall. That's a County customer that ties
2. through a meter into the City system here on Country
3. Club Road and back into the City. This is the Ashby
4. Heights line. There is a new subdivision, Portland East,
5. being developed here. These black lines tie into the
6. Ashby Heights interceptor and flow west through the City.
7. And this is the Deer Run Apartment project which is still
8. under construction. They have a connection there with
9. the County line. Over to the east and off the map is the
10. Massanetta Springs, a private development, that comes over
11. by force mains and discharges into a gravity line in this
12. vicinity. That is referring to Map Exhibit H-23. Massa-
13. netta Springs, Incorporated sewerage system is here over
14. in the Conger's Creek drainage shed, it comes across the
15. line and then flows by gravity in a westerly direction.

16. Q. Does that flow into the City system?

17. A. Yes sir.

18. Q. All right.

19. A. Again on H-23 the area we just looked at, Donnelley,
20. Park View, Belmont Estates, as indicated in brown. The
21. City service areas are in blue and the major intercep-
22. tors. Referring to H-23, it's an areawide map. You
23. see in red the Towns of Bridgewater and Dayton, which
24. have their own sewerage collection system, but discharge

1. ing along adjacent to the highway.

2. Q. I ask you now to turn to Map Exhibit H-26. First of
3. all, Your Honors please, the smaller map didn't reproduce
4. clear. Will you state to the Court first the lines as
5. shown on the big map, the Authority lines, and then re-
6. late what color is shown on the small map?

7. A. We have some difficulty in the printing process, the com-
8. bination of colors, in trying to get these to match ex-
9. actly. So, they don't match in all cases. But, refer-
10. ring to large Map Exhibit H-26, "Proposed Sewer System",
11. we have indicated the proposed annexation boundary in
12. yellow, the existing corporate limits of Harrisonburg in
13. red, we have again what was basically shown on the earl-
14. ier existing system map. We have Rockingham County ser-
15. vice areas and lines, we have City of Harrisonburg service
16. areas and lines. Then we have in a tan color the various
17. interceptors of the Harrisonburg-Rockingham Regional
18. Sewer Authority. In addition to that we have shown the
19. proposed facilities. And on Map Exhibit H-26 we have
20. priority 1 as what I would describe as a bright pink
21. line. That appears on your small map exhibit as more
22. of a deep purple. Priority 2 on our wall map is sort
23. of a purple color, as you'll note, and that is a lighter
24. shade of purple in the book. And then priority 3, that

1. is somewhat, that's more of a red; you see it in the
2. book as a red. So, in the book you're referring to,
3. Your Honors, the deep purple lies in priority 1, like I
4. say, the medium purple or violet are priority 2, and
5. the reddish line is priority 3. You have in a tan color
6. or a brown . . . I'd say the Authority is more of a tan,
7. but these brown lines are future lines. So, again, this
8. map illustrates the various backbone existing systems
9. and the City's plan for priority phasing of extensions
10. of sewer service out into the proposed annexation area.
11. This is a three priority system, priority 1 being one to
12. four years; priority 2, four to seven years; priority 3,
13. seven to ten years.

14. Q. How did you arrive at the priority 1, Mr. Steadman?

15. A. The priority 1 lines are those lines you see here to the
16. east. We have a line going out of the City out through
17. the Ridge Road, Ridgeville area, coming back and tying
18. into a small pump station here in the vicinity of Ashby
19. Heights. Leaving that pump station here and going back
20. into the City line at this point. On the west we have
21. sewer lines out into the Circle Drive area and some ser-
22. vice down off of Route 33. These are basically lines
23. to serve populated developed areas that from time to
24. time have experienced septic tank troubles or where there

1. have been septic tank rejections. Down further to the
2. southwest we have several lines to tie into the Hillan-
3. dale interceptor. This line you see here goes over to
4. the National Coach Homes mobile home park and relieves
5. that lagoon there. The lagoon is operating successfully,
6. they have some problems with pumps and whatnot. But
7. this would take that lagoon out of service. Then we
8. have lines down Route 11 South.

9. Q. What were the reasons for establishing the lines down
10. Route 11 South as a top priority?

11. A. There are again in this sort of strip commercial/light
12. industrial area, there are areas that have experienced
13. septic tank problems. There has been from time to time
14. various problems with wells in this area. So, priority
15. 2 is the deep purple, which is further extension of
16. the lines out 33, down the Garber's Church road area,
17. to service here on Ridge Road, improvement of some of
18. the very old lines in Park View, and extension of ser-
19. vice here in the area of the northwest. Priority 3, more
20. of a reddish color, are further extensions of the lines
21. to provide additional service as the area develops along
22. roads, and some replacement of the collector lines up
23. in the Park View area. Park View is a very old system.
24. Granted the City has some very old systems, but we under-

1. stand most of these were old terra-cotta pipes laid with
2. open joints, some of them are crushed. Smoke testing is
3. difficult, T.V. work has been very non-conclusive. So,
4. this would be a general plan to provide for the improve-
5. ment of that sewer system.

6. Q. Where are your futures located?

7. A. Future lines will generally provide service to the re-
8. maining areas as future growth develops. Out here to
9. the east and the southerly portion of the proposed area.

10. Q. Would it be your judgment that the priorities, some of
11. these priorities might change?

12. A. This was our best judgment at this time as to a general
13. plan for phased construction. Obviously all of those
14. priorities are subject to change as demand dictates or
15. if health hazards were to occur, or whatever the cir-
16. cumstances might be. This is our general plan.

17. Q. I ask you now to turn to the City's Tab Exhibit 31,
18. entitled "Proposed Sewer Improvements in Proposed Annex-
19. ation Area". Will you briefly summarize the cost as
20. estimated?

21. A. Yes sir. Exhibit 31 is a tabular presentation of the
22. lines we looked at on Map Exhibit H-26, giving a des-
23. cription of the lines, the area it serves under the col-
24. umn of "Interceptors". That really should be "Intercep-

1. tors-Pumps". Giving the lengths and priorities and
2. costs for priority 1, which is one to four years, prior-
3. ity 2, four to seven, and priority 3, seven to ten.
4. That's a two-page exhibit.
5. Q. What is the total cost of priority 1?
6. A. The total cost of priority 1, \$1,634,900.00.
7. Q. And for priority 2?
8. A. \$779,000.00.
9. Q. And priority 3?
10. A. \$1,084,700.00.
11. Q. And the grand total is what?
12. A. The grand total for one to ten years is \$3,498,600.00.
13. Q. Is that last cost estimate carried over to another ex-
14. hibit?
15. A. Yes sir. If you'll turn over to . . .
16. Q. Tab Exhibit 33?
17. A. Thirty-three. The data displayed on Exhibit 31 is sum-
18. marized on line 2 of that Exhibit 33. Exhibit 33 is
19. entitled, "Consolidation of Estimated Major Capital
20. Improvement for Proposed Annexation Area."
21. Q. All right, I ask you now to turn to Map Exhibit H-21.
22. JUDGE ARTHUR: I don't believe we have a
23. Map 21.
24. MR. WICKHAM: That's an areawide map. That's

1. the maintenance and operation functions of the Park View
2. Sanitary District. Up until that time the Sanitary Dis-
3. trict, as I understand, had contracted with a private
4. plumbing firm for their maintenance and repairs and so
5. on.

6. Q. I ask you now to turn to the Donnelley area and ask you
7. to state how Donnelley was supplied with water.

8. A. I believe in about late 1979 Harrisonburg and Rockingham
9. entered into a contract wherein Rockingham County extend-
10. ed the line and built the tank, and Harrisonburg sells
11. water through a meter out here at the northern limits
12. to serve Donnelley. I believe that contract was limited
13. to thirty thousand gallons a day, which is the require-
14. ment of Donnelley.

15. Q. I now ask you to direct your attention to Route 33 East,
16. and ask you to describe how K-Mart and Krogers obtained
17. water and how they did so.

18. A. We'll be referring to this point right here, and the
19. City line comes around right here and ties in with 33.
20. Initially that area was served by the City of Harrison-
21. burg when K-Mart and Kroger developed. As I understand
22. from earlier testimony, K-Mart and Kroger had adequate
23. water but they had some problems with the fire protec-
24. tion. Harrisonburg's water system, you might say, is

1. basically three service areas. A high level area gener-
2. ally in this vicinity here, a low level, and then a sub-
3. lower level. As you flow south from Harrisonburg the
4. pressure reducing because of the higher elevations serves
5. this area, so therefore there's a tremendous amount of
6. pressure coming down to the south. This area was right
7. at the fringe of the high level. Initially the high
8. level was served by booster pumps at the Tower Street
9. reservoir complex. The booster pump serves the same
10. function as a tank, it just has to keep running and
11. as development grows you have to add on to your pump.
12. The City at that time was looking at the development of
13. a tank, either out here behind Krogers or over here in
14. the vicinity of Country Club Lane. And also about that
15. same time the City had issued a temporary water service
16. connection to the contractor who was beginning work on
17. the County Mall. As a condition for obtaining a building
18. permit from Rockingham County, as I understand it, the
19. County required that the Mall be served by County water.
20. So, at that time the County and the City negotiated a
21. contract, a master meter was installed, and the City
22. turned over K-Mart and Kroger as customers to the County
23. as well as the Mall. But they didn't ignore their growth
24. at that time, they did come back in and boosted the line.

1. You can see a new twelve inch line that came down and
2. across and connected up in the vicinity of Tower Street
3. to Old Furnace Road out to Country Club, Blue Ridge
4. Drive, which is down along around Vine Street there and
5. Country Club Road. At the same time they replaced pumps
6. at the Tower Street pumping station with larger pumps
7. that would meet the larger demand to service out in that
8. 33 East area. Rockingham County then with their master
9. meter at the same time ran this line and developed a tank
10. in a much higher elevation and provided better pressure
11. back to this area. And then from that tank extended
12. service into what had been earlier the private system,
13. the well system, here in Ashby Heights.

14. Q. When has most of the County's water system been develop-
15. ed, excluding the Park View area?

16. A. Park View was the Park View Development Corporation and
17. Sanitary District. Generally datewise, I believe, this
18. contract with Donnelley was about late 1979. The City's
19. meter connection was in 1977 or 1978 up here on 33 East.
20. And more recently from this system the County has provid-
21. ed service into Portland East and the Deer Run Apartments
22. here. Although this well had a permit for exploration
23. and drilling back in 1975, it's producing water now,
24. and this system was constructed and got underway some

1. ~~time this year, I believe, or late last year.~~

2. Q. I ask you now to turn to City Exhibit Map H-20, entitled
3. "Proposed Water System." Can you explain the legend
4. found on that map?

5. A. Exhibit H-20 is found in the small tabular form exhibit
6. book. Again, I apologize, we had a little problem with
7. our colors here. On the large wall map, H-20, entitled
8. "Proposed Water System", we have again the existing
9. facilities for the City of Harrisonburg and Rockingham
10. County. Exhibit 20 indicates the existing systems that
11. we have discussed, Rockingham County in green, the City
12. of Harrisonburg in blue. And additions have been added
13. for proposed facilities, priority 1, 2, 3 and future.
14. Priority 1 on H-20, the large map, is in pink. Priority
15. 2 a deep purple. Priority 3 a deep red. On your smaller
16. map exhibit, I think we can distinguish priority 1 as
17. the darker color. Priority 2 is, I'd call it, a medium
18. pink. The pink on yours corresponds to the deep purple
19. here on this exhibit. Priority 3 is another shade of
20. pink, it looks like it's a little bit darker on your
21. smaller map exhibit. Priority 3 on the large wall map
22. is a red line. Future is more of a tan or buff color.
23. The gray areas indicate generally service or the avail-
24. able lines. This is, again, a phased plan of extension

1. water, sewer and our road improvements so that they can
2. be done as efficiently as possible. There are, as far
3. as wells and septic tanks, some down here on Route 11
4. South. We've got concentrated areas of trouble spots
5. or difficult soils for septic tank areas out here. This
6. is a replacement line for the older Park View system.
7. And this provides water on out and loops in with this
8. area out here on Ridge Road. Again, a phased plan that
9. is subject to change by immediate demand.

10. Q. What are the plans for the use of the County well, Mr.
11. Steadman?

12. A. We don't plan to seek to acquire the South County System
13. or the well.

14. Q. Why is that?

15. A. The City has, since the early sixties, has a line down
16. here that will serve as a basis for extensions in that
17. area. We feel that this line which travels outside the
18. area can provide service to the County further on south
19. down 11 to Mt. Crawford. And also the County has a con-
20. tract I believe for the joint use of the tank and supply-
21. ing storage back over here to Dayton. The City would
22. not want to tie into a well system at this time beings
23. that we have a treated system developed over the years.

24. Q. What lines were you referring to just a minute ago, Mr.

1. Steadman? The line you said would continue to serve the
2. south end of the County, the County lines, would you
3. point to those?

4. A. That's the line indicated in green.

5. Q. It's set forth in green in the southern end of that
6. map, is that correct?

7. A. On Map H-20, that's correct.

8. Q. And where would that supply come from that would fill
9. those pipes?

10. A. As I understand it that supply would come from the well
11. the County has developed here on the County Farm site.

12. Q. I would ask you now to turn to Tab Exhibit 30, which
13. is entitled "Estimated Water Improvements in the Propos-
14. ed Annexation Area".

15. A. Tab Exhibit 30 is a tabular presentation of the systems
16. we looked at on Map Exhibit H-20.

17. Q. What is the total amount expended in the priority 1
18. period?

19. A. In priority 1 it's \$875,700.00.

20. Q. And in priority 2?

21. A. \$960,400.00.

22. Q. And in priority 3?

23. A. \$1,092,100.00.

24. Q. And that's a total of?

1. A. \$2,928,200.00.

2. Q. Is that amount carried over on Exhibit 33?

3. A. Yes sir, the data found on Exhibit 30 is carried forward
4. to Tab Exhibit 33, line 1, estimated water improvements.
5. Exhibit 33 is, "Consolidation of Estimated Major Capital
6. Improvements for Proposed Annexation Area."

7. Q. What are the total water and sewer improvements proposed?

8. A. The total water and sewer proposed over a ten year per-
9. iod is \$6,426,800.00.

10. MR. WICKHAM: Your Honor please, we have a new
11. Exhibit 32. We didn't get the information from the
12. County . . . the last information we got was on the bus
13. tour, and we thought it best just to bring in a brand
14. new exhibit to reflect the latest information we receiv-
15. ed from the County concerning original cost and so forth.
16. And I would like to at this time re-introduce Exhibit 32
17. in the place of old Exhibit 32, and ask that the old
18. exhibit be discarded.

19. MR. FITZGERALD: Do I understand that this
20. purports to include the valuations of all the sewer and
21. water lines in the annexation area that belong to the
22. County of Rockingham?

23. MR. WICKHAM: I didn't hear you.

24. MR. FITZGERALD: Do I understand that this

1. value should not exceed the original cost basis.

2. JUDGE ARTHUR: Your Exhibit 32 doesn't have a
3. heading as to what approach that represents, but that is
4. your original cost approach, is it not?

5. A. Yes sir.

6. JUDGE ARTHUR: And 32a is replacement cost.

7. A. That is correct.

8. Q. And why didn't you make an estimate of present value?

9. JUDGE MOON: He's already answered that, I
10. believe. Didn't you answer that?

11. A. Yes sir.

12. JUDGE ARTHUR: In your opinion the original
13. cost approach is the correct one in this case?

14. A. Yes sir. We feel we aren't replacing anything, that
15. we're looking at the original value, trying to get it
16. down to the local share that's associated with the people
17. that bought the systems or remain with the systems.

18. JUDGE ARTHUR: Now, you mention in your note
19. that upon annexation Harrisonburg would reimburse Rock-
20. ingham County for its local share of the Harrisonburg-
21. Rockingham Regional Sewer Authority lines. Are you refer-
22. ring in there to an agreement that the parties have, or
23. is that just an assumption on your part, or a recommen-
24. dation, or what?

