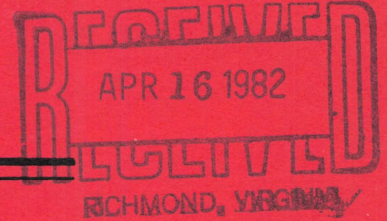


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 812007

COUNTY OF ROCKINGHAM

Appellant

v.

CITY OF HARRISONBURG

Appellee

JOINT APPENDIX
Volume II

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME IV

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 14th and 15th 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 14th day of May, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

L. PRESTON WADE,

having been duly sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. State your name, please, sir.

A. My name is L. Preston Wade.

Q. What is your occupation, Mr. Wade?

A. I am Chairman of the Board of Wiley and Wilson, Architects, Engineers and Planners.

Q. Where is Wiley and Wilson located?

A. Our main office is in Lynchburg and we have offices in Richmond, Virginia Beach and Nashville, Tennessee.

Q. How many persons does Wiley and Wilson employ?

A. Approximately 200.

Q. Is there a resume of your educational and professional background and experience shown on Exhibit Q-5?

A. There is.

Q. Does the information there concerning your educational background and work experience accurately set forth that data?

A. It is.

Q. You have been a participant in a number of annexation proceedings in the past, have you not?

A. I have.

Q. And I note on sheet two of two of your qualification

1. sheet that you have served as a National Director of the
2. National Society of Professional Engineers. Is that
3. correct?

4. A. That is correct.

5. Q. And President of the Virginia Society of Professional
6. Engineers.

7. A. That is correct.

8. Q. And you have served as President of the Lynchburg Chamber
9. of Commerce.

10. A. That is correct.

11. Q. You are a registered engineer?

12. A. I am.

13. Q. In states other than Virginia?

14. A. As shown, yes.

15. Q. Will you briefly trace your working experience, your
16. professional career, from the time you graduated until
17. the present.

18. A. Well, upon graduation I returned to V.P.I. and worked
19. in the planning office, taught full-time applied mechan-
20. ics. I went into the Air Force as an engineer in the Air
21. Force for a tour of duty. Upon leaving the Air Force I
22. was employed by Wiley and Wilson where I had spent some
23. summer employment in earlier years, through my college;
24. and I worked in various positions, as surveyor, drafts-

1. man, designer, engineer, project engineer, project man-
2. ager, as head of the Civil Department. Then I became
3. a partner in the firm in 1969 and was Director of Project
4. Administration and Construction Administration. Then
5. in 1973 the firm was reorganized into a corporation,
6. and I became Vice President. Then in December of 1973
7. I was made President of the firm, and then in January
8. of 1980 I became Chairman of the Board.

9. Q. During your tenure with Wiley and Wilson have you been
10. involved in most all of the engineering and planning
11. functions with which your firm deals?

12. A. In one way or another, I have.

13. Q. What was your first involvement with this proceeding?

14. A. In early 1975, we and your firm were called in to assist
15. the City of Harrisonburg in some deliberations regarding
16. possible annexation. They had already gathered certain
17. information regarding two main areas, one of some fifty
18. or so square miles . . .

19. Q. By "they", you mean . . .

20. A. The City.

21. Q. City Council?

22. A. City Council and the administration. And another twenty-
23. six square miles. At which time they did call us in.
24. And upon looking over the information and all, they ask-

1. ed for our joint recommendation as to what might be a
2. feasible approach for annexation, if feasible at all.

3. Q. Prior to the first conference at which you appeared, at
4. which time you were shown by the Council and administra-
5. tion annexation areas of some fifty square miles and
6. another of something less than half of that, you had had
7. no prior input into their thinking, is that correct?

8. A. None whatsoever.

9. Q. At the time of that conference, were you asked to con-
10. sider the feasibility of the annexation of the areas
11. which they had considered, as well as any other areas?

12. A. Yes, we were.

13. Q. And did you make an investigation and ultimately a re-
14. commendation?

15. A. Jointly we did so.

16. Q. Is the line that is embodied in the present annexation
17. ordinance the line that you recommended in 1975?

18. A. That is correct, the 14.14 square miles being sought
19. here today.

20. Q. In arriving at a recommendation in 1975 that that area
21. be the subject matter of the annexation ordinance, what
22. factors did you take into account?