1. A. No sir, that is the agreement that Mr. Driver testified
2. to previously, as to at the time of the development of
3. those two interceptors, F and G, a contract was entered
4. into that pending the disposition of this annexation suit,
5. whoever the area was awarded to would compensate the
6. other party for their half of the local share. So, the
7. local share of those two lines was paid jointly by Rock-
8. ingham County and the City of Harrisonburg, fifty/fifty.
9. So, if the area is awarded to Harrisonburg, Harrisonburg
10. would reimburse Rockingham County in that amount. At
11. the present time the Authority services those customers
12. for accounting purposes and keeps those funds separate.
13. Q. If these systems remain with the County, what is the
14. agreement?
15. A. If the systems were to remain with the County, then Rock-
16. ingham County would compensate the City of Harrisonburg
17. in the amount of one hundred and sixteen thousand dollars
18. as the local share.
19. Q. Is the City's water system capable of supporting the ex-
20. tensions that you have described?
21. A. Yes sir. I think we've seen from our exhibits and pre-
22. vious testimony that the City has a broad base of raw
23. water sources and treatment sources, storage, distribu-
24. tion lines that have been developed over a long period

1. of time, and have promoted the growth in this area and
2. are ready and able to provide service to the annexation
3. area. Yes sir.

4. Q. In your opinion is the City's proposed sewer extensions,
5. would they be capable of supporting the annexation area?

6. A. Yes sir.

7. Q. And the future growth?

8. A. Yes sir.

9. Q. What are some of the advantages for the City to control
10. the water systems in this area, Mr. Steadman, and the
11. sewer collection facilities?

12. A. I think there are several advantages. One, it's ideal
13. to be able to control the drainage shed that goes through
14. your jurisdiction, for utility purposes as well as plan-
15. ning and many other reasons. Utilities play one role
16. in a broad spectrum of City services and planning func-
17. tions. The City should be able to control growth and
18. help enforce zoning through the extension of its utili-
19. ties. Certainly having only one jurisdiction enhances
20. coordination, working with utility companies on lines,
21. new industries coming into the area, connections, consis-
22. tency in policies and rates. These are some of the
23. things. Response for emergency operations. The City
24. has its utilities garage centrally located to provide

1. maintenance service to this area. The City has a long-
2. standing staff in public works, experienced in the effi-
3. cient operation of systems. Most of these facilities
4. are interconnected with the City's system. All the water
5. is supplied to the annexed area by the City's water sys-
6. tem, and most of the sewerage flows through the City.
7. The least, again, the least number of governmental units
8. in a drainage shed is most desirable in eliminating con-
9. fusion on policies, connections, meters, and all these
10. myriads of things that have to be tended to on a day-to-
11. day basis.

12. MR. WICKHAM: I have no further questions.

13. JUDGE MOON: We'll take a recess.

14. (Recess)

15. .

16. MR. WICKHAM: I have one more question of
17. the witness.

18. Q. Mr. Steadman, if the Court were to award an annexation
19. line that included Donnelley, what would be the addi-
20. tional cost of acquiring the water and sewer lines up
21. to Donnelley?

22. MR. FITZGERALD: My objection runs to this
23. testimony too, Your Honor.

24. JUDGE MOON: Overruled. It would only be

1. MR. FITZGERALD: If it please the Court, this
2. witness is under cross examination. I've asked the ques-
3. tion three times, but I've yet to get the answer.

4. JUDGE MOON: Well, I thought he said yes the
5. last time.

6. MR. FITZGERALD: He said yes to one question.
7. I asked him whether the credit the people were going to
8. get was being given to the City, not the people. If he
9. has answered, I'll go on.

10. JUDGE MOON: He answered yes to that.

11. Q. You said that you found out by interrogatory how much
12. of the County's total revenue sharing money was used
13. in these systems. Is that correct?

14. A. Yes sir.

15. Q. Are you familiar with federal revenue sharing funds?

16. A. Only from the, you know, the line entry and the audits
17. and budgets where they were identified as federal revenue
18. sharing.

19. Q. Do you know, Mr. Steadman, that federal revenue sharing
20. funds are not like federal grants for water and sewer,
21. are they, sir?

22. A. A grant is an earmarked fund for a specific project.

23. Q. And one jurisdiction may apply for it and get that grant
24. for that project, and another jurisdiction may not apply

1. for it. Is that correct?
2. A. That's correct.
3. Q. But federal revenue sharing is supposedly an equitable
4. sharing of revenues back to localities, isn't it?
5. A. Yes sir. But it's again identified with people. It's
6. based on certain numbers. And I suppose you could say,
7. whether that person is identified as a federal person, a
8. state person, a city person or a county person, he has
9. been credited with some share of that.
10. Q. Is that all that it's identified with is numbers and
11. people?
12. A. There are other things. I'm not qualified to go into the
13. formula.
14. Q. You know that there is a formula?
15. A. Yes sir.
16. Q. And you know that the formula is the same for the City
17. of Harrisonburg as it is for the County of Rockingham,
18. don't you?
19. A. I would think it would be.
20. Q. And you know at the same time the County got its federal
21. revenue sharing, the City got its federal revenue sharing
22. based on whatever the formula is, don't you?
23. A. Yes.
24. Q. So now you're saying that the County had to use its

1. funds, and it could be used for other things, true?

2. A. Yes.

3. Q. Federal revenue sharing could be used for other things?

4. A. Yes.

5. Q. It could have been used for school buildings or some
6. other project way outside the area, couldn't it?

7. A. I believe anything other than just general operations.

8. Q. Yes sir. That the County having used its share of the
9. revenues being shared back for water and sewer that hap-
10. pened to be in this area, that again you give the City
11. credit for that.

12. A. Yes sir, the federal funds.

13. JUDGE MOON: Are you basing that on the num-
14. ber of people in the area, or are you taking that one
15. hundred percent?

16. A. We take it one hundred percent, Your Honor. What was
17. reported as federal funds. We understand one of the
18. things the Court looks at is recognition of contributions
19. by federal funds and in the various columns that we have
20. set up.

21. MR. COGAR: May I just say something at this
22. point, Judge Moon? In 15.1-1043, in setting forth the
23. power of the Court and what values shall be assigned
24. to the County property awarded to the City, the statute

1. provides that the city or town shall receive credit on a
2. basis to be determined by the Court for any sum it may
3. have contributed to such public improvement and may in
4. the discretion of the Court be allowed credit for any
5. portion of the cost thereof contributed by any federal,
6. state or other agency and not borne by the County.

7. That's why we used the federal.

8. MR. FITZGERALD: I object to arguing the case
9. in the middle of my cross examination.

10. MR. COGAR: Well, I object to your arguing
11. the law with the witness.

12. JUDGE MOON: Okay, I think we understand your
13. point, that the County could have used the funds for any
14. reason it wanted to.

15. MR. FITZGERALD: Yes sir. These funds did
16. not come from the federal government to the project. It
17. came to the County, and the County then from its general
18. funds used it, but it did flow . . .

19. JUDGE MOON: Yes sir.

20. Q. Mr. Steadman, did you make any study of the effect on the
21. rates, water and sewer rates, within the City if this
22. annexation is granted?

23. A. No sir. The City made some calculations on that.

24. Q. Who did?

1. A. The City, the accounting department.
2. Q. Will it affect the revenues in the City?
3. A. Yes.
4. Q. What will the effect be?
5. A. At present the City charges for its customers in the blue
6. areas outside the City basically a double rate. Upon the
7. effective date of annexation, those rates in essence will
8. be half. At the same time, the City wholesales under a
9. particular rate to Park View, it wholesales at another
10. rate to 33 East. Thirty-three east, in turn, has a rate
11. schedule for Ashby Heights and so on. Then their sewer
12. consideration, some fees will go up, some will come down.
13. I think the net effect is about a decrease of thirty-five
14. to forty thousand dollars.
15. Q. You mean some rates in the area sought for annexation,
16. water and sewer rates, are going to go up?
17. A. Yes.
18. Q. Where?
19. A. Well, I think that some of the sewer rates will go up.
20. Q. Where?
21. A. Well, Park View.
22. Q. Park View's sewer rates are going to go up. Now, where
23. are they going to come down?
24. A. Where would the rates come down?

1. Q. Yes sir.

2. A. In Forest Hills, out in the various complexes there,
3. and the Circle Drive area out there to the west. That
4. portion of the line that travels down 33 out to the
5. water plant.

6. Q. What is the net effect of this on the City's water
7. and sewer revenues?

8. A. That is the figure I gave you. It would be a reduction.

9. Q. Can I hear that again?

10. A. It would be thirty-five to forty thousand dollars reduc-
11. tion anticipated immediately in the water and sewer reve-
12. nue.

13. Q. So, what will the City have to do if it maintains the
14. same policy of sufficiency of water and sewer?

15. A. Well, if the City held purely to the rate structure,
16. immediately I don't know that it will have any effect.
17. There are many reserves in the public works funds. The . .

18. Q. To maintain those reserves and to maintain their same
19. physical policy with respect to the water and sewer,
20. what would they have to do?

21. A. Well, I'm not prepared to say they'll have to raise
22. rates. All localities say that they support utilities
23. purely through the rates, but there are interfund trans-
24. fers from water and sewer back to the general fund, and

1. vice versa. So, from various funds in the City that
2. would have to be made up initially. And, at the same
3. time, additional extensions will be made and there will
4. be new customers, and there will be a grow back. But
5. initially there will be a deficit impact.

6. Q. A deficit impact?

7. A. Yes.

8. Q. Mr. Steadman, are you familiar with the County's systems
9. that you have described in the area?

10. A. Their location and information we've gotten in interrog-
11. atories as to descriptions and inventories, yes sir.

12. Q. Are any of these systems capable of serving areas outside
13. the area sought for annexation? In addition to Donnelley.

14. A. Donnelley, the Donnelley line is an eight inch line, it
15. is a secondary line. I would think if that line were
16. going to go beyond the area it would have been a twelve
17. inch.

18. Q. But Donnelley is beyond the area, is it not?

19. A. Correct. It's beyond the area, the line to Donnelley,
20. and it would provide service to Donnelley. I'm not sure
21. what your question was. Are you suggesting that it
22. would go on out beyond Donnelley?

23. Q. Can the system, the tank and the line to the tank, can
24. that serve anything more than Donnelley?

1. A. In that immediate vicinity, yes sir.
2. Q. How about the line from Valley Mall, from the tank back
3. to Valley Mall?
4. A. That could serve additional connections on 33.
5. Q. And from the line from the tank down to Ridgeville.
6. A. Back in through Ridgeville, yes sir. There could be
7. connections on that line.
8. Q. You discussed that system there. You said one street
9. was being served now.
10. A. Yes.
11. Q. Do you know that everybody that has wanted to be served
12. is being served? Did you check on that?
13. A. As I understand it, one street is being served. You can
14. see the meters. We weren't aware that the adjacent
15. street and the areas along Ridge Road were being served.
16. Q. Did you know that they didn't want to be served?
17. A. No sir.
18. Q. Your proposal is that whether they want to be served or
19. not, the City would run a line there.
20. A. Yes.
21. Q. Do you know whether or not any adjacent area to Ashby
22. Heights along Port Republic Road can be served?
23. A. I would think that that line . . . immediately adjacent
24. to Port Republic Road, yes sir.

1. Q. Do you know whether areas outside the area sought for
2. annexation to the east on 33 or east of the line, east
3. of Ashby Heights, can be served?

4. A. East on 33, yes. You'd have to make some considerable
5. improvements and reinforcing of the system to go on out
6. Port Republic Road.

7. Q. Let me ask you this, Mr. Steadman. If the City was award-
8. ed, as Mr. Cogar calls it, all that you're seeking here,
9. there would still be some County water system left,
10. wouldn't it?

11. A. If the area as indicated on that map is awarded, the
12. only County water system that would remain would be the
13. Donnelley Plant and the South County system that ties in
14. with Dayton.

15. Q. How about the sewer situation?

16. A. Sewer would be the area you see there in blue on H-20,
17. Belmont Estates. That is served by City water, but County
18. sewer. That would be a remaining service. Also, I be-
19. lieve on the east, Massanetta Springs, a private camp,
20. it's discharged by forced main, and that flow would come
21. back through the Ashby Heights interceptor to the Author-
22. ity.

23. Q. Do you know where Rosedale is east of Portland East?
24. Would that remain?

1. A. I'm not sure I'm familiar with that. Is that the street
2. that's being developed right to the east of Portland
3. East?
4. Q. Yes.
5. A. Yes sir, that would remain. That's outside the line.
6. Q. Well, have you made any estimates, if you got what you're
7. asking for, of whether or not there'd be any cost of
8. severance or separation of what the City is asking for
9. and what the County would have left?
10. A. How do you define cost of severance?
11. Q. Well, somewhere along the line, if you're going to ac-
12. quire all this, a meter has got to be installed or a
13. line has got to be cut, or something has got to be done
14. to sever the systems, doesn't it?
15. A. I think in our proposals we have noted, for instance on
16. Donnelley, we have proposed to move the meter out to the
17. corporate boundary.
18. Q. Have you made a study of all the effects on the sewer
19. and water systems of Rockingham County as to what you're
20. proposing?
21. A. We have taken into consideration moving those meters,
22. yes sir.
23. Q. At what cost?
24. A. I would have to go back to my work papers.

1. Q. And all that's necessary is to move meters? For water
2. and sewer?

3. A. Okay, sewer, we've got two force mains, we have a dis-
4. charge point we would change, on the basis that it would
5. seem appropriate that all the lines be contained in the
6. City. Other than Donnelley, Massanetta and Belmont Es-
7. tates, I don't know of any . . . you mentioned Rosedale,
8. that would be four.

9. Q. The fact of the matter is, you've made no study of it,
10. have you?

11. A. We have taken that into consideration, in our costs,
12. that we would move the meters and that those lines
13. would come into the City.

14. Q. Can you tell us what the cost is?

15. A. You might have say a hundred thousand dollars in moving
16. meters.

17. Q. Where is that in all of your exhibits?

18. A. We don't show that particular item.

19. Q. That item is now shown, a hundred thousand dollars.

20. One of your initial priorities with respect to water is
21. to run a water line down Route 11 South, is that true?

22. A. Yes.

23. Q. And it's going to run overtop of or parallel the line
24. that the County has already put there?

1. A. It would be parallel to that, right. The County is pro-
2. posing a similar thing coming over from the well. You
3. see the green line, the County is proposing where the
4. City has already had service for some time.
5. Q. Yes sir, that little distance.
6. A. But, . . .
7. Q. You can't leap frog through the air with a water line,
8. can you?
9. A. You can't.
10. Q. Well, why are you proposing to run a water line down
11. Route 11 South paralleling a line that's already there?
12. A. Because this area, if awarded, would be in the City ser-
13. vice area and the City would want to extend its service
14. right there to that southern line just as they've done
15. over on the Pleasant Valley Road, and ultimately connect
16. up that whole area.
17. Q. Yes sir, Mr. Steadman, and why didn't they already do
18. that?
19. A. I would think that under the present circumstances that
20. the County wouldn't allow them to.
21. Q. Well, they some way or another ran it down 11 South to
22. a point that they cut across and went over to the Indus-
23. trial Park.
24. A. That was in the early sixties.

1. Q. Why didn't they run it down 11 then? They'd been having
2. trouble down there you said.

3. A. I don't know that they had problems back in the sixties.
4. I know that they're having problems now.

5. Q. You think the soil has changed conditions since the
6. sixties?

7. A. Well, maybe those developments weren't there in the six-
8. ties. I don't know what was there in 1960.

9. Q. You think the development along Route 11 South was not
10. there in the sixties?

11. A. There was some development.

12. Q. Can you tell us then why now and why wasn't the line run
13. down there to solve the problem that existed?

14. A. I'm not prepared to answer why the City didn't run a
15. line in 1960 down Route 11.

16. Q. Or in 1970 either, is that correct? It's not down there
17. yet, is it?

18. A. No.

19. Q. Except the County has one in.

20. A. Yes.

21. Q. You mentioned that that line was served by well water.
22. Do you know of any municipal water system in the state
23. that's served by well water?

24. A. Yes sir, there are municipal systems that are served by

1. well water.
2. Q. And that's a perfectly acceptable way of providing water,
3. isn't it?
4. A. If all the bacteriological, chemical tests are met and
5. the proper treatment is given, it is.
6. Q. Well, you have to do that with surface water, don't you?
7. A. That's right.
8. Q. And you have to treat surface water, don't you?
9. A. That's correct.
10. Q. How about when you store surface water or well water in
11. reservoirs. Do you have to do anything to make sure
12. that that is kept treated?
13. A. You have to maintain a chlorine residual in the system.
14. Q. Even after you've treated it?
15. A. Yes.
16. Q. Now, if you were building a storage facility with treat-
17. ed water today, could you store it in an uncovered stor-
18. age?
19. A. No.
20. Q. You could not?
21. A. You could not.
22. Q. It is prohibited by law.
23. A. Yes.
24. Q. By regulations, by the Health Department.

1. A. Yes.
2. Q. Does the City have any open storage?
3. A. The City has two open storage reservoirs up on Tower
4. Street, they are major reservoirs, and then the two and
5. a half million gallon tank just north of that. They are
6. open, uncovered reservoirs. But they are provided with
7. chlorination and aeration.
8. Q. But that type of facility would not be permitted under
9. the present regulations, would it?
10. A. Not today, no sir.
11. Q. You don't show any priority for covering those things
12. up, do you?
13. A. No sir.
14. Q. Is that somewhere in the future, or are you just going
15. to leave it open?
16. A. The City's plans right now, they have maintained them to
17. the satisfaction of the Health Department, the proper
18. water quality and their chlorine residual, and right now
19. I don't know of any plans they have to cover the reser-
20. voirs.
21. Q. Can you show us again on the map, Mr. Steadman, what's
22. known as the high level system of the City and the gen-
23. eral area it covers?
24. A. This is just the general area (indicating on map), Ott

1. Street, in this area.
2. Q. Generally in the easterly section of the City?
3. A. Northeast would be more correct.
4. Q. The reservoir you talked about, uncovered reservoirs,
5. were providing whatever elevation it provided plus the
6. pumping to achieve the pressure for that area, weren't
7. they?
8. A. Yes sir.
9. Q. Were you in the 1962 annexation case?
10. A. No sir.
11. Q. Was Wiley and Wilson in that case?
12. A. I believe we were.
13. Q. Have you reviewed the exhibits in that case?
14. A. Yes, I believe you and I reviewed those when we had the
15. Commission on Local Government hearing.
16. Q. And it does call for a storage tank, an elevated storage
17. tank, up on Tower hill, doesn't it?
18. A. Up on Tower hill. At that time that was a one level
19. area, but since then they established the high level
20. system. And that was shown as a future tank on priority
21. four with no designated date.
22. Q. No designated date. But someone saw fit to note that it
23. was going to be needed or they wouldn't have shown it at
24. all.

1. A. Well, the plan at that time, that was on the low level
2. system; but since that time they've separated it and
3. developed the high level system. The tank today is serv-
4. ing the high level system. What you're referring to was
5. served in 1962 by booster pumps.

6. Q. You do know that there has been since 1962 pressure prob-
7. lems within the area called the high level system area?

8. A. Yes sir, and the City has made several major improve-
9. ments, a sixteen inch loop around north of the City,
10. a separation of the area, as I mentioned in earlier tes-
11. timony the boosting of the system out to 33 East at K-
12. Mart and Krogers.

13. Q. You mentioned K-Mart and Krogers, you mentioned that
14. the City requested the County to take those two custo-
15. mers over because they did not have adequate pressure
16. there to provide fire protection?

17. A. I'm not sure that I'm qualified to answer if it was in
18. response to a request. I know that after the County
19. built its system and negotiated a contract for the master
20. meter and was serving that through its tank, the City
21. said, "You go ahead and service it." Prior to that time
22. the City was in the midst of making plans to provide a
23. tank that would have done the same thing.

24. Q. Well, Mr. Steadman, you said you're not in a position

1. to know. I counted when you testified on direct, I
2. think, ten or twelve statements you made prefaced by
3. "I understand".

4. A. That's correct.

5. Q. Do you understand that there were pressure problems in
6. that area?

7. A. I understand that. I'm not certain of the circumstances
8. where the City said, "Hey, take our customers." Prior
9. to having been cut off from building the tank, they would
10. have served those customers.

11. Q. The tank they built up on the hill would not have helped
12. though?

13. A. The tank on the hill is really the tank that would have
14. been located out there, except it was a larger tank.

15. Q. The tank on the hill, on Tower Hill, . . .

16. A. The tank on Tower Hill will help it.

17. Q. Will help it. And, as a matter of fact, that's where
18. the plans shows it to be located in 1962, on Tower Hill.

19. A. Mr. Fitzgerald, somehow I think we're confusing this.
20. The intent of that tank today was on a high level system,
21. two alternate sites, being identified as in the vicinity
22. of the Country Club and behind Kroger's. At the time of
23. the 1962 study I don't think they envisioned that as be-
24. ing a high level storage tank.

1. Q. Mr. Steadman, just answer my question, and I hope it will
2. be the last one I have to ask you about the tank. Isn't
3. the location of that tank shown on the proposed plan in
4. 1962, exactly where the tank is today?

5. A. That is correct. The same location, the functions are
6. different though.

7. Q. You mentioned, I believe, the fact that the County South-
8. ern system tied in with the Town of Dayton's system.

9. A. Yes.

10. Q. Are you familiar with that?

11. A. That's the intent. It isn't tied in at present. That
12. stage of the project has to be designed and bid and
13. constructed for it to tie in. But that's the ultimate
14. plan, yes sir.

15. Q. You know that the plan is to tie them together.

16. A. Yes.

17. Q. And one backs up the other, isn't that true?

18. A. That is correct. They share jointly in the storage.

19. Q. And the Town of Dayton gets its water from Silver Creek,
20. doesn't it?

21. A. Silver Lake.

22. Q. Silver Lake at the present time.

23. A. Yes.

24. Q. You mentioned the North River as a prime water source

1. for the City. Do you know that that is also the river
2. that the Regional Sewer Authority plant discharges into?

3. A. Yes sir. The Sewer Plant is considerably downstream,
4. but they discharge.

5. Q. Did I understand you to say that certain of these sewer
6. lines that you propose to put in, as a matter of fact
7. most of them, are to take care of growth in the area?

8. A. Immediately they're to take care of most of the . . .
9. one and two, Mr. Fitzgerald, would be in developed areas,
10. and certainly as they go out of those areas, I'm sure
11. that there would be additional growth stimulated by
12. those lines.

13. Q. As I understand your exhibit, you say that seventy-five
14. percent of the funds to provide for those sewer exten-
15. sions are to come from federal financing, federal grants.

16. A. No sir. Well, you're correct, as shown there, but the
17. column that I read into the record on Exhibit 31 is total
18. cost. At the time we developed this possible local cost
19. things were considerably different than they are now.
20. There's not going to be any federal funding for sewer
21. lines in the foreseeable future that I know of. So, we
22. have indicated in the totals that went over to Exhibit
23. 33, on consolidation, we have shown the total cost.

24. Q. On 33 you show the total cost?

1. A. Yes. That little note is a little misleading. It says
2. total cost, federal and local funds. It really should
3. have just said total cost. Down below it you see possi-
4. ble local cost, and that would indicate with seventy-five
5. percent federal funding. So, to be correct, that total
6. cost should just reflect that, and the federal funds be
7. struck.

8. Q. On Exhibit 31, is that exhibit still in, or has that
9. been modified or replaced?

10. A. No sir, that hasn't been replaced. That's the original
11. exhibit.

12. Q. That exhibit is wrong?

13. A. Where is it wrong?

14. Q. Where it says seventy-five percent federal funding.

15. A. All it says on that . . . let me go through it again.
16. The total cost column is the total cost for the project.
17. Underneath that we have said possible local cost if we
18. got seventy-five percent federal funding; that would re-
19. present twenty-five percent for the local cost. We didn't
20. read that into the record, we didn't say anything about
21. it; because we feel now that with the President's program
22. on E.P.A. funds, that there wouldn't be any E.P.A. funds
23. available for development of those lines.

24. Q. All right, sir. So, you're not counting on federal funds?

1. A. No.

2. Q. These cost figures, priority one, two, and three, on your
3. Exhibit 33. What do these figures represent, present
4. day cost of construction?

5. A. Yes sir, they are present day cost.

6. Q. In other words, in priority one where you have from one
7. to four years, if it's being done in the fourth year, if
8. you let the bid in the fourth year, you haven't reflected
9. any possible increase in the cost of it.

10. A. No sir. We tried to put everything on a constant basis.
11. That's reflected throughout the exhibit.

12. Q. The same thing is true with the other priorities?

13. A. Yes sir.

14. Q. In ten years the cost you reflect there could be double,
15. couldn't it?

16. A. That's possible. We hope not.

17. Q. Well, it certainly at the present rate of inflation,
18. even less, say ten percent inflation rate, in ten years
19. that's doubling the cost, isn't it?

20. A. That's right.

21. Q. One thing I noticed, Mr. Steadman, on most of your ex-
22. hibits, when you show a City line running off cross
23. country to serve an area, you showed a color, a blue
24. color, around it. You're showing that you could serve

1. the area, on either side of the line, I suppose. Is that
2. correct?

3. A. Well, let me go to the map. This line is a raw water
4. line. This indicates that there are customers along
5. that line who are actually connected. These all indi-
6. cate customers connected to the line. We don't know of
7. any customers that are attached here. We tried to be as
8. fair in this as we could.

9. Q. I thought you had called that service areas.

10. A. Well, I might say then they're areas where customers are
11. presently connected.

12. Q. You did the same thing for the sewers?

13. A. Yes.

14. Q. Well, why is the area shown for water systems of the
15. County at Valley Mall a rather narrow green stripe coming
16. down there? Is that the shape of the Mall?

17. A. No, the Mall could be extended a little further. I think
18. the County exhibit shows the converse. There are big
19. colored areas and the City lines are the individual lines.
20. We didn't intend to slight the County there.

21. Q. You did not. But the fact of the matter is, larger areas
22. are either served there or could be served.

23. A. Yes.

24. Q. By the County.

1. A. Yes.

2. Q. If the City was awarded this annexation and the City has
3. its way and does not acquire, for instance, the County
4. South Water System, and the City puts a water line down
5. Route 11 South as shown, who would serve the customers
6. on either side of Route 11? After annexation.

7. A. If annexation is effective January 1, and that's priority
8. one, the City would evaluate the situation at that time.
9. I don't think they'd want to duplicate service, but the
10. City is prepared to extend the lines right now to solve
11. the problems that are there.

12. Q. It's ready right now to do it?

13. A. Yes.

14. Q. Extend the lines.

15. A. Yes.

16. Q. If the City serves the customers it means the County
17. has got lines running up a considerable distance with
18. no customers, doesn't it?

19. A. Well, the same thing exists over there at Pleasant Valley
20. Road. There's a considerable distance of County line
21. where there was already a City line.

22. Q. Are you talking about that little one inch where the
23. pink line and the green line are side by side?

24. A. I'm talking about where the green line is running by the

1. blue area.

2. Q. That's a considerable distance from the road, isn't it?

3. Where the green line is running by the blue area?

4. A. Well, if you'll notice, there were fire hydrants all
5. along that line on the tour.

6. Q. How would you have suggested the County get from the well
7. location over to where the storage tank is going to be?

8. A. Probably just about the way they have.

9. Q. Do you know when Fairway Hills was first opened or first
10. plotted?

11. A. I'm not sure.

12. Q. Do you have any idea how many years it's been there?

13. A. Ten or fifteen years.

14. Q. You showed as one of the improvements a water pumping
15. station on Port Republic Road. Is that correct?

16. A. Yes sir.

17. Q. What is the purpose of that station?

18. A. To provide a loop from the City's lower service level
19. up to the high service level. It came in around on the
20. east, out there on 33, come into the tank, and that
21. would be a higher service level. That would just pro-
22. vide a reenforcement. As it is, Ashby Heights is at a
23. dead end and there's continuing development, continuing
24. to extend off the remote end of that feeder line. This

1. would just be simply to interconnect.

2. Q. Do you know that there are problems, pressure problems,
3. in the Forest Hills Subdivision now that's served by the
4. City?

5. A. It has been reported, but there is a major project
6. that's been under construction, it will be completed by
7. the end of this month, a twelve inch line with lines
8. coming out Market Street, a line coming up here, and
9. this line will come over and solve that problem.

10. Q. How long has that pressure problem existed? In Forest
11. Hills?

12. A. I don't know.

13. Q. As long as Forest Hills has been there, isn't that true?

14. A. I'm not sure that it would have initially.

15. Q. What caused it to develop then?

16. A. As growth occurred and there were more extensions on the
17. line and more demand on the line, then that pressure has
18. dropped.

19. Q. Well, isn't it true this pumping station you propose to
20. build as an improvement in the area, won't that help to
21. alleviate the situation in Forest Hills?

22. A. That's beyond Forest Hills. This is another service
23. area.

24. Q. Can you tell us why in Park View you do not propose to

1. replace the oldest line in Park View, in the sewer situa-
2. tion?

3. A. Mr. Fitzgerald, we've had an awfully difficult time
4. coming to grips with exactly what is in Park View. We
5. had general plans and we looked at those, and we've met
6. with Mr. Eshleman who used to be the secretary or treas-
7. urer, we've met with your engineers, and that's our best
8. plan. If this area is awarded we'll go in and do cer-
9. tainly a detailed engineering. We will attempt to go in
10. and improve the system.

11. Q. All right, sir. According to your exhibits, both in
12. water and sewer, you indicate that the entire City is
13. served with water and sewer by the City.

14. A. Yes sir.

15. Q. Is that correct?

16. A. Service is available throughout the City.

17. Q. Service is available by the City through the City, is
18. that correct?

19. A. Yes sir. There are a few exceptions. There are areas
20. down over a hill where somebody can't get to a sewer
21. line. If you're getting to does the City have septic
22. tanks, yes, I think there are some septic tanks.

23. Q. What I was getting at, Mr. Steadman, you haven't shown
24. any proposed improvements within the City.

1. A. No.
2. Q. Are there any needed?
3. A. We haven't gotten in and done a detailed, complete flow
4. system through the City, but there are obviously old
5. lines, we have some pressure problems being studied.
6. The City's primary problem in the sewer system is infil-
7. tration in some of the older lines. And they have been
8. studying that and are taking action to eliminate some
9. of that.
10. Q. They have a report on infiltration, don't they?
11. A. They have an interim report.
12. Q. And doesn't that indicate considerable sewer system
13. improvements are going to be needed within the existing
14. City?
15. A. I wouldn't use the word improvements. I'd use the
16. word some disconnections, there are some isolated sec-
17. tions of line that may need replacing.
18. Q. It's more than maintenance, isn't it?
19. A. Maintenance and replacement, yes.
20. Q. More than maintenance?
21. A. Yes. Rehabilitation is the correct word.
22. Q. But you don't have any figure for that?
23. A. Yes, the report that was just published, the interim,
24. there's several things--I don't want to confuse you with

1. a lot of details, but there's a certain guideline limi-
2. tation as to how much you should get out, and that's
3. recently been changed; but, based on the City's needs
4. it looks like over a ten year period that the City might
5. need to spend four hundred and fifty thousand dollars
6. to correct some of the infiltration problems. They have
7. been doing this work over the last three or four years
8. in isolating illegal connections and things of this na-
9. ture.

10. Q. Is that going to increase the sewer rates?

11. A. This right now, over the ten year period, the four hun-
12. dred and fifty thousand dollars, would work out to be
13. forty-five thousand per year, and that already is in the
14. budget of the utilities department.

15. Q. As the City exists now, you don't anticipate any necessi-
16. ty to raise sewer rates or water rates within the City?

17. A. Not at this moment, no sir.

18. MR. FITZGERALD: That's all.

19. JUDGE ARTHUR: May I ask a couple of ques-
20. tions, please? I'm not sure I got your figures right,
21. or understood them, one or the other, with reference to
22. the Donnelley Plant. What was your figure on that, in
23. the case that should be taken in, and what does it cover?

24. A. The figure that we had as an approximation, the addition

1. JUDGE TRABUE: The only thing it does is ad-
2. just for the Donnelley?

3. MR. WICKHAM: That's correct.

4. JUDGE TRABUE: And struck footnotes three
5. and seven.

6. JUDGE MOON: We're not admitting it yet,
7. until Mr. Fitzgerald has a chance to look it over.
8. All right, who is your next witness?

9. MR. WICKHAM: I call Mr. Rouse.

10.

11.

12.

JOHN ROUSE,

13.

having been duly sworn, testified as follows:

14.

Direct Examination by Mr. Wickham:

15.

Q. Would you state your name and occupation?

16.

A. John Rouse, and I work for Data Corp. of Virginia.

17.

We do data processing work for banks throughout the

18.

Shenandoah Valley.

19.

Q. And is that corporation affiliated with the Rockingham

20.

National Bank?

21.

A. Yes sir, we are a wholly owned subsidiary of Rockingham

22.

National Bank.

23.

Q. How long have you worked for Rockingham National Bank?

24.