23. A. Well, there were any number of factors in it. If I may
24. utilize one of the maps here, I might better be able to

1. explain. We were interested in the present development
2. within the corporate limits, . . .

3. Q. You're looking now at . . .

4. A. I'm referring to H-6. We were interested in the develop-
5. ment within the existing corporate limits as of the
6. date which is shown on here in red, and the development
7. as you see here by the various categories pretty well
8. indicates that it was a rather built-up area. There's
9. been a lot of testimony before on this particular point,
10. but the building up of this particular area and spilling
11. over into the adjoining area, which is best shown over
12. here, gave us the natural areas to look at to see if
13. that might be a feasible area. We were interested in
14. such things as community of interest, where services
15. might be provided by the City in 1975. And without go-
16. ing back and reiterating all of those that you've heard
17. about earlier, we had water and sewer, and/or sewer, in
18. any number of areas. I'm pointing here to the Fairway
19. Hills area, the Forest Hills areas, the Route 11 area,
20. the Pleasant Valley Industrial Park area, the Park View
21. Sanitary area, and in certain selected areas right adja-
22. cent to the City. We also in looking at what might be
23. desirable land for development, and those would be the
24. white areas shown on here, the undeveloped area at that

1. time, some of which are in farmland, which you've heard
2. a lot about; but we took into account the lay of the
3. land, its proximity to certain major arterials, as well
4. as how we might go about servicing this particular area
5. with those normal urban-type services. Whether it be
6. fire, police, planning and zoning, and that sort of
7. thing.

8. Q. Excuse me just a moment. You have pointed out on the
9. map arterials going out of the City in all directions
10. toward the outer perimeters of the annexation lines, and
11. you have shown a development going out of the City in
12. virtually all directions to the outside perimeter of
13. the annexation line. And you have referred to services
14. provided by the City beyond its boundaries into various
15. of those areas. On the map that you are looking at,
16. H-8, there are what I would call interstices or spaces
17. in between those arterials and that development. Did
18. you take it into account for any purpose?

19. A. We took into account the spaces, interstices, in between
20. the development. And, as I mentioned a moment ago, the
21. particular lay of that land and how it might best be
22. developed in the future. That led us to find not only
23. industrial, commercial, but residential areas throughout
24. the area here that would be desirable for future devel-

1. opment.

2. Q. In the development . . . in considering the area that
3. you proposed in 1975 for annexation, did you take into
4. account or were you aware of, or both, the fact that
5. there had been an annexation in 1962?

6. A. We were very much aware of that.

7. Q. All right, you were aware of the area and population
8. that was awarded to the City in 1962?

9. A. Yes. In 1962 there had been an annexation of 3.01 square
10. miles involving 926 individuals.

11. Q. Was it 926 or 962?

12. A. It may be 962, I could have transposed that.

13. Q. Have you conducted any studies to ascertain what has
14. occurred in terms of growth and development in the area
15. annexed to the City in 1962?

16. A. I have, in particular with the benefit of the recently
17. supplied to the planning office here in the City of
18. Harrisonburg, the U. S. Census detailed information. We
19. were able to go back in and through a process of identi-
20. fying enumeration districts throughout the 1962 annexa-
21. tion area, come up with the 1980 population for the 1962
22. annexation area, as well as the City as it existed just
23. prior to that annexation.

24. Q. Excuse me just a minute, before we speak to that, I don't

1. believe we have a map, do we, that shows the 1962 annexa-
2. tion area?

3. A. Yes, we do. The 1962 area is that shown in the darker
4. shade of blue.

5. Q. All right, sir.

6. A. And on one of these over here.

7. Q. All right, on H-2 in the dark blue is shown the area
8. annexed to the City in 1962?

9. A. That is correct.

10. Q. All right, will you please continue.

11. A. That particular area at the time of annexation in 1962
12. had 926 population. Then the 1980 census just completed,
13. it has 9,460 population. Meaning that there's been an
14. increase in the 1962 annexation area, the dark blue area,
15. of roughly nine hundred percent, or 8,523 increase from
16. 1962 up until 1980. Now, the City . . .