A. I've been with Rockingham National for almost sixteen

1. years.
2. Q. You've been in the Harrisonburg area since that time?
3. A. Yes sir, I have.
4. Q. Where do you now reside?
5. A. I now live in the area known as north Park View.
6. Q. Is that a part of the Park View Sanitary District?
7. A. Yes sir.
8. Q. And what County services do you receive?
9. A. County services?
10. Q. Yes.
11. A. I guess the normal services that the County would pro-
12. vide, as far as police protection, fire protection, that
13. sort of thing. I'm at a loss . . .
14. Q. What City services do you receive?
15. A. I receive City services, I receive water through the Park
16. View Sanitary District and associated sewer service. I
17. contract for a private trash collection service.
18. Q. Do you receive a transportation service provided by the
19. City?
20. A. Yes, the City Bus comes out to Eastern Mennonite College,
21. which is a moderate walk from my house.
22. Q. Are you serviced by the Harrisonburg Electric Commission?
23. A. No sir, I'm not. I'm served by Vepco.
24. Q. I hand you City's Tab Exhibit 9c. It's been previously

1. filed, but I'm not sure it's in the book. I would ask
2. you to identify that, if you will, for the Court.

3. A. This is a copy of an attachment to a letter that I wrote
4. to the Commission that was studying the annexation, and
5. this includes a comparison of consumption of electrical
6. between Vepco, which services me, and H.E.C., which I
7. would assume would service me if I were annexed into
8. the City. The water and sewer service provided by the
9. Park View Sanitary District versus that which the City
10. would provide. Trash collection, which is currently pro-
11. vided by private contract service and which again, I as-
12. sume, would be provided by the City. The utility taxes
13. for telephone, in comparison for those in the County and
14. City. And a comparison of the real estate and personal
15. property taxes that I would pay using the valuations
16. that the County is assessing for versus the rate in the
17. City if I were annexed.

18. Q. And what is the bottom line of your analysis?

19. A. The bottom line of my analysis is that out of \$1,992.71
20. worth of hard cold dollars that I paid out in 1980, I
21. would have saved \$347.27 by being a resident of the City,
22. as opposed to being a resident of the County. That's
23. approximately seventeen percent.

24. Q. Do you receive any snow removal service?

1. A. I'm at the mercy of the State Highway Department, so when
2. they get the major arterial routes clean they get around
3. to us. That has been as late as three or four days that
4. we get to slide down our hill.

5. Q. Where do your children go to school?

6. A. My children go to Pleasant Valley Elementary School, which
7. is on the southeast side of the City. They go past four
8. public schools to get to Pleasant Valley.

9. Q. Are you a member of the P.T.A. of that school?

10. A. Yes sir, I am the immediate past president of the P.T.A.
11. of the Pleasant Valley Elementary School.

12. Q. Have you recently talked to the Superintendent of Schools
13. concerning the crowded condition of that school?

14. A. Well, Pleasant Valley has seven academic grades, and they
15. only have twenty-seven classrooms for these seven academ-
16. ic grades. So, one grade has to suffer with an enlarged
17. class each year. And we have for the last four or five
18. years been asking the County School System to provide an
19. additional classroom so that we wouldn't have the maxi-
20. mum allowable number of students forced into one class-
21. room or one grade of classrooms in Pleasant Valley. We
22. have also asked for other facilities, such as a music
23. room. The band practices on the stage, the music teach-
24. er, the choral music teacher, pushes her piano from room

1. to room in order to have choral music. There is no music
2. room. They are trying to begin an enrichment program in
3. the County, and because of the lack of space we finally
4. had to go to the Superintendent and ask him for a port-
5. able classroom to be provided so that the enrichment
6. program would have a place to work. That has now been
7. provided and, I understand, will be ready for occupancy
8. soon if not today. I'm not sure.

9. Q. What type of police protection do you receive?

10. A. The Rockingham County Sheriff's Department, which has
11. a considerable amount of area to cover.

12. Q. Do you wish to be annexed by the City of Harrisonburg?

13. A. Yes sir, I do.

14. MR. WICKHAM: I have no further questions.

15.

16. Cross Examination by Mr. Smith:

17. Q. Mr. Rouse, you said you live in north Park View?

18. A. Yes sir.

19. Q. How long have you lived there?

20. A. I've lived there for fifteen and a half, going on six-
21. teen years. I've been in my house since December, 1967.

22. Q. Where did you live before you moved in your house?

23. A. I lived in a trailer court just off of Route 42, within
24. the Sanitary District.

1. JOSEPH GARDNER,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Wickham:

4. Q. Dr. Gardner, would you state your full name, occupation
5. and residence?

6. A. My name is Joseph Gardner, my occupation is physician,
7. and I live at 295 Birdie Circle, Fairway Hills.

8. Q. Is that subdivision just north of the Country Club area?

9. A. To the north and east, yes.

10. Q. Not presently in the City?

11. A. No sir.

12. Q. How long have you lived there, Doctor?

13. A. This is my ninth year.

14. Q. And previous to that time did you live in the City of
15. Harrisonburg?

16. A. Yes. I lived on Dixie Avenue for about sixteen to seven-
17. teen years, since 1956.

18. Q. Is that when you came to the Harrisonburg area, in 1956?

19. A. Right. I've been here twenty-five years.

20. Q. Will you state to the Court what City services you receive
21. at your residence?

22. A. Fairway Hills is serviced by City water and sewage at
23. this time.

24. Q. Do you receive any County services?

1. A. Police protection from the County Sheriff's Department,
2. and I assume fire protection.

3. Q. Are you aware of any patrols by the Sheriff's Office in
4. your area?

5. A. I've never been aware of any routine patrols. To my
6. knowledge they have come if called, but I'm not aware of
7. any routine patrols.

8. Q. Do you wish for the City to annex your residence?

9. A. Well, yes.

10. Q. And would you state the reasons why.

11. A. Well, personally I'm just philosophically more associated
12. with the City. I maintain an office in the City of Har-
13. risonburg, I work at a hospital that's in the City of
14. Harrisonburg, my children went to school in the City of
15. Harrisonburg, my church is in the City of Harrisonburg,
16. probably seventy-five percent of my practice is in the
17. City of Harrisonburg, and the organizations and whatnot
18. that I belong to are more closely allied to the City of
19. Harrisonburg than they are to the County. From an eco-
20. nomic point of view, I'm aware that the tax structure
21. would be a little bit higher, but I have done a little
22. bit of comparison, not in depth like Mr. Rouse has, but
23. I can't see that that would be a significant advantage,
24. to have the lower tax rate, in comparison with the City.

1. Q. Do you recall when Fairway Hills Subdivision was devel-
2. oped?

3. A. Yes, it was developed in 1971.

4. Q. Do you know who developed that subdivision?

5. A. Yes sir, it was developed by myself, Warren Denton, Henry
6. Clark and Dr. Tanner, who is now deceased.

7. Q. Is there anymore land in that subdivision that's subject
8. to future development?

9. A. Yes, we have about thirty more acres which has been engi-
10. neered for future development, but no actual work has
11. been done, no dirt has been moved.

12. Q. Would it be your desire that that additional thirty acres
13. be annexed by the City?

14. A. Yes, it would.

15. Q. Can you state briefly your reasons for that?

16. A. Well, yes, I can. In order to develop the original
17. section of Fairway Hills, which is approximately sixty
18. lots, we were stymied by the fact that the soil percola-
19. tion tests would not allow for septic tank systems. And
20. so the land lay there for a number of years, and finally
21. we proposed to the City to extend the City water and sew-
22. age lines from the present Kawneer Plant up to the area.

23. Q. The Kawneer Plant is located behind the Sheraton?

24. A. Behind the Sheraton and on the old so-called Country Club

1. Road or old 23. And because of the City we were able to
2. extend the City water and sewage lines up into the sub-
3. division and develop it. And at this point, of course,
4. we have City water and sewage lines there. And to devel-
5. op the adjoining thirty acres it would be economically
6. far more feasible than bringing the lines up from the
7. Mall which are on the other side of 33 and a considerable
8. distance from our proposed subdivision development.

9. MR. WICKHAM: I have no further questions.

10.

11. Cross Examination by Mr. Fitzgerald:

12. Q. Doctor, you say you are more aligned with the City than
13. you are the County?

14. A. I said personally, yes sir.

15. Q. You first lived in the City when you first came here,
16. didn't you?

17. A. Yes sir.

18. Q. And there came a time when you and two others decided to
19. do a little land speculating?

20. A. And three others, yes sir.

21. Q. Three others. And were you the initiator of this land
22. speculation?

23. A. I was the initiator probably in that I wanted to build
24. a house adjacent to the golf course, which was a desirable

1. building lot.
2. Q. You wanted at that point to get out of the City?
3. A. At that point I wanted to build a house and there was
4. no desirable land that I felt like I could find in the
5. City.
6. Q. I see. But you really wanted to be next to the golf
7. course.
8. A. The golf course certainly made it more desirable, yes
9. sir.
10. Q. Are you a golfer?
11. A. Yes sir. Sort of a hacker.
12. Q. Have you developed any other property in the County?
13. A. No sir.
14. Q. Do you own any property on Old Furnace Road?
15. A. Yes.
16. Q. That's not for development?
17. A. It is. I thought your question was have I developed any
18. other land.
19. Q. Are you developing or contemplating developing other pro-
20. perty in the County?
21. A. Possibly. I have no definite plans. In regard to the
22. three acres on Old Furnace Road, it was acquired within
23. the last three, four months, I think in the latter part
24. of 1980, but I've made no plans, no engineering has been

1. done on it.

2. Q. Do you own any other property either in the County or
3. the City?

4. A. I own shares in the Medical Arts Building which is in
5. the City.

6. Q. Is that all you own in the way of property; either inter-
7. est in or property?

8. A. I own some--in conjunction with some more people, I own
9. some land on top of one of the mountains that we use
10. purely for hunting purposes.

11. Q. In the City you say you own an interest in the Medical
12. Arts facility?

13. A. Yes sir.

14. Q. Twenty-five percent of it or . . .

15. A. No, I own eighty-five shares out of twelve hundred and
16. some, which would be less than ten percent; eight percent
17. maybe.

18. Q. When was that built?

19. A. That was built in 1962.

20. Q. Is that where you have your offices?

21. A. Yes sir.

22. Q. And for nine years, or approximately that, you have
23. traveled from your home in Fairway Hills to your office.

24. A. That is correct.

1. Q. Now, you say you would like to be in the City because
2. you're more allied with the City. That won't put your
3. home any closer to your office, will it?

4. A. No.

5. Q. When you purchased this land, or you and the others that
6. have interest in it, purchased the land that was later
7. developed into Fairway Hills, it was earlier than 1971,
8. wasn't it?

9. A. This land was originally there because many years, I
10. think even before maybe I came on the scene, the Country
11. Club wished to expand their nine hole golf course to an
12. eighteen hole golf course. In order to get the land,
13. the landowner would only sell a block of land. One of
14. the more affluent members of the then Country Club Board
15. told the Country Club Board, if they would buy . . . that
16. he would buy the entire tract and let them have what
17. they needed on a pro rata basis and he would develop the
18. remainder of it. But he was unable to develop it because
19. he could not get the soil to perk. And the way I became
20. involved was I simply tried to buy a lot from the then
21. owner. He then proposed that if it could be developed
22. that he would then sell me the lot that my wife and I
23. desired. Consequently I contacted the other three people
24. and we looked at the various ways that it maybe could be

1. developed. And the only way it could be developed was
2. with the cooperation of the City.

3. Q. My question was, when did you buy the land.

4. A. We never really bought the land. What we did was tell
5. the man who owned it that we would develop it and pay
6. him a pro rata amount as each lot was sold until he re-
7. covered his amount, and then he became a partner in our
8. venture.

9. Q. Can you tell me, did that occur before . . . you had to
10. record a plat of the land, didn't you?

11. A. Yes, it was recorded.

12. Q. You've mentioned the fact that you started in 1971, but
13. prior to that you had to get some interest in the land to
14. do this, didn't you?

15. A. Yes.

16. Q. When did you make your arrangements with whoever owned
17. the land to do what you've done?

18. A. About 1971.

19. Q. In 1971.

20. A. 1970 and 1971.

21. Q. And you knew the condition of the soil out there when
22. you made your arrangement, didn't you?

23. A. We knew the condition of the soil, and we had it re-perked
24. and it still did not perk.

1. Q. Yes sir. But at that point were you committed to go
2. ahead with the project?
3. A. No, we were not committed except on the condition that
4. we could develop it.
5. Q. So then you went to the City about getting water and
6. sewer service?
7. A. That's correct.
8. Q. And the City agreed to it.
9. A. The City agreed to take over the lines and maintain them
10. if we put them in according to their specifications.
11. Q. You paid for them?
12. A. We paid for them.
13. Q. Sewer and water.
14. A. Sewer and water.
15. Q. And gave them to the City?
16. A. Correct.
17. Q. And then they charge the people there service charges.
18. A. Correct, and they maintain them.
19. Q. And at the time you turned them over to the City, the
20. City didn't have a penny invested in them, did they?
21. A. No.
22. Q. Is it true that there have been over the years you've
23. lived there and people have moved into that subdivision,
24. there have been some water pressure problems there.

1. A. I live at the top of the hill, and I've never had any
2. significant problems with water pressure. There is a
3. pumping station which requires maintenance that is at
4. the bottom of the hill, and occasionally after an elec-
5. trical storm one of the pumps may go out. I have never
6. had a significant problem, and I live at the top of the
7. hill. But I have heard dissension from some of the other
8. residents.

9. Q. About the water pressure.

10. A. About the water pressure. Whether or not it's valid or
11. not, I have my doubts.

12. Q. Have you got any idea about why the residents there
13. would complain about water pressure if they didn't have
14. a problem?

15. A. I think there have been times when the pumping station
16. has been for a very short while out of order due to an
17. electrical storm.

18. Q. You say the thirty acres is an additional tract of land
19. that the group has bought, or is that part of the origi-
20. nal tract?

21. A. Most of it is part of the original. We recently acquired
22. thirteen more acres to give us access to another road
23. which was required by the State Highway Department in
24. order to develop that, because they wanted more than one

1. entrance in it for emergency vehicles, fire and so forth.
2. They felt like one entrance into a subdivision that had
3. as many houses as this one was going to have was not ade-
4. quate for service.

5. Q. The whole purpose though in the development of it is
6. certainly, to some extent, a profit making motive, isn't
7. it?

8. A. Certainly.

9. MR. FITZGERALD: That's all.

10. MR. WICKHAM: I have no further questions.

11. JUDGE MOON: Thank you, sir.

12. MR. COGAR: Mr. Sullivan.

13.

14.

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24.

1. ROBERT JAMES SULLIVAN, JR.,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Cogar:

4. Q. State your name, please.
5. A. Robert James Sullivan, Jr.
6. Q. By whom are you employed?
7. A. The City of Harrisonburg.
8. Q. In what capacity?
9. A. I'm Director of Planning for the City of Harrisonburg.
10. Q. How long have you held the position of Director of Plan-
11. ning in the City of Harrisonburg?.
12. A. For sixteen years.
13. Q. You are a native of Harrisonburg, are you not?
14. A. Yes sir.
15. Q. You are a college graduate?
16. A. Yes sir.
17. Q. What degrees do you hold?
18. A. I have a Bachelor of Science Degree with a major in
19. political science from Mount Saint Mary's College, of
20. Emmitsburg, Maryland. I have a Master's Degree in public
21. administration from the University of Pittsburgh.
22. Q. Before coming to Harrisonburg you worked for the City of
23. Norfolk and the City of Richmond?
24. A. Yes sir, with their redevelopment and housing authorities.

1. Q. Are you familiar with the history of planning in the
2. City of Harrisonburg?

3. A. Yes sir.

4. Q. When did that process first take on some emphasis?

5. A. In 1938 the Harrisonburg City Council appointed a Plan-
6. ning Commission.

7. Q. You had no Planning Commission prior to that time?

8. A. No sir, that was the first Planning Commission establish-
9. ed by our City Council.

10. Q. At the time of the establishment of that Planning Com-
11. mission, what was the general state of planning of
12. cities of comparable size in the State of Virginia?

13. A. Well, basically speaking, towns and cities began estab-
14. lishing Planning Commissions in the nineteen twenties.
15. And Harrisonburg was one of the first cities of a small-
16. er size in the Commonwealth to create a Planning Commis-
17. sion. I know of a few cities that established their
18. Planning Commissions in the forties and fifties and
19. sixties.