17. Q. That's . . . from 926 people to 9,460 people, that's ten-
18. fold.

19. A. That is correct. The City as it existed just prior to
20. the 1962 annexation, according to the 1960 census, had
21. a population of 11,916. The old City just prior to the
22. 1962 annexation. The 1980 census for that same City,
23. the old City just prior to the 1962 annexation, had a
24. population of 10,211. Or a decrease of 1,705 in the old

1. City.

2. Q. Now, Mr. Wade, in determining that the pre-1962 annexa-
3. tion City, which in 1960 had a population of 11,916, now
4. contains a population of 10,211, what did you use as a
5. source material to obtain those population figures?

6. A. Well, as I mentioned awhile ago, the U. S. Census detail-
7. ed sheets for enumeration districts were recently sup-
8. plied to the City's planning office. We went through
9. those, there are some approximately two hundred for the
10. whole City, seventy or eighty are involved in the 1962
11. annexation. Approximately four or five of those were
12. actually cut as far as not being completely compatible
13. with the line as such, and what we did there was to take
14. the number of dwelling units by that factor shown for
15. the population per dwelling and make an adjustment ac-
16. cordingly.

17. Q. And of the growth in the 1962 annexation area, from 926
18. to 9,460 since 1962, that represents almost fifty per-
19. cent of Harrisonburg's population today. Is that correct?

20. A. That is correct.

21. Q. Now, have you developed additional data or made any analy-
22. sis of the 1960, 1962 and 1980 data, to determine the in-
23. crease in the population in the existing City since the
24. 1962 annexation.

1. A. Right. As I read into the record a moment ago, the
2. existing City . . . are you asking now prior to the 1962
3. annexation?

4. Q. Well, I'd like for you to put together the two studies
5. that you have made, and tell the Court what that shows.

6. A. A moment ago I had already given the 1962 annexation
7. area changes. I also gave the prior to 1962 old City
8. changes. Now, if you combine those into today's over-
9. all City, we have before us today a U. S. Census popula-
10. tion of 19,671, compared with a City in 1960 and 1962--
11. 1960 for the old City, since that's an official U. S.
12. Census population, that figure was 11,916. And then the
13. 1962 annexation of 926. That gave a 1962 population of
14. 12,832. Which, when compared with today's population of
15. 19,671, means that we've had an increase of 6,829.

16. Q. Are you able to relate the population and growth to the
17. growth of James Madison, or is that going to be done by
18. another witness?

19. A. Another witness will do that.

20. Q. All right. You had a moment ago told the Court some of
21. the factors which you considered by reference to Exhibit
22. H-8 in determining where you would recommend the place-
23. ment of the annexation line, and you had referred to
24. certain existing services being provided by the City in

1. the area, and certain growth patterns which were observ-
2. able in 1975. I would appreciate it if you would at
3. this time put that exhibit back on the easel and explain
4. to the Court what other factors influenced the decision
5. to recommend that line.

6. A. Picking up from earlier, as indicated, there were any
7. number of desirable vacant land areas throughout that
8. could be utilized for various types of development, resi-
9. dential, business, commercial, industrial, what-have-you.
10. Other factors that we take into account have to do with
11. a particular road system. Where it's fairly convenient
12. to do so we like to have a looping effect in order to
13. provide the services. And you can see a good example
14. of this, if I might begin up here in the upper right-hand
15. corner, and come around this line and tell you a little
16. more about exactly where the line follows. Throughout
17. the area too we have any number of drainage divides that
18. we like to make use of when at all possible. We have a
19. drainage divide generally in through here that allows
20. us to come in and pick up a road, two hundred and fifty
21. feet back off the centerline of that road, to have the
22. frontage on the road within the corporate limits, both
23. sides of the road in the corporate limits. We have a
24. power line pick up back over in this area that we follow-

1. ed in through here, we are trying to get back across
2. country now. We don't have an easy road network to pick
3. up to follow there, but we do have a major transmission
4. line that offers a pretty good boundary.