20. Q. What were some of the first tasks that the Planning
21. Commission did in 1938?

22. A. The first assignment was to analyze the existing land
23. use patterns of the community in order to draw up a
24. zoning ordinance. So, by the spring of 1939, that first

1. Planning Commission presented its recommended zoning
2. ordinance or zoning map to the City Council.

3. Q. It was adopted, I take it?

4. A. Yes sir. In May of 1939 the City Council did adopt
5. Harrisonburg's first zoning ordinance. And this, of
6. course, was setting into motion the process of planning
7. that has guided Harrisonburg toward its destiny as being
8. the "City with a Planned Future".

9. Q. The "City with a Planned Future" is the City's slogan?

10. A. Yes sir, it's on our stationery.

11. Q. Does the County have a comparable slogan?

12. A. "Turkey Capitol of the World".

13. Q. What followed the adoption of the zoning ordinance in
14. terms of major milestones of planning?

15. A. Well, World War II set in and, of course, that touched
16. everyone's lives, but the Planning Commission proceeded
17. to study problems and/or changes that were occurring.
18. For example, they anticipated an increase of traffic as
19. the automobile and the truck industry was certainly grow-
20. ing and expanding, and also there was a realization that
21. population would likely increase once the war concluded.
22. So, traffic, which brings on such subjects as congestion,
23. and we had congestion on our pre-automobile age streets;
24. it was certainly a problem that was being analyzed during

1. World War II and immediately after World War II.

2. Q. All right, in terms of, or speaking of your study of
3. the traffic problems, what did Harrisonburg do to ad-
4. dress any traffic problems or traffic congestion in the
5. City at that time?

6. A. In conjunction with the Department of Highways, the City
7. Council and the downtown businessmen, for example, stud-
8. ied the situation regarding mainly U. S. Route 11, Main
9. Street, which passed . . .

10. Q. What was the problem?

11. A. Well, the heaviest flow of traffic throughout the greater
12. Harrisonburg area and Rockingham County is north-south
13. along the old Valley Pike or U. S. Route 11. The problem
14. was simply that we had congested streets, so this was
15. what we were seeking some solutions for.

16. Q. Will you just briefly tell the Court what solutions you
17. arrived at?

18. A. The community, perhaps unlike some other communities in
19. this country, realized that a by-pass would be a likely
20. help to the City and to the citizens. So, in analyzing
21. the area, this was a proposed solution, to construct a
22. by-pass around the edges of the City of Harrisonburg.

23. Q. The thought of creating the by-pass originated with the
24. City, is that correct?

1. A. Yes, it did.

2. Q. And aren't by-passes generally thought of by cities
3. about the same way people look upon root canals?

4. A. Yes, I'm afraid so. Because, obviously, there's the con-
5. cern that if you remove some of the traffic from your
6. developed area, the business area, that this would inevi-
7. tably cause a loss of some business to the merchants in
8. the downtown area or other commercial areas within the
9. community. We realized this would affect the City's rev-
10. enues to some degree, but of course we also realized that
11. potential future growth would certainly be assisted or
12. spurred on by any additional roadways that might be plac-
13. ed in the territory.

14. Q. Was this by-pass ever constructed?

15. A. Yes sir, the by-pass was constructed. The opening date
16. was July, 1960. The planning that I'm now describing
17. in the late forties did take on a different perhaps direc-
18. tion in the mid-fifties as President Eisenhower and Con-
19. gress passed Interstate and Defense Highway Act. In
20. other words, what I'm leading up to is that the seven
21. mile by-pass which was opened around Harrisonburg was,
22. in fact, part of Interstate 81. And . . .

23. Q. So, there originally was a concept for a by-pass which
24. started in the late forties?

1. A. Yes sir.

2. Q. And you got in touch with the State Highway Department,
3. the planning went forward for the by-pass, and then the
4. Interstate Highway Program came into being.

5. A. Yes sir. If I might compare, instead of having perhaps
6. a two-lane by-pass constructed, which did occur in nearby
7. Staunton and Lexington during the early fifties, we were
8. perhaps just at the right moment ready for this road, and
9. instead of a two-lane by-pass we got the four-lane divid-
10. ed highway under the interstate program. I say "we", I
11. mean, of course, the whole area of Harrisonburg, Greater
12. Harrisonburg, and Rockingham County, and the Central
13. Shenandoah Valley.

14. Q. When did that construction commence?

15. A. The interstate was under construction in the late fifties,
16. and I do recall the dedication date was July 1, 1960.

17. Q. What size project was it?

18. A. Seven miles, beginning about two miles south of the
19. present City limits and terminating about three and a
20. half miles north of the present City limits. And it is,
21. of course, on the east side of the City proper, and
22. there are four interchanges involved. We are very proud
23. of that fact, by the way, that we have I think the most
24. interchanges of any community up and down the State of

1. Virginia on Route 81.

2. Q. On Exhibit H-1B, will you point out to the Court where
3. those interchanges are located?

4. A. Beginning at the south end, we have the interchange
5. here close to Pleasant Valley School and the Walker Man-
6. ufacturing Company. The second interchange is a diamond
7. shape at Port Republic Road. The third interchange is
8. a cloverleaf at Route 33 east. The fourth interchange
9. is above the map, about three and a half miles beyond
10. the City.

11. Q. Route 81 extends through Virginia from where to where?

12. A. From the Frederick County line north of Winchester
13. southwestward to Bristol, Virginia.

14. Q. And exits the state at Bristol?

15. A. Yes sir.

16. Q. And this seven miles was the first seven miles built of
17. 81, is that correct?

18. A. That's my understanding, yes sir.

19. Q. Did I understand you from earlier testimony to say that
20. when the decision was made to build a by-pass that was
21. turned into a part of Interstate 81 that the City con-
22. templated that some growth would attend that by-pass?

23. A. Yes sir, it was anticipated that in all likelihood the
24. land at the interchanges would develop in some urban

1. fashion.

2. Q. To what extent have those plans materialized, or those
3. expectations.

4. A. There are businesses, industrial development, institution-
5. al and residential development, at all of the interchanges
6. or near the vicinity of the interchanges, especially the
7. first three, as I outlined to the south. For instance,
8. at the Pleasant Valley exit, they have institutions such
9. as the schools, Pleasant Valley and Massanutten Vo-Tech,
10. commercial development, restaurants, and motels and ser-
11. vice stations, and Walker Manufacturing is near that exit,
12. plus the Pleasant Valley Industrial Park area. And at
13. Port Republic Road we have motels, restaurants, service
14. stations, housing developments close to Port Road. I
15. might say Forest Hills was there before the interstate
16. was built. And on the City's side, W.V.P.T. educational
17. television station chose to locate itself so that it
18. could be seen by the interstate flow of traffic and also
19. have easy access to the interstate.

20. Q. Then going on in a northerly direction, what else has
21. developed?

22. A. At the Cloverleaf, Route 33, industrial development exists
23. on the east side, Dunham-Bush and Kawneer, commercial
24. development in the form of motels, restaurants and ser-

1. vice stations. There is a mobile home park there. I'm
2. not certain if the mobile home park was in place in 1960.
3. It may have begun on the old 33, but after the new 33 was
4. opened the Neff Mobile Home Park certainly considered the
5. new 33 as its main front door. And, of course, on the
6. now City side of the cloverleaf, the Cloverleaf Shopping
7. Center developed, and apartment developments, some other
8. housing developments. And to the far north, the northern
9. exit has a drive-in theater that was in existence in
10. 1960, and the Cardinal Motel and Restaurant I believe has
11. expanded sometime since 1960. But by and large there
12. hasn't been a great amount of intense development at the
13. northern exist.

14. Q. Mr. Sullivan, where 81 passes through or traverses the
15. northern boundary of the annexation line, would you
16. fix your eye on that spot on H-1B?

17. A. Yes, this point.

18. Q. There has been some discussion about a possible inter-
19. change in or near that location. What is your knowledge
20. of that?

21. A. That's where Old Furnace Road crosses the interstate,
22. and the purchase of the interstate right-of-way in the
23. fifties involved enough land so that there is space for
24. a diamond interchange.

1. Q. There are no present plans to develop that that you're
2. aware of?

3. A. No sir.

4. Q. What has the City done with respect to the improvement
5. of streets within its corporate boundaries?

6. A. In the 1960's the City of Harrisonburg requested assis-
7. tance from the Highway Department and contracted to draw
8. up a master plan for streets, or what we call our major
9. arterial street plan. This study preceded in the early
10. sixties the January 1, 1962 annexation date, and by the
11. mid-sixties, 1966, the City Council officially adopted
12. the major arterial street plan. The plan itself was a
13. projection of street improvements for basically a twenty
14. year period, so we were trying to see what we would need
15. by the year 1985 in that plan. And meanwhile in the City
16. itself, in 1960, work was underway to widen East Market
17. or Route 33 from about a block east of this building,
18. from Mason Street, on up the hill. East Market was a
19. relatively narrow, two-lane street. And with the opening
20. of the interstate coming in 1960, it was of course good
21. engineering and design work to widen it to four lanes,
22. anticipating that there would be a shift of traffic flow.
23. Whereas before the interstate most traffic was basically
24. north-south, now we were anticipating traffic flowing

1. off of the interstate, coming into downtown and the City
2. proper, and from the City going out in that direction.
3. So, my point is, East Market was rebuilt and actually
4. relocated when you get out to the Cloverleaf, in 1959
5. and 1960. Well, meanwhile the plan comes out with a
6. list of other projects that we felt would be needed to
7. keep up with the traffic situation. So, there have been
8. projects carried out as a result of that plan within the
9. City of Harrisonburg.

10. Q. The projects that were embraced in your 1966 major arter-
11. ial plan through 1985, were these projects thought to be
12. needed simply because of the demands on City streets by
13. City residents?

14. A. No. The demand is from a wide area of territory. Harri-
15. sonburg, of course, being the County seat and commercial
16. core, shopping area, business area, and so forth of all
17. of Rockingham County and areas of counties beyond Rock-
18. ingham County, there's always been an influx of traffic
19. from a pretty sizeable territory visiting Harrisonburg,
20. doing business here, working here, and so forth.

21. Q. Will you point out briefly some of the highway projects
22. that were undertaken within the City as a result of your
23. 1966 major thoroughfare plan.

24. A. The first undertaking after having constructed East Mar-

1. ket, was the portion of Route 42, or High Street, my old
2. neighborhood. We started widening High Street from a
3. two-lane residential street to its present eighty-five
4. foot right-of-way at the corner of Virginia Avenue and
5. West Gay Street in northwest Harrisonburg, and it was
6. widened southward to an intersection with South High and
7. Grace. And that project, I believe, was underway in
8. 1967 and about finished by early 1969. That's one. Do
9. you want me to mention others?

10. Q. While we're on that, is there any need or does that
11. widening or improvement of that street serve in any
12. particular way residents without the City?

13. A. Well, of course, High Street is Virginia Route 42, and
14. there is a steady flow of traffic coming into Harrison-
15. burg from the northwest. By the way, there's a stock-
16. yard function here at the north tip of the City. And
17. of course traffic flowing into the City from the south-
18. west portion of the County using High Street. And at
19. both ends really of the inner-City portion of High,
20. there is a stockyard operation and some related business-
21. es and industries, and then at the south end, near Grace,
22. we have the Farm Bureau. So, I know that High Street
23. always had a heavier influx of area traffic, area visi-
24. tors, than perhaps South Mason Street on the other side

1. of town. I remember watching from my front porch the
2. trucks and cars coming by on Saturday morning because
3. there was a heavier flow on Saturdays. And the funniest
4. part was when we saw someone brought his calf to town
5. in the back seat of a four-door car. But, anyway, I just
6. remember that point, all through my life, I guess.

7. Q. Route 42 runs generally north and south, does it contin-
8. ue up and down the Valley from Harrisonburg?

9. A. Yes, it goes northwest into the northern part of Rock-
10. ingham to the Town of Broadway and Timberville, and
11. then it continues north over to Shenandoah County and
12. the Town of Woodstock, I believe, is where it terminates.
13. The southwestward 42 travels through Dayton and Bridge-
14. water and on into Augusta County and finally it termi-
15. nates at Clifton Forge in Allegheny County.

16. Q. You were about to mention some other projects completed
17. by the City within its corporate limits as a result of
18. the major thoroughfare plan.

19. A. There is a very important inner-City loop known as
20. Cantrell Avenue. I'll use my pointer to show that.
21. It starts on the west end on High Street, at an inter-
22. section with High, and heads eastward over the Talmage
23. Cooley Bridge, intersects with U. S. 11 or South Main
24. Street, it then passes Rockingham Memorial Hospital,

1. really and truly envisioned Harrisonburg would develop
2. and grow.

3. Q. So, that accounts for the Cantrell Avenue project having
4. been expedited. Now, another major street project set
5. forth in that major thoroughfare plan was the improvement
6. of South Main Street, is that correct?

7. A. Yes sir.

8. Q. What improvements were made there?

9. A. South Main was a three-lane street, and it was improved
10. from approximately at this point on the map, or Grattan
11. Street, which is just south of the World War I monument,
12. and southward to the present City limits. Now we have
13. a five-lane South Main Street named after our former
14. City Manager, Mr. Woodward. It's the W. A. Woodward
15. Highway.

16. Q. When was that improvement undertaken and completed?

17. A. During the 1970's, beginning basically in the mid-seven-
18. ties. It's the longest single street project that's
19. ever been carried out within Harrisonburg.

20. Q. Do you anticipate it will have any impact on development
21. within the area?

22. A. Yes, I anticipate that it will continue the development
23. that is underway that we see in the City, but especially
24. beyond the City in a southerly direction. Simply because

1. it's now so much easier to move in a north-south direc-
2. tion on Main Street. When it was three lanes, it wasn't
3. enough space to line up at traffic lights, there are a
4. couple of traffic lights up that way; and it just simply
5. has a much smoother movement of the traffic volume. And
6. South Main, by the way, has the highest count in the
7. City, and apparently always has. The high count is ap-
8. proximately eighteen or nineteen thousand vehicles in a
9. twenty-four hour period in the James Madison University
10. vicinity.

11. Q. Is the thoroughfare plan which was intended to take you
12. through 1985 still in effect?

13. A. No, we adopted another arterial street plan which, of
14. course, is the nature of the planning process. Espec-
15. ially where economic and other forces are occurring
16. bringing about change and development. It almost sounds
17. ironic, but when we adopted the plan in 1966, we were
18. set to go for a twenty year period; but by 1969 the
19. Planning Commission and members of City Council and City
20. staff realized that we wouldn't be wrong in, in fact,
21. studying this situation beyond the City limits. So, what
22. we got into motion was the process of updating the docu-
23. ment, and this time we were able to study beyond the City
24. limits. There was something involved in the Highway De-

1. partment regulations about some changes they lived by
2. that allowed studies to, in fact, incorporate territory
3. beyond the actual municipality. This, of course, is to
4. study the economics, the land use, the population, and
5. of course the overall traffic flow. I guess what I'm
6. saying is that the City limit is kind of an artificial
7. thing as far as traffic movement goes. So, here we are
8. now in 1969 and especially in 1970 pursuing a broader
9. study of the subject of traffic needs and traffic direc-
10. tions.

11. Q. What is the current plan which will guide your thorough-
12. fare plan?

13. A. The City does now have a major arterial street plan that
14. the City Council adopted in November of 1979. This
15. occurred following a number of reviews that involved
16. officials, employees from the City and the County, the
17. Highway Department, and also a joint public hearing in
18. this room was held by the Board of Supervisors and the
19. City Council. That hearing was in the summer of 1979.

20. Q. These hearings and the work of the State Highway Commis-
21. sion culminated in a major thoroughfare plan which pro-
22. jects arterial street needs through what period?

23. A. Until 1995.

24. Q. What projects are proposed in that thoroughfare plan?

1. Major projects.
2. A. There are projects actually to reflect our 1966 plan,
3. so we're still hoping to improve some streets in the City
4. proper, such as portions of North Main and a portion of
5. West Market, a portion of South High southwest of the
6. high school, the present terminus of the five-lane por-
7. tion. And in the surrounding area the plan calls for
8. widening, straightening, what-have-you, rebuilding of
9. Ridge Road and Stone Spring Road and part of Mt. Clinton
10. Pike, and a portion of Mt. Clinton Pike is under con-
11. struction. I believe we saw that activity in Park View
12. last week.
13. Q. Are these projects sized and designed to serve traffic
14. from the surrounding area?
15. A. Yes sir.
16. Q. What has been the history of land use planning in Harri-
17. sonburg?
18. A. Well, I alluded to 1938-1939, the first zoning ordinance
19. was drawn up based on the existing land use pattern that
20. existed in the City at that time. And, of course, each
21. time we have reviewed our zoning map and zoning ordinance
22. we have looked carefully at the existing land use data.
23. The pattern is fairly simple, if I may give a little bit
24. of background. For instance, in 1938 the City had a com-

1. mercial central area, the downtown, and there were stores,
2. a few maybe light industrial activities northward from
3. downtown out North Main Street, and then along the rail-
4. road tracks which basically split Harrisonburg down the
5. middle, the Southern and the C & W, the warehousing and
6. the various industrial plants such as we had, the feed
7. mills and some raw material type places where the coal
8. and lumber and whatnot are brought in, just followed the
9. railroad. So, that left the west side of town residen-
10. tial and the east side residential. This is a general
11. description of how simple it was in the late thirties.