5. Q. Is that transmission line within or without the annexa-
6. tion line?

7. A. We purposely left that transmission line outside of the
8. annexation area. The substation here was also left out-
9. side of the annexation area and in the County. Coming
10. on around, we followed the power line here, picked up
11. the road, two hundred and fifty feet over, then we pick-
12. ed up a parallel line to a railroad in here and came
13. across. We had again to work our way back in across
14. here in the southern portion to pick up some logical
15. points to follow back around and have a boundary to the
16. south. We did so picking up one of the trunk sewer lines
17. in this area and following it over. Coming back up the
18. 81 right-of-way, and then two hundred and fifty feet off
19. the centerline of these roads coming on around. The
20. drainage in this area, of course, is down in this manner.
21. We picked up here at the corporate limits of Dayton, come
22. around, and again without elaborating throughout I'll say
23. that we're now off of a more major thoroughfare in here
24. and we stayed off a thousand feet going up through here.

1. Q. And you're referring now to what thoroughfare?

2. A. This is Dayton Pike right in here. It's Route 42. Now,
3. we cut off up in here and come across here, this is
4. Route 910, and get back over to Route 33. This is Route
5. 33 coming out. The City's filter plant sets right here.
6. Then we work our way back around and . . .

7. Q. How far did you stay off of 33?

8. A. Off 33, a thousand feet. In most cases where it's at
9. all possible for the major thoroughfares we like to be
10. seven hundred and fifty to a thousand feet back so that
11. any major development in there, we don't have the con-
12. flicts of zoning and that sort of thing, as well as ser-
13. vice to the area. So, for the more major thoroughfares,
14. seven hundred and fifty to a thousand feet. For the
15. more residential type roads, about two hundred and fifty
16. feet off the centerline. That's one thing I probably
17. should point out here too as far as the Commission's re-
18. port is concerned. I was a little bit surprised to find
19. when the Commission gave their recommendation, they ex-
20. cluded an area right in here, which was County Study Area
21. No. 4, I believe, and I'm supposing just because of the
22. ease of the way it had been identified, which was a logi-
23. cal way of identifying the study areas. The County had
24. shown a division of Study Area 4 and the one adjacent to

1. it right down Route 11. And when the Commission recom-
2. mended their line, they left the proposed line right down
3. Route 11. We think it would have been much more logical
4. to have included both sides of the highway there for the
5. reasons I mentioned a moment ago, and would have done so
6. to the tune of seven hundred and fifty to a thousand feet
7. back off of Route 11 here to be included so that both
8. sides could be controlled. But, coming on around, we
9. pick up the back side of the Sanitary District, Park
10. View, went around it, again leaving it parallel to the
11. road here, two hundred and fifty feet off. Then across
12. country and it's pretty close to a drainage divide here.
13. I might mention that Donnelley sets right here. And, as
14. mentioned earlier and before the Commission, we had pur-
15. posely left this tract of land out because it was the
16. County Fair Grounds, as it was referred to, and we left
17. it as a County owned property there.

18. Q. Was it a County owned property or used for County func-
19. tions?

20. A. Well, at the time I thought it was County owned. I learn-
21. ed later before the Commission that it was a Fairgrounds
22. Association that actually owned it, and it was used for
23. County functions.

24. Q. And it was in that operation in 1975?

1. A. That is correct.

2. Q. But you would have included it had it not been in that
3. use?

4. A. Yes, because it's a very desirable tract here as far as
5. potential development is concerned. The drainage divide
6. is here so that naturally the services, both water and
7. sewer, come back in and through the City, which is the
8. source of the services for Donnelley right now. Then
9. back across country here, we pick back up with the exist-
10. ing corporate limits in this general manner. I might
11. mention here too, this came out earlier, that we needed
12. a looping of a road system in here to help service this
13. area which would be fairly difficult to get to otherwise,
14. as far as getting back around over through here without
15. this road or without going out of the City and then
16. back in, if you drew it other than the way we have it.
17. Although it's all the way into another drainage divide
18. area, we felt like this was highly desirable. And at the
19. time, back in 1975, we were led to believe by the City
20. that there was at least one property owner down here who
21. really wanted to be annexed by the City. So, that had
22. some bearing too.

23. Q. All right, sir. You have referred to Donnelley. Have
24. you made any investigation to ascertain the taxable values

1. of that facility?

2. A. Yes. As far as the Donnelley facility is concerned, there
3. is very little of that carried on the books at the time
4. that we looked at the books to determine exactly what is
5. the value of it. I think they have something in the
6. neighborhood of a few thousand dollars out of a total
7. of . . . I'm guessing that facility is some twelve to
8. eighteen million dollars, all total, with its improve-
9. ments.

10. MR. FITZGERALD: If it please the Court, this
11. is no time to be guessing, and I object to guessing.

12. A. Well, I would estimate that to be.

13. MR. FITZGERALD: I don't think he should be
14. estimating either. If he has a value that's on the books,
15. if he knows it, fine; if they don't . . .

16. Q. What is the value on the books?

17. MR. FITZGERALD: I think he testified he did
18. not know what it was.

19. A. I do have the value that was on the books.

20. MR. FITZGERALD: That the value he got off
21. the books was prior to the total assessment being put
22. on the books.

23. A. The full assessment was not on the books, unless it's
24. happened within the last couple of weeks. As of March

1. 17, the Rockingham County books showed for Donnelley and
2. Sons, land in the value of \$228,580.00, improvements of
3. \$1,500.00, a total assessment of \$230,080.00, with taxes
4. assessed at \$1,196.42. The full plant out there occupies
5. an area of some 255,000 square feet. It is a printing
6. facility type plant. My particular company, we have
7. designed any number of printing plants throughout the
8. County, both large and small.

9. Q. Well, do you know from your experience as an engineer
10. and a planner, and as Chairman of the Board of perhaps
11. the largest engineering law firm in Virginia, whether
12. two hundred thousand dollars fairly represents the value
13. of that property?

14. A. No, that's just a partial assessment. A mighty small
15. partial, I might add.

16. Q. Based on that square footage and today's construction
17. costs, what would the building cost?

18. A. The building would probably be somewhere in the neighbor-
19. hood of seven to nine million dollars. Somewhere in
20. there, the building alone.

21. Q. And it is a printing facility?

22. A. It is a printing facility.

23. Q. And what would the presses cost?

24. A. The type of presses that they have would run, with the

1. binders and what-have-you, would probably cost them
2. three quarters of a million to two million dollars each.

3. Q. And that would give a value to that plant in what range?

4. A. Again, I would estimate somewhere in the neighborhood
5. of twelve to sixteen or eighteen million, depending on
6. exactly how many presses they have.

7. Q. And that's the best information that you have been able
8. to develop?

9. A. That's the best I can develop.

10. Q. In arriving at the annexation line you recommended, did
11. you take into account any patterns of growth or changes
12. occurring within the City?

13. A. We did.

14. Q. Would you tell the Court what you took into account in
15. that regard?

16. A. It was fairly obvious that the James Madison University
17. complex was having a profound effect upon not only Harri-
18. sonburg but the surrounding area as well in Rockingham
19. County. You have seen evidence of the growth and heard
20. testimony earlier of that particular growth. That has
21. been influenced too as far as the faculty and auxiliary
22. facilities that go along with servicing those particular
23. people. You could also find the beginnings of some of
24. the commercial development, relocating, as far as more

1. desirable sites and along the major thoroughfares there.
2. You also had, in effect, a spilling over of any number
3. of the residents within the existing corporate limits.
4. It's fairly customarily throughout most older cities
5. that people desire a little bit more open space area.
6. Mr. Sullivan indicated yesterday that they generally
7. move away from certain industrial complex areas associa-
8. ted with the inner-city, and spill over into more desir-
9. able open space areas, which frankly are very limited
10. within the existing corporate limits. And consequently
11. they are going outside.

12. Q. From an engineering standpoint and from your experience
13. as an engineer, do you foresee there to be any advantages
14. for a developer to deal with only one unit of local govern-
15. ment?

16. A. A tremendous advantage, and I think the two good examples
17. here are the Donnelley as well as the Valley Mall Shop-
18. ping Center area. They are good examples of the type
19. of thing that happens. We had in each case industries
20. desiring services, desiring open space area. The County
21. had the open space land, the City had the utilities need-
22. ed, water in particular. We had a running conflict, the
23. developer was caught in the middle, and there was an aw-
24. ful lot of politics in between before we finally came to

1. an understanding of exactly how either of those sites
2. would be served. Enough of a conflict that, from what
3. I can gather as far as the Valley Mall area is concerned,
4. the City was ready and willing and wanted to locate a
5. tank out in that particular area. But, as far as issu-
6. ing a building permit to the Valley Mall area, the County
7. was not anxious to do so unless it furnished the water.
8. Again, the strife between the two continued, the developer
9. was really in the middle of all of that. It just would
10. be awfully, awfully desirable to have this area right
11. here, the area we've outlined as the proposed annexation
12. area, all under one local government to cut out this type
13. of situation.