12. Q. That pattern of development was not unique to Harrison-
13. burg, was it?

14. A. It's, in essence, what you would expect in the United
15. States. The free enterprise system, that is development
16. based on no local regulations, basically would bring on
17. this type of a pattern. Industry along the tracks, rail-
18. road tracks, commercial sort of in the middle, and then
19. of course residential as far away as possible from the
20. warehouses and the stores.

21. Q. From your 1938 land use plan, that continued through the
22. years to be updated?

23. A. Yes sir. The land use plan that we follow today, I
24. might add, was officially adopted in 1970. And this plan

1. is considered our general guide for urban development in-
2. side the City, and it does reflect future and existing
3. urban development beyond the present City. It is a gen-
4. eral guide, I stress that point, when it comes to apply-
5. ing it during a zoning case or when comparing it to the
6. zoning map.

7. Q. Is your zoning influenced by what goes on in the boundar-
8. ies outside the City limits?

9. A. Well, the development beyond the present City limits
10. in some cases appears to be almost a continuation of
11. maybe the pattern in the City, but there are some con-
12. flicts on the boundaries, whereby just across the line
13. there's maybe residential on the City's side and indus-
14. trial or commercial on the County's side. Some of the
15. zoning that's occurred just beyond the present City lim-
16. its, I believe, was speculative in that the map is color-
17. ed but, you know, the land is still vacant. It hasn't
18. developed at this stage.

19. Q. The City does not have any zoning power beyond the cor-
20. porate limits?

21. A. No sir.

22. Q. You say you're presently operating under a land use plan
23. of 1970.

24. A. Yes sir.

1. Q. Do you have anything in the mill to update that plan?

2. A. Yes. The land use plan is, in fact, in an update condi-
3. tion right now. The City Council has at this point a
4. comprehensive plan update it is considering for further
5. review and adoption.

6. Q. Did you employ consultants to help you devise that plan?

7. A. Yes. During the mid and late 1970's, the consulting firm
8. of Harland Bartholomew and Associates has been working
9. with the planning office, Planning Commission, to bring
10. together an overall comprehensive plan update.

11. Q. Their suggestions or their work product, has it been
12. reviewed by your Planning Commission?

13. A. Yes sir. The Planning Commission held its hearings and
14. public forums in 1979 and 1980, and it has been forwarded
15. to City Council very recently so that Council is review-
16. ing it and its contents at this stage.

17. Q. There was reference earlier in this case, Mr. Sullivan,
18. to an affidavit signed by you and it seemed to be sug-
19. gesting that Harrisonburg did not have a comprehensive
20. land use plan. Were you present when that affidavit was
21. read?

22. A. In this room, yes sir.

23. Q. Will you clarify for the record the circumstances under
24. which you gave the affidavit and what the affidavit says.

1. it's in evidence.

2. Q. That's the affidavit that was read into evidence, Mr.
3. Sullivan. Will you tell the Court the circumstances un-
4. der which that was given?

5. A. The subject here, and the date was July of 1980, July 8,
6. and . . . okay, the Harrisonburg Electric Commission was
7. in Court. A neighborhood association brought them here
8. regarding one of their construction projects, which in-
9. volved a utility pole. And what the Harrisonburg Elec-
10. tric Commission lawyers asked me was did Harrisonburg,
11. in fact, have a comprehensive plan concerning the util-
12. ities, and my answer was, no sir, we did not have an
13. adopted comprehensive plan concerning utilities. So,
14. that's what this is all about.

15. Q. That's the essence of the affidavit?

16. A. Yes sir.

17. MR. FITZGERALD: Are you introducing this
18. into evidence? I'd like for Mr. Cogar to state one way
19. or the other for the record.

20. MR. COGAR: I'll tell you something, Mr.
21. Fitzgerald, when I get ready to introduce something into
22. evidence you'll be one of the first to know because I'm
23. going to do it right in your presence.

24. MR. FITZGERALD: I would hope so. The wit-

1. ness is reading from the affidavit, and I suggest that
2. the affidavit ought to be put into evidence. Mr. Cogar
3. is not going to . . .

4. JUDGE MOON: Well, it's already been read
5. into evidence, hasn't it?

6. MR. COGAR: Yes sir.

7. MR. FITZGERALD: Your Honor, but there was
8. some objection made to it at the time, as I recall, and
9. the Court has said with respect to some of these things
10. it would receive them in evidence but was not deciding
11. the truth or veracity of what was said. And I think the
12. document ought to go into the evidence.

13. JUDGE MOON: Do you want to offer it in evi-
14. dence?

15. MR. FITZGERALD: Yes sir, if Mr. Cogar is
16. not.

17. JUDGE MOON: Well, on cross examination you
18. can offer it.

19. MR. FITZGERALD: All right, sir.

20. MR. COGAR: I thought being read in evidence
21. put it in evidence. If Mr. Fitzgerald wants to do it
22. otherwise, he may.

23. Q. Mr. Sullivan, that which was read into evidence, which
24. is to be found on the piece of paper before you, does

1. not say that the City does not have a comprehensive plan,
2. does it?

3. A. No, it doesn't.

4. MR. FITZGERALD: I object to Mr. Cogar tes-
5. tifying . . .

6. JUDGE MOON: It says what it says.

7. JUDGE ARTHUR: Does that refer to that great
8. big power pole we saw over there with a yellow ribbon
9. tied around it?

10. A. Yes sir.

11. JUDGE ARTHUR: Or a blue ribbon. With rest
12. in peace written on it, or something.

13. A. Something to that effect.

14. Q. Is there any requirement in law that . . .

15. MR. FITZGERALD: If it please the Court,
16. this witness has not been qualified to give an opinion
17. at law. Even if he was it's not admissible to tell the
18. Court what the law is.

19. Q. Are you familiar with what the requirements are with re-
20. spect to comprehensive plans?

21. MR. FITZGERALD: If it's requirements of law,
22. I renew my objection.

23. JUDGE MOON: Well, he can testify as to what
24. his understanding is of what's required of him in his

1. job. I mean, it's not binding; his opinion as to what
2. the law is is not binding on the Court or is not even
3. evidence, but it can explain why he does or does not have
4. a plan. If he doesn't think the law requires one, that's
5. some of the reason for not having one.

6. MR. FITZGERALD: Well, Your Honor, this wit-
7. ness does not adopt the plan, . . .

8. JUDGE MOON: Well, I know, but . . .

9. MR. FITZGERALD: He said that the City Coun-
10. cil must adopt the plan.

11. JUDGE MOON: Well, he can still give his
12. understanding as to why the City doesn't have a plan.

13. A. It is my firm belief that Harrisonburg has a series of
14. adopted plans, and it has been our philosophy--"our"
15. meaning City Council ultimately--to adopt plans accord-
16. ing to specific subject matter. And there are certain
17. functions of the City, such as utilities, that the City
18. has the plans, in fact, in essence as general guides.
19. But, shall I give you a couple of specifics that actually
20. we've already touched on. We have specifically adopted
21. a land use plan, the zoning ordinance and the zoning map,
22. which has gone through several total reviews. We have
23. specifically a major arterial street plan, specifically
24. a parks and recreation plan. And all of these have, in

1. fact, been thoroughly reviewed and hashed out in the pub-
2. lic hearing process, and adopted and amended. I believe
3. Mr. Gilkerson referred to the adopted parks plan, and
4. I'm referring today to the land use plan and the zoning
5. ordinance and the arterial street plan. And I would also
6. like to add that the schools certainly come into the pic-
7. ture as Mr. King testified regarding his six year plan
8. that is submitted to the state, but also to City Coun-
9. cil.

10. Q. What is the difference between a comprehensive plan and
11. a comprehensive utilities plan?

12. A. Well, I think the difference, the comprehensive overall
13. plan includes many subjects; whereas if you say what is
14. a comprehensive utility plan, that's a specific document
15. addressing the subject of utilities or a utility. Now,
16. it's my understanding that the Harrisonburg Electric
17. Commission has specific plans of their own that they
18. abide by and, you know, technical aspects that they must
19. adhere to concerning the load and the growth patterns and
20. what-have-you.

21. Q. Within your comprehensive plan recently recommended by
22. the Planning Commission to the City Council to replace
23. the 1970 plan, you have many sub-plans but one of those
24. is not a utility plan, is that correct?

1. A. No, the utilities actually are discussed on about a
2. page and a half in a document which numbers about eighty-
3. five pages of written material. In addition to the writ-
4. ten text, of course, there are a number of maps involved
5. which are incorporated into the plan. And one map is
6. called community facilities plan, which indicates the
7. Electric Commission's substations and whatnot, plus
8. things like fire stations, the police station, parking
9. lots and decks, and the water facilities and sewer fa-
10. cilities.

11. Q. I think you stated in earlier testimony that the City
12. had its first zoning ordinance in 1939. Would you trace
13. the evolution of your zoning ordinance in a summary way
14. for the Court from 1939 to present.

15. A. Okay, I'll try to be brief. In 1939 the ordinance had
16. basically four categories: a commercial category, an
17. industrial or manufacturing category, and two residential
18. categories. One for medium to high density development
19. and one for lighter density development. This ordinance
20. was carried through the years until the mid-fifties,
21. and in 1958 the entire ordinance was rewritten. And at
22. this point some new districts were added. For example
23. we got into the idea of neighborhood commercial, but we
24. still had the central business district and general busi-

1. more construction of apartments and conversion of houses
2. to apartments or sororities, fraternities, rooming house
3. functions. So, we certainly have been involved in zoning
4. and the density side of zoning since the mid-sixties,
5. and especially in the seventies, because the real thrust
6. of growth began after 1970.

7. Q. If you will, turn to Exhibit H-4, which can be found in
8. the small map book and it's on the easel to your right.
9. Will you tell the Court what that purports to show, Mr.
10. Sullivan?

11. A. This is the present zoning map of the City of Harrison-
12. burg, and it shows our eight zoning classifications in
13. the color scheme.

14. Q. How do eight classifications compare with cities of
15. similar size in Virginia?

16. A. Very similar. The nearby cities of Staunton, Waynes-
17. boro, and Winchester have nine or ten classifications.
18. Martinsville has twelve. Larger cities in Virginia,
19. such as Richmond, have seventeen classifications. Some
20. of the small towns in Virginia have two or three classi-
21. fications. Again, we apply zoning to existing or, in
22. other words, local needs and conditions.

23. Q. Was this zoning map developed on a comprehensive basis
24. or did you just follow existing growth patterns?

1. A. It is based on a comprehensive history and unfolding
2. process. I would say it has become more complicated
3. compared to that 1939 zoning pattern that I described
4. earlier.

5. Q. On H-4, in the purple, that through the center of the
6. town is the type of industrial that you were talking
7. about that grew up adjacent to railroad tracks, the
8. earliest means of commercial growth.

9. A. Yes, the railroad entering right here at North Liberty
10. Street, and swings through Harrisonburg, and one branch
11. goes in a southwesterly direction and one branch goes
12. in a southerly direction toward Staunton. That's the
13. purple color.

14. Q. All right. In looking at the agricultural zones that
15. you have established, to what extent do these zones
16. guide growth and development?

17. A. Agricultural zones?

18. Q. Residential, I'm sorry.

19. A. Okay, we have residential zones in four basic, or four
20. categories. The yellow areas are the R-1, light density
21. or single family zones. Under R-1, our text begins by
22. saying, you know, single family homes. But it also per-
23. mits such amenities that tend to go very nicely with
24. residential areas; parks, schools, cemeteries, churches

1. and agricultural use. Now, going on to the R-2 category,
2. it's labeled as medium density residential areas of the
3. City. This permits single family homes on a smaller lot,
4. if you're just beginning to develop the lots or lay them
5. out. It permits duplex housing and it does permit, if
6. a lot is large enough, to have a triplex or a fourplex
7. house or apartment, or to permit the other items I men-
8. tioned; the parks, the schools, the churches, the ceme-
9. taries, and also R-2 permits using a house for rooming
10. house purposes if the owner lives in. The R-3 residen-
11. tial category is the higher density zone. And, by the
12. way, the R-2 and the R-3 are basically the older neigh-
13. borhoods, but not a hundred percent the older neighbor-
14. hoods. R-3 permits the single family home, the various
15. apartments I described, and larger apartment complexes.
16. We don't cut it off at four units per building. The R-3
17. also allows the rooming houses, and now for the first
18. time I'll mention the sororities, fraternities, univer-
19. sities and colleges, and hospitals. And I think probably
20. the final thing under R-3 that I need to mention is pro-
21. fessional offices are allowed, and also nursing homes.
22. Nursing homes are permitted under R-3. The professional
23. offices basically came about because of the desire to
24. have a couple of doctors' offices in the vicinity of the

1. hospital. And we determined in the late sixties that
2. Richmond, Virginia had such a nice zoning category along
3. Monument Avenue and Franklin Street that permitted older
4. houses to be developed as professional offices, we thought
5. that would be worthy of consideration on East Market
6. Street, just east of downtown, and on South Main and
7. South Liberty, and over on High Street.

8. Q. What was the last category you mentioned?

9. A. The last residential zone is the R-4, residential zone,
10. known as planned unit development. And this particular
11. zone is our little Reston, and we had a developer come in
12. from Northern Virginia with this great idea--now, this
13. actually occurred before I came to the job--but it has
14. resulted in a medium density housing mix for three devel-
15. opments that we saw on the trip. Reherd Acres, Park
16. Crest or Northfield Estates, and Harris Gardens. Now,
17. the mix that I'm speaking of would be, like Reherd Acres,
18. we saw single family homes and for sale townhouses.

19. Q. Would you point out Reherd Acres?

20. A. Reherd Acres is in this location.

21. Q. Now, that's R-4, and those same developers own land imme-
22. diately north of it in the proposed annexation area.

23. A. Yes, they do.

24. Q. Do you know how that's zoned by the County?

1. A. Yes, it's zoned partially higher density, I believe R-3
2. category, along Old Furnace Road, and partially it's a
3. single family category; which is comparable to, as you
4. see, the City's zoning in that case.

5. Q. Where is Park Crest?

6. A. Park Crest is on East Washington Street or just on the
7. north side of East Washington Street.

8. Q. All right, on H-4 that's the second brown area from the
9. north?

10. A. Yes sir.

11. Q. Reherd Acres being immediately above it on the corporate
12. line?

13. A. No, Harris Gardens is immediately above it. This is
14. Harris Gardens. Now, I would like to add that under the
15. R-4, the developer sets aside some of his land for common
16. use, and we have some of this common use actually in
17. parking lot areas, but also in some of the green space
18. intermingled among the living units. R-4 text permits
19. convenience of stores of a small nature, a small percen-
20. tage of an R-4 district could be used or devoted to
21. neighborhood convenience development, neighborhood com-
22. mercial convenience.

23. Q. The question at this point of any person seeking a change
24. in this zoning or rezoning or a special use permit comes

1. first to your Planning Commission?

2. A. The request for rezoning starts with a correspondence
3. to City Council, Council refers it to the City Planning
4. Commission, yes sir. We would be, in essence, the first
5. group to be involved in the process, other than that ini-
6. tial pass through the City Council's minutes.

7. Q. Has City Council been disposed to favor the recommenda-
8. tions of your Planning Commission or to go against them?

9. A. The vast majority of the Planning Commission recommenda-
10. tions, the City Council accepts. If we recommend rezon-
11. ing, the vast majority of the time that property is re-
12. zoned. If we recommend to deny the rezoning, the vast
13. majority of the time Council does not rezone the proper-
14. ty. And by vast, I mean about ninety-eight or ninety-
15. nine percent.

16. Q. Will you speak briefly to the commercial zoning, and
17. with that any views you may have as to commercial needs
18. of a city.