14. Q. Mr. Wade, from your prior experience in annexation you
15. are aware that it is within the power of the Court to
16. require a City to assume a just proportion of the exist-
17. ing debt of the County, are you not?

18. A. I am.

19. Q. Have you developed exhibits which purport to show what
20. the City would propose by way of reimbursement to the
21. County, or by way of assumption of County debt, in the
22. event that this annexation is granted?

23. A. I have. If you'd like, I'll direct your attention to
24. Exhibit 37 and 37a; I believe they are the two in parti-

1. MR. COGAR: I didn't realize you hadn't seen
2. it.

3. MR. FITZGERALD: I'm still here. (Counsel
4. examines document) We have no objection.

5. JUDGE MOON: All right.

6. Q. Mr. Wade, with the exception of credit, if that's what
7. it can be called, taken on account of the Massanutten
8. Vocational Technical School, does the debt proposed to
9. be assumed by the City comport essentially with that
10. which the County proposes?

11. A. That is correct. Just one final item. If you go to
12. line F then you will see the computations that will get
13. the values that were testified to on the earlier exhibit.
14. That grand total is shown on line E.

15. Q. You are also aware, are you not, Mr. Wade, that it is
16. within the power of the Court to require the City to pay
17. to the County or compensate the County for a period of
18. years not to exceed five for prospective loss of net tax
19. revenues, are you not?

20. A. I am.

21. Q. Have you made certain computations which reflect the
22. City's proposal with respect to compensation for loss
23. of . . . prospective loss of net tax revenues?

24. A. I have.

1. Q. You have made such projections and calculations in other
2. annexation cases, have you not?

3. A. I have.

4. Q. In approaching the development of this data, what defi-
5. nition or what guide of the term prospective loss of
6. net tax revenues have you employed?

7. A. Well, the one that we customarily employ, and that gen-
8. erally follows this. The prospective loss of net tax
9. revenues means the loss to the County of the taxes levied
10. by the County in the annexation area, less the reductions
11. in the County's local expenditures for governmental ser-
12. vices resulting from the annexation.

13. Q. So, you take into account only the loss of local taxable
14. values.

15. A. That is correct.

16. Q. You do not take into account loss of state or federal
17. funds?

18. A. No. We treat the state and federal funds as being funds
19. that really or basically follow the people, the way that
20. they are proportioned, no matter where they might be
21. located within the political subdivision or the state.
22. So, they go with the people, wherever they might be.

23. Q. You are aware of the language of the statute which re-
24. fers to taxable values being annexed to the City, and I

1. take it you do not deem that County local taxable values
2. have anything to do with state or federal funds.

3. A. That is correct.

4. Q. Now, would you turn to the exhibits and call the Court's
5. attention to those exhibits on which you have computed
6. the City's proffer with respect to prospective loss of
7. net tax revenue.

8. A. I will, and I think maybe what might be best here is to
9. pick up some general background information.

10. JUDGE ARTHUR: What is the exhibit number?

11. A. I'm going to go back and pick up several earlier ex-
12. hibits for certain information that we utilized. If
13. you'll follow with me, first turn back to the general
14. data sheet, which is Exhibit 3. I'll just point out
15. several figures here. On number 3, up at the top, you
16. can see under the population figures that we are annex-
17. ing 5,165 individuals. That's a percentage of the total
18. County of 9.1%. Then I'd like to direct to your atten-
19. tion under 5.d.(3), a total of 525 school children who
20. are attending public type schools. That's 5.16% of the
21. total students within the County. Then over on . . .

22. Q. Mr. Wade, let's go back up here for just a moment on the
23. population figures. You showed there that the present
24. population of Harrisonburg is 19,671 people, and there

1. are 5,165 in the annexation area. So, if that number be
2. combined with the present City's population, you would
3. have 24,836 or, am I then correct, the annexed citizens
4. would then comprise 20.79% of the enlarged City.