19. A. Well, we have two commercial categories on the map.
20. The pink and the red. Let me go to the map. The pink
21. area is the central business district or B-1 zone. And
22. the red areas that you see around the City are the gen-
23. eral business zones. And, of course, there are some dif-
24. ferences in the regulations in the central business dis-

1. trict. The developer can build his structure right on
2. the property line. This is really reflecting how the
3. community developed prior to 1939 with stores right on
4. the sidewalk out here around the Court Square. The de-
5. veloper doesn't have to provide his off-street parking.
6. He may choose to, and most of them now do for customer
7. convenience. The developer may go into the air as far
8. as he wants. We have six-story skyscrapers, you know,
9. in Harrisonburg. The general business category then
10. begins to spread out the commercial, and there is a
11. height limit, I believe it's three stories. There is an
12. off-street parking requirement involved and a set-back
13. requirement in the general business areas. And, of
14. course, the general business areas might be labeled as
15. neighborhood shopping or neighborhood businesses, you
16. know, in our just normal language. Or, it might be
17. labeled highway commercial or it might be labeled shop-
18. ping center commercial. But, for sake of simplicity, and
19. we've had certainly success in controlling and regulat-
20. ing zoning, we just say it's either going to be central
21. business district if you're here in the basic middle of
22. the community, and general business in the outlying por-
23. tions, if it's, in fact, a commercial area.

24. Q. Would you comment briefly on your existing industrial

1. zoning and any associated needs of the City in that area.
2. A. The industrial zones that you see on the map, an awful
3. lot of it is related to the railroad track. In fact, the
4. only truly large industrial pattern over here on the map
5. not near a railroad track would be Waterman Drive corri-
6. dor, which was annexed in 1962. And then, of course,
7. north of this Southern Railroad crossing, North Liberty
8. to Charles Street, we have zoned industrial. Both of
9. these areas, by the way, were involved in the 1962 annex-
10. ation. And at that time the Frazier Quarry was underway,
11. so I think there was little choice but to zone at least
12. part of Waterman Drive as industrial. And then at the
13. northern end of Waterman Drive the Highway Department of-
14. fice was located, and I'm not sure about the Pepsi-Cola
15. plant. Charles Street in 1962 likewise had begun a pro-
16. cess of developing as sort of a truck terminal area,
17. without zoning, by the way. It was just something that
18. took hold, I suppose, between North Main Street or U. S.
19. 11 North as it connected North Liberty.
20. Q. While you were just at Exhibit H-4 you pointed to an
21. area to the west of the City on the western boundary
22. just north of . . .
23. A. West Market perhaps?
24. Q. What is that exiting, is that 33 exiting to the west?

1. A. This is 33, yes.

2. Q. Just north of where 33 exits the City, and it would ap-
3. pear to me that that's the only area zoned in that deep
4. purple for heavy industrial. Is that correct?

5. A. Yes. The last zone, the M-2, we call industrial; but
6. in reality it means heavy industrial as that relates to
7. our situation. The situation is it's a rock quarry.

8. Q. From your knowledge of the City and working with var-
9. ious planning tools, is there in your opinion any other
10. area within your present corporate limits that could
11. accommodate in keeping with your plan heavy industrial?

12. A. No sir.

13. Q. What has the City's experience been in attracting in-
14. dustrial establishments and businesses into its corporate
15. boundaries?

16. A. Well, in the last shall we say eighteen or nineteen years
17. the two new industries are Dunham-Bush and Kawneer that
18. are located just east of Interstate 81.

19. Q. They are on either side . . . they are the purple tracts
20. shown on either side of the cloverleaf to the east of
21. 81, is that right?

22. A. Yes sir. They are in the City of Harrisonburg, this
23. portion and this portion (indicating on map).

24. Q. That's in twenty years?

1. A. Yes. They were annexed into the City as I believe has
2. been mentioned to the Court before, as far as the rea-
3. sons and whatnot.

4. Q. There were friendly annexations to acquire the sites
5. on which they could be situated, is that correct?

6. A. Yes sir. As I understand it, the two companies desired
7. to come to the Harrisonburg area and to the Rockingham
8. County area, and these were the choice properties where,
9. as we know, beside the interstate and rail access was
10. made available. So, the property was there, the space
11. was there for these types and sizes of industries.

12. Q. Were City utilities a consideration?

13. A. Yes sir, water and sewer.

14. Q. Both industries are served by City water and sewer?

15. A. Yes sir.

16. Q. Are you familiar with the zoning in the annexation area?

17. A. Yes, I am.

18. Q. In the event that annexation be granted to the City of
19. Harrisonburg, what would the City's plan be with respect
20. to zoning in the territory sought to be annexed?

21. A. Well, basically our present City zoning ordinance says
22. that territory annexed shall be subject to Rockingham
23. County zoning classifications and regulations as it was
24. zoned when the annexation takes effect, and until it is

1. rezoned by the City. So, what we're saying is, if we
2. were to annex residential or commercial or industrial
3. land, or agricultural land, it would remain under that
4. set of regulations; but meanwhile the City would analyze
5. the total land use pattern and ultimately the City Plan-
6. ning Commission would have a public hearing or hearings
7. and City Council would have hearing or hearings, and of
8. course the Council then adopts a zoning ordinance for
9. the entire area.

10. Q. Within what period of time would you contemplate the
11. hearings would be held and the area rezoned to the ex-
12. tent required?

13. A. I would contemplate that it would occur definitely with-
14. in that first six to eight month period following an
15. annexation date.

16. Q. There has been, Mr. Sullivan, earlier reference to the
17. relocation or location of commercial enterprises beyond
18. the boundaries of Harrisonburg. Are you familiar with
19. some of these relocations?

20. A. Yes, I am. A number of places of business you're refer-
21. ring to?

22. Q. Yes. Do you have an exhibit that would show the Court
23. the relocation from the City that you've testified to?

24. A. Yes sir.

1. Q. I have placed before you Exhibit H-32, which can also be
2. found in the small book, and I will ask you if you will
3. step up to that and tell the Court what that purports
4. to show.

5. A. I'll begin with the rainbow on the map. This indicates
6. the number of commercial establishments that have relo-
7. cated from the central portion of Harrisonburg to the
8. Valley Shopping Mall.

9. Q. The shopping mall was built when?

10. A. It was opened in the fall of 1978.

11. Q. So, the rainbow effect to which you refer to on H-32 has
12. occurred within two years plus, is that correct?

13. A. Yes sir.

14. Q. What are some of the stores or business establishments
15. that have relocated from downtown to the Valley Mall area?

16. A. Leggett's Department Store, J. C. Penney's. I think we
17. would be fair to say they were major stores that have
18. moved from downtown Harrisonburg to the Valley Mall.

19. Q. Are these stores the type that are generally thought of
20. in shopping center malls as anchor stores?

21. A. Yes sir.

22. Q. What does an anchor store imply?

23. A. It implies that they attract most of the attention,
24. and therefore generate the bodies that you need to move

1. back and forth in front of the smaller stores. And, of
2. course, most shopping centers are designed with the an-
3. chors on the end, so you're forced to walk by all the
4. other folks. That's smart design, of course. That's
5. basically what an anchor store is.

6. Q. You have a great number, to be specific you show thirty-
7. four businesses which have relocated on Exhibit H-32 from
8. within the boundaries of Harrisonburg to the annexation
9. area. Did you develop this data?

10. A. Yes, I did. Basically this data came from our office.
11. There are a number of stores, four or five, that moved
12. to the Mall but I think it's fair to report that they
13. also continue to have a downtown outlet or downtown store.

14. Q. What store did you have reference to there?

15. A. Well, we have Medco Drug Store, Alfred Ney's, American
16. Federal Savings and Loan, Colony Optical.

17. Q. These stores that have relocated but continue to have a
18. downtown operation are shown with an asterisk on Exhibit
19. H-32, correct?

20. A. Yes sir.

21. Q. Do you have any comments with respect to any other of
22. these relocations?

23. A. Well, I think I should go ahead and say that these var-
24. ious orange lines indicate relocations simply from other

1. parts of the City, they've gone in different directions.
2. For example, we have an industry, clean industry out
3. here next to Ashby Heights, ComSonics, and it really
4. started as a man's home occupation up here at his house.
5. So, when he wanted to increase his operations, he had to
6. build a shop and he found the site he wanted on Port
7. Republic Road. A couple of the businesses have moved
8. from basically a downtown location north, there's one
9. over here west of the City limits, southwest, and further
10. south to the Pleasant Valley Industrial area.
11. Q. We have established through your earlier testimony that
12. the rainbow effect as shown on H-32, the large map, or
13. the large red area in the small book, are relocations
14. that occurred in approximately the last two years. Will
15. you give the Court the time frame of relocation for those
16. shown in the orange color which relocated to other parts
17. of the annexation area?
18. A. That would go back to 1962. In other words, I didn't
19. mention Howard Johnson's, but Howard Johnson's was one
20. of those orange lines, and they were located on Route 11
21. South and they wanted to build a restaurant and motel
22. over on the interstate. So, they relocated just east of
23. the interstate at the Port Republic Road interchange.
24. But that, for example, I know goes back to the early

1. sixties or mid-sixties when that particular movement oc-
2. curred.

3. Q. Of the nineteen that have relocated to the annexation
4. area and places other than the Valley Mall area, approx-
5. imately how many of those did so within the last five
6. to ten years?

7. A. Oh, about I think ten of them, maybe plus, maybe twelve.

8. Q. What has been the experience of the owners of the proper-
9. ties who have lost these tenants or these businesses?

10. MR. FITZGERALD: I object, Your Honor. It
11. would be purely hearsay. We've been listening to it, I
12. know, but there comes a time we have to draw the line
13. somewhere.

14. MR. COGAR: All right, I'll withdraw the
15. question.

16. JUDGE MOON: He can only testify as to what
17. he actually knows and observes.

18. Q. Mr. Sullivan, if you are walking around the streets of
19. Harrisonburg and a business is in operation, is it
20. within your capability to look through the windows and
21. see whether people are at work? Do you know when a busi-
22. ness is open?

23. A. Yes, usually. The lights are on . . . is that what you
24. mean?

1. Q. Yes. We're going to get it as uncomplicated as possible.
2. And what is the indication to you that a business is
3. closed?

4. A. Well, as I say, no lights, often a little sign in the
5. window or the door that says closed.

6. Q. Have you in recent days had occasion to go around your
7. City and look at business establishments which appeared
8. to you to be closed?

9. A. Yes sir.

10. Q. Did . . .

11. MR. FITZGERALD: I think the question ought
12. to be clarified as to whether he means closed permanent
13. or closed at midnight or closed on Sunday . . .

14. MR. COGAR: Oh, I'm sorry, I didn't make that
15. clear.

16. Q. Did you understand me by the question . . .

17. JUDGE MOON: Just tell him what you under-
18. stand. We don't need to go into what he understood.

19. A. Closed from operating a place of business or industry.
20. In other words, closed permanently.

21. Q. Closed, nothing there.

22. A. Yes.

23. Q. Did you at my request cause some photographs to be made
24. of some of these businesses which appeared to be closed

1. permanently?

2. A. Yes sir.

3. Q. Have you put those photographs on a board of some sort?

4. A. I understand they are on a board.

5. MR. FITZGERALD: Is this another un-prefiled
6. exhibit?

7. MR. COGAR: This is a series of photographs.

8. MR. FITZGERALD: Has it been filed before?

9. MR. COGAR: No sir.

10. JUDGE MOON: Why don't we go ahead and take
11. a recess.

12. (Recess)

13. Q. Mr. Sullivan, there is displayed on the easel to your
14. right an exhibit which has been marked H-32A for identi-
15. fication. How did that come to be constructed?

16. A. Photographs were taken by a local photographer last week
17. during the regular business hours of the weekdays, Wed-
18. nesday and Thursday.

19. Q. I asked you, did I not, sometime Wednesday morning.

20. A. Yes sir.

21. Q. To take pictures of certain businesses closed.

22. A. Yes sir, of some of the businesses that are closed.

23. Q. And these pictures were taken during regular business
24. hours on Wednesday and Thursday.

1. A. Wednesday probably after lunch hour or middle of the day,
2. and then Thursday, yes sir.
3. Q. Would you step up to H-32A and point out to the Court
4. what is shown there.
5. A. I'll start at this point. Metro Pants Company, which
6. is over here at the eastern edge of downtown.
7. Q. Excuse me, the lines that are drawn from the pictures
8. to the map in the center of the Exhibit H-32A, are in-
9. tended to show where the building shown in the photo
10. is located within the City, is that correct?
11. A. Yes sir. This is one of Metro's two or three structures
12. in their complex just east of the post office.
13. Q. And Metro closed when?
14. A. 1981, right after Christmas. This is the Swift and
15. Company building over here on North Liberty Street. It
16. is presently not operating as a poultry meat packing
17. facility. They closed also since Christmas, I believe.
18. Q. Is it operating in any fashion?
19. A. To my knowledge it is not at this stage. Ram Supply was
20. located on Chesapeake Drive over in our industrial strip
21. to the west of downtown. This is a building owned by
22. Metro, we have a vacant Metro warehouse, and that's lo-
23. cated within a block of this Metro structure, at the cor-
24. ner of North Mason and East Elizabeth Street. Years ago

1. it was the Southern Bakery and there was always a nice
2. odor associated with the fresh baked bread in that vicin-
3. ity. This is Ney's House of Fashion, a ladies dress shop,
4. that recently closed on South Main Street across from
5. the Leggett's Department Store Building. This is the
6. vacant building that used to house Charles Smith Shoes
7. on west Court Square, just out the window from this build-
8. ing. More recently there was a chain ladies garment
9. store in this building. And this is a new structure
10. that replaced an older one in the very same spot on South
11. Main, a half a block south of the Courthouse, the Floros
12. Building. That's again on downtown Main Street. Glass-
13. ner Jewelers over on the east side of Court Square, ad-
14. jacent to the County Office Building. The Leggett's
15. Building. At the top of this display we have the upper
16. level of our Liberty or Water Street parking deck. There
17. are a few cars, but it's not fully occupied. And then
18. this illustrates the lower level of the Wolfe Street
19. parking lot or parking deck with a number of available
20. spaces.

21. Q. When were those parking decks built?

22. A. This Water Street-Liberty Street parking deck was built
23. in the mid-seventies, and the Wolfe Street lot is newer,
24. perhaps only two years old.

1. Q. Was that done in response to a business demand?

2. A. Yes, it was. And, of course, it was and is a part of
3. the Parking Authority's overall plan to provide the off-
4. street parking for a busy and viable downtown district.

5. Q. Were the operators of any of the business establishments
6. shown on Exhibit H-32A desirous of having those parking
7. facilities built?

8. A. Well, concerning the Water Street lot, I know that the
9. Leggett's Department Store people, the manager and the
10. owners in Lynchburg, and Ney's House of Fashion, were
11. very much interested in more parking in the southern
12. portion of downtown Harrisonburg. The Wolfe Street lot
13. was, of course, a surface parking lot prior to the con-
14. struction of the deck. And Metro Pants was, in essence,
15. using that lot, about fifty or sixty percent for their
16. employees. What they would do was have their employees
17. park there before eight in the morning, and then about
18. nine o'clock Metro would come and feed the meters so that
19. the employees--that was a fringe benefit, parking for
20. the employees a block from the factory. And the building
21. of the deck was a response from contacting banks in down-
22. town, the George Washington National Forest people and
23. the post office people, seeing a need for parking as close
24. as possible to the various offices and places of commerce

1. and industry. And, again, from the zoning description,
2. because we don't require the businesses to have their
3. own parking, the City has I'd say since the early fifties
4. definitely been in the business of providing as many
5. parking spaces as possible throughout the downtown area.

6. Q. The building previously occupied by Penney's is not
7. shown on there. Has it been occupied by someone else
8. since Penney's moved to the Mall?

9. A. Yes sir. The Penney's building on the left side of the
10. Court Square has a series of small shops. This remodel-
11. ing, revitalization of that structure took place imme-
12. diately upon the Penney's store moving to the Valley
13. Mall. In other words, the construction and redesign
14. process took place in 1979 and opened then sometime in
15. 1980.

16. Q. What sort of businesses do you have in there now?

17. A. Oh, there's a restaurant, a ladies apparel shop, and I
18. believe there's a hair fixing place and other small gift
19. type shops in that structure.

20. Q. To your knowledge do the vacated business establishments
21. on H-32A represent all the unoccupied structures within
22. the City resulting from relocation?

23. A. No sir. We have a number of other vacant structures
24. that formerly housed places of business or warehouse and

1. industrial type activities.

2. Q. Were these selected on the basis that they represent
3. some of the more substantial properties vacated?

4. A. I think so, yes.

5. MR. COGAR: I offer Exhibit H-32A.

6. JUDGE MOON: No objection, it will be received as 32A.
7.

8. Q. Mr. Sullivan, from your perspective as a professional
9. planner and head of the planning department of the City
10. of Harrisonburg, what do you believe the City's needs
11. are for additional developable land beyond its present
12. boundaries?

13. A. Well, because of the relatively rapid growth in Harrisonburg,
14. especially in the 1970's, and this growth has
15. been accelerated quite a bit in the late seventies, early
16. eighties, the present territory of Harrisonburg cannot
17. provide the types of desirable sites for certain developments,
18. industrial in particular, and even a number of
19. the commercial type establishments. The activities that
20. have been taking place, developing in the Greater Harrisonburg
21. area, I think it's interesting to say that they
22. want to be Harrisonburg oriented or have Harrisonburg
23. addresses through the post office system . . .

24. MR. FITZGERALD: I object to what these in-

1. dustries want.

2. JUDGE MOON: Sustained.

3. A. At any rate, they are nearby because there are certain
4. things available, such as utilities, road frontage, even
5. perhaps the fact that they are still to be close to higher
6. population densities. I think these are some of the reasons
7. development is taking place around the fringes of
8. Harrisonburg.

9. Q. You are familiar with the annexation area?

10. A. Yes sir.

11. Q. The area sought to be annexed.

12. A. Yes sir.

13. Q. Do you have an opinion with respect to the ability of
14. the vacant land, industrial and commercial land, within
15. the present boundaries of the City to compete in the
16. marketplace with sites in the annexed area?

17. A. I think we have, of course, some parcels available for
18. development, or some parcels that are not urbanized.
19. But they are, by and large, odd in shape, small in nature,
20. not on the key arteries of the City, not on railroad
21. right-of-ways, for example. So, in other words, we have
22. some land available for some additional development. It
23. is limited as far as capability or capacity to be the
24. best choice.

1. Q. How do you contrast that with sites you have seen and
2. know of in the annexation area?

3. A. Well, I know that the sites, generally speaking, or the
4. potential sites by assembling perhaps parcels, would be
5. vastly larger in scale. And also there's more likelihood
6. of good highway road frontage or interstate connection
7. in the proposed annexation area versus the present six
8. square mile City of Harrisonburg area. So, Harrisonburg
9. really needs land in order to remain or be competitive.

10. MR. COGAR: You may examine.

11. A. Well, I think if . . .

12. MR. FITZGERALD: I didn't hear a question
13. asked. Did you ask a question?

14. MR. COGAR: No, but if you haven't finished
15. your answer, Mr. Sullivan, go ahead.

16. A. A prime example . . .

17. MR. FITZGERALD: I object.

18. JUDGE MOON: No, no, he misunderstood. I
19. think you said "You may examine", and I think he thought
20. you said "Give an example".

21. A. I thought he said give an example.

22. JUDGE MOON: Go ahead, Mr. Fitzgerald.

23.

24.

1. City have anything to do with putting a tenant in any
2. one of those stores you show on that board?

3. A. I don't relate the actual court, legal process of annex-
4. ation, as having much or anything to do with putting
5. merchants back in these stores.

6. Q. As a matter of fact, since many of those merchants moved
7. out or went out, wherever they went, there have been
8. other merchants who have moved in since they closed up.
9. Isn't that true?

10. A. There is, yes sir, a constant change in the makeup of
11. the business district here and the business district
12. anywhere in the United States.

13. Q. And there's really no difference in the amount of vacancy
14. that you've been able to come up with here now than there
15. was ten years ago in the City of Harrisonburg, is there?

16. A. There were, I frankly don't believe, as many vacancies
17. ten years ago in the City of Harrisonburg as there are
18. in 1981.

19. Q. Economic conditions were not the same then either, were
20. they?

21. A. No sir.

22. Q. Would you say from your knowledge as a planner and from
23. your study of the area that the economic condition gen-
24. erally has been bad in the last couple of years?

1. A. I believe so.

2. Q. A business could have a sizeable gross receipt or receipts
3. in a year, pay a sizeable tax, and go broke, couldn't it?
4. No profits?

5. A. Possibly it could.

6. Q. Did you indicate that you had given no consideration
7. at all to planning for the future use of the area sought
8. for annexation if it were granted?

9. A. No, I didn't indicate we haven't planned beyond the City.
10. We have planned, expressed planning needs such as our
11. land use plan illustrating potential and existing land
12. use patterns, and also the arterial street plan reflects
13. areawide planning needs. The parks and recreation plan,
14. not the one Mr. Gilkerson alluded to as the new plan,
15. but the existing plan in essence involves the entire
16. area. If you get what I mean. I mean, we planned for
17. the remodeling of the Riven Rock Park in the west end
18. of the County, and our parks here in the City touch the
19. County territory and, of course, anticipate use of citi-
20. zens from throughout the area.

21. Q. Other than using some of the land for parks, have you
22. developed any plan of development or uses of the area
23. sought to be annexed?

24. A. Not other than the utility subjects and the highways.

1. Q. Well, I'm talking about the use of the land for residen-
2. tial, commercial and industrial purposes.

3. A. No, not as a final conclusion, if that's what you're get-
4. ting at. We don't have a plan down to the details of
5. how we would like to guide the overall continued growth.

6. Q. Do you have a preliminary plan?

7. A. We do, sir.

8. Q. And where is that?

9. A. Well, the plan update we've been referring to is now
10. in the hands of City Council for their consideration.

11. Q. And does that show how you would use the land commercial-
12. ly, residentially and industrially if it were granted?

13. A. It has a map marked and so named, a land use plan.

14. Q. Yes sir.

15. A. Which includes this area of the City present and the
16. proposed additional area.

17. Q. Mr. Sullivan, you say that plan is before the City Coun-
18. cil now, does it show the way the City would propose
19. to use the land sought for annexation with regard to
20. residential, commercial and industrial uses?

21. A. Yes sir.

22. Q. In the future.

23. A. Yes sir.

24. Q. It does?

1. A. Yes sir.
2. Q. But that has not been adopted?
3. A. Not adopted, no sir.
4. Q. Dunham-Bush, you mentioned that. Do you know when that
5. located there?
6. A. The construction began in 1964, I believe.
7. Q. The . . .
8. A. Construction work on the plant.
9. Q. When did the consideration of locating there begin?
10. A. I don't know the exact answer, but my guess is in the
11. early sixties.
12. Q. About at the time of the 1962 annexation case?
13. A. Just about the same time.
14. Q. Right after the City had doubled in size.
15. A. Yes sir.
16. Q. And Dunham-Bush still wanted to locate outside the City?
17. A. Now I wasn't here in the early sixties, and I know the
18. steps that occur, an outside industry works with the
19. Rockingham Development Corporation. And up to a point
20. future industries and the discussions that take place
21. with future industrial developers is not known to the gen-
22. eral public or, in fact, even a number of City officials.
23. But the point arrived where Dunham-Bush decided to come,
24. I believe it was then called Space Conditioning from

1. Los Angeles, to our Greater Harrisonburg area.

2. Q. Do you agree that the location of public facilities and
3. utilities go a long way to guiding the growth?

4. A. I do, sir.

5. Q. And is this part of the plan that's still before the
6. City Council?

7. A. You mean utilities and expansion thereof?

8. Q. Yes, a comprehensive plan insofar as utilities and public
9. facilities.

10. A. Yes, it's part of the text material. The discussion of
11. public utilities is part of the text, yes.

12. Q. And public utilities and public facilities.

13. A. Yes.

14. Q. Now, is it true that the reason you gave your testimony
15. in the Electric Commission case was the Commission wanted
16. to show that it did not have to get approval of the loca-
17. tion of its electric lines or its facilities?

18. MR. COGAR: I object, Your Honors please.

19. I don't know if he knows what the Commission wanted to
20. show.

21. MR. FITZGERALD: My goodness.

22. JUDGE MOON: Sustained.

23. Q. Were you told why they wanted your testimony? Or your
24. affidavit?

1. A. It was my understanding that it would help the Electric
2. Commission's case.

3. Q. Mr. Sullivan, do you know it was the Commission's posi-
4. tion in that case that if the plan had not been adopted
5. at that time with regard to public facilities and util-
6. ities, the Commission did not have to get approval of
7. the location.

8. A. That certainly was their legal interpretation of the
9. status of the City Code regarding H.E.C. and the status
10. of the Code regarding planning.

11. Q. And you were asked in respect thereto to give this affi-
12. davit.

13. A. Yes sir.

14. Q. And you gave the affidavit and, of course, it's true,
15. isn't it?

16. A. Yes, this is a true statement.

17. MR. FITZGERALD: I'd like to introduce this
18. as County Exhibit 105, I believe it is.

19. JUDGE MOON: All right.

20. Q. Do you know of any reason why the City has not adopted
21. that portion of the comprehensive plan since the initial
22. part of it was adopted, I believe you said, in March of
23. 1970?

24. MR. COGAR: Your Honor, that misstates his

1. testimony. They had a plan in 1970 and then they worked
2. on another one, the new plan.

3. MR. FITZGERALD: If you want to take the seat
4. I'll be glad to . . .

5. MR. COGAR: No, no, I just . . . I'm stating
6. my recollection.

7. Q. You did say the City had adopted some part of the compre-
8. hensive plan?

9. A. Yes sir, we have. We have the 1970 land use plan,
10. which was adopted in March of 1970.

11. Q. So, as early as 1970 you had adopted that part of the
12. comprehensive plan?

13. A. Yes sir.

14. Q. Can you tell the Court why . . . no, I'll change the
15. question. When did you first recommend to the City, to
16. the Planning Commission or the City Council, that a com-
17. prehensive plan with regard to utilities and public fa-
18. cilities should be adopted?

19. A. That I recommended or got involved in in 1979, in the
20. overall comprehensive update.

21. Q. Can you tell us why you didn't get involved in it as
22. early as 1970 when you were talking about land use?

23. Didn't you agree that utilities and facilities have a
24. lot to do with guiding development?

1. A. I think, to answer that as best I can, the basic atmos-
2. phere of our procedures in City Hall and our City govern-
3. ment is that we have many plans, some of them are trans-
4. lated into specific really construction projects by the
5. water department, the sewer department, the electric
6. commission, and so forth. And there's been a very defi-
7. nite emphasis in the philosophy of City Council and the
8. Planning Commission and City management that we do be-
9. lieve in planning as a general guide, and specifically
10. our City has seen fit to adopt streets as a plan, parks
11. and recreation, land use and the zoning. Now, more spe-
12. cifically, the redevelopment and housing authority has
13. its set of plans for redevelopment and public housing,
14. and the parking authority has its plan for the parking
15. garage and parking lot development. And the utilities
16. were, for instance water and sewer, so involved with the
17. expanded water system on the west side of the County,
18. and then the Sewer Authority came along in 1970, that
19. the City Council and the Planning Commission have seen
20. all these things underway in a very specific manner by
21. the various units that are set up, the authorities and
22. separate commissions; so, again, you know, it's a con-
23. stant process and we feel, I think it's the philosophy,
24. that the so-called comprehensive plan update is just that.

1. It's, again, a broad statement. And even down to the
2. H.E.C., it's a very vital, businesslike operation, and
3. we only have a page and a half in here so far as describ-
4. ing electric utilities.

5. Q. Now can you answer the question?

6. A. I didn't mean to elude it. - What was the question?

7. Q. The question was, why the City has not adopted the
8. comprehensive plan with regard to utilities and public
9. facilities in all these years.

10. A. Well, I would say it's because the City Council set up
11. the Electric Commission in the mid-fifties and they've
12. also operated themselves very, very detailed into the
13. water and sewer expansion service.

14. Q. Would you say they didn't need it?

15. A. Well, they need the general idea, which means the gener-
16. al documentation. They have chosen to have these gener-
17. al documents, you know, available through the years.
18. And they have before them now a document that on March
19. 19th, I believe, I reminded them to study it and schedule
20. public hearings to eventually adopt this booklet.

21. Q. Well, if it's not needed, why are they adopting it now?

22. A. I think they're going to at least consider adopting it
23. at the advice of their City Attorney and the whole place
24. we are in history. It's gotten so that everything we

1. do needs to have a legal sanction, so we're going to
2. adopt this plan update. And I would anticipate that it
3. will have to be rewritten again in the very near future.
4. But that's not wrong, this is what it's all about in
5. planning, especially for a community that's subject to
6. the rapid changes; whether it changes up or changes down.
7. We're not sitting still.

8. Q. I don't want to prolong this, but what you're saying
9. is that it was not needed in the past to have an adopted
10. comprehensive plan insofar as utilities and public facil-
11. ities, but you think it is now.

12. A. I would agree we should adopt the plan update that in-
13. cludes mentioning the utilities, and I would agree that
14. H.E.C. has had a full-fledged adopted program, you know,
15. directed by its Board of Directors and Superintendents
16. since the mid-fifties. The Planning Commission, by the
17. way, has reviewed H.E.C.'s purchases of properties and
18. construction of subways--of substations. Not subways
19. yet. And we have not looked at telephone poles or high
20. wire poles in the history of our development.

21. Q. You talked about the by-pass road being 81. Eighty-one
22. by-passes Route 11 from Pennsylvania, in Pennsylvania all
23. the way down to Tennessee, doesn't it?

24. A. I believe so.

1. Q. That's the by-pass, isn't it? Of Route 11?
2. A. It's a parallel route, yes sir.
3. Q. Are you telling us that the location of 81 is where the
4. City planned a City by-pass route?
5. A. The late forties and early fifties booklets that I have
6. had access to indicate that the best place for a by-pass
7. in the Harrisonburg vicinity would be east of the City
8. proper. They considered going around the west side,
9. apparently to a great extent back in the late forties.
10. Q. My question was, the location of Route 81, was that where
11. the City had planned to put a by-pass before 81 was built?
12. A. My recollection of the booklets and the maps therein
13. is that the by-pass was going to be built just about
14. where Interstate 81 now exists.
15. Q. And did I understand you that that section of the by-pass,
16. by-passing the City, of 81, was opened in 1960?
17. A. 1960, yes sir.
18. Q. Two years prior to the last annexation, is that correct?
19. A. Yes. My Uncle Fallon cut the ribbon on that project, by
20. the way. He was head of the Bureau of Public Roads for
21. the State of Virginia. He is also a native of Harrison-
22. burg.
23. Q. Did I understand you to say also that in the improvements
24. to some of the arterial roads within the City, that the

1. State Department of Highways was called upon for their
2. assistance?

3. A. Assistance to the extent that they assisted us with funds
4. to hire Hayes, Seay, Mattern and Mattern out of Roanoke
5. to draw up that 1966 plan, and they also assisted with
6. some technical review and advice.

7. Q. The City relies on the State Department of Highways for
8. highway construction pretty heavily, doesn't it?

9. A. Pretty heavily when it comes to those kinds of roads
10. that we can apply for the funds. And then we have,
11. what do you call it, the breakdown of so many federal
12. dollars and so many state dollars and so many local
13. dollars.

14. Q. You mentioned the fact that these roads were planned to
15. carry traffic in and out of the City out beyond the
16. limits. That's true whether or not they're going 33
17. all the way to Elkton, isn't it?

18. A. I think I follow your question, yes sir.

19. Q. When you talked about the people coming into the City
20. using those roads, you said coming into the City to do
21. business or to work in the City.

22. A. Yes sir.

23. Q. And would you agree that the influx of people into the
24. City in the morning, for instance, does show an influx

1. of people not to come in and go to bed in their homes,
2. but to come in and go to work or to come in and do busi-
3. ness.

4. A. Yes.

5. Q. In your knowledge, you mentioned something about the
6. history of the growth of Harrisonburg, and other wit-
7. nesses have alluded to it too; in your knowledge of the
8. City of Harrisonburg, the area was the County seat to
9. begin with, was it not?

10. A. Yes sir.

11. Q. It was not an incorporated town or city to begin with.

12. A. No, not in the very beginning.

13. Q. And the growth of the City of Harrisonburg was initiated
14. by the fact that the Courthouse and the County seat
15. were located right where we're sitting?

16. A. Yes sir.

17. MR. FITZGERALD: That's all.

18. JUDGE MOON: Thank you. I think this would
19. be a good place to stop. We'll recess until tomorrow
20. morning at nine o'clock.

21. (End of Day's Proceedings)

22.

23.

24.