5. A. I don't see the figure before me that you refer to.

6. Q. Well, it isn't before you.

7. A. Oh, okay.

8. Q. Taking the nineteen thousand and the five thousand and
9. adding them together would give me 24,836; and then I
10. asked you, or I guess I told you, that isn't it a fact
11. that the five thousand people who would then be in the
12. enlarged City would represent 20.79% of it.

13. A. Approximately 20.8%.

14. Q. And the reason I say that is that on your exhibit I
15. think that e. is really a meaningless computation.

16. A. Well, I don't know how to respond to that.

17. MR. COGAR: We'll withdraw that part of the
18. exhibit.

19. Q. All right, go on down to wherever you were.

20. A. All e. was intending to show is that as far as the old
21. City is concerned, we were increasing the old City popu-
22. lation by 26.3%. Now, once you've added it in, as you've
23. pointed out there, we end up with 20.8% of the enlarged
24. City. That's all that figure is.

1. Q. Go on with what you were on.

2. A. Over on sheet 2 of 3, there is a breakdown of those
3. assessables that we referred to earlier back on 37.
4. Under item 10.g. you'll see the total annexation or
5. total assessed values for the total County. For the
6. proposed annexation area under 11.g. Then on sheet 3
7. of 3, you'll see the 14.11% again. Then you will note
8. the information there under 14 through 17 is essentially
9. that referred to earlier on 37 and 37a, the debt assump-
10. tion information. Then under 18 you'll see the loss of
11. net tax revenue for one year to be the figure that we
12. will see more of on a later exhibit, but the \$1,561,768.00,
13. and for two years, three, four, or what-have-you. You
14. will see those figures. Now, if you will turn to Exhib-
15. it 6 . . .

16. Q. You're going now to tell the Court how you computed what
17. is shown on sheet 3 of 3?

18. A. Shortly, but I want to point out a few more figures that
19. we'll be using.

20. Q. All right.

21. A. So, if you'll turn to Exhibit 6, "Taxable Values, Tax
22. Rates, and Tax Levies for the City of Harrisonburg."
23. You will see there under 1980, and that's the one I
24. really want to call your attention to, a total of

1. two hundred and ninety-nine million plus, and then you
2. will see the varying tax rates under 1980, and then the
3. levies that result from them. I would like to point out
4. that the City has just had a reassessment, which will
5. be reflected in the 1981 books, and that real estate
6. values is as shown, that one figure under 1981, of
7. \$356,508,350.00. I think Mr. Milam mentioned that ear-
8. lier. I would also like to show that the prior reassess-
9. ment was reflected back when they went from their former
10. percentage of assessment to a hundred percent. So, back
11. in 1978 and 1979, those two years, it was quite a change
12. there. That's when they went to the hundred percent
13. assessment ratio and also had a reassessment at the same
14. time. I just call those to your attention.

15. Q. In years prior to 1979, they were using a percentage for
16. assessment of less than a hundred percent, as was custo-
17. mary with most localities throughout the state.

18. A. Yes sir. Now, if you will turn to Exhibit 7, "Taxable
19. Values, Tax Rates, and Tax Levies for Rockingham County."
20. Again I want to point out the 1980 values, and without
21. going back through those simply make you aware of what
22. they are. They are in the last column. Then on Exhibit
23. 8, you will simply find a recap of the total County and
24. the area sought. Again, both of those figures have been

1. mentioned earlier. Then on Exhibit 9, you'll find,
2. "Assessment Ratios, Tax Rates, and Effective True Tax
3. Rates" for varying years for both the City and the County,
4. and then the weighted average for all cities and counties.

5. Q. Well, just work one of those examples through.

6. A. Perhaps an easier one to work through and the one we
7. would be working with the most here, as far as the City
8. is concerned and the County we are now on a hundred per-
9. cent assessment rates. Our tax rate for the City is
10. sixty-five cents--this is real estate now--the tax rate
11. is sixty-five cents per hundred, the County is fifty-two.
12. And when you take the hundred times the sixty-five, you
13. end up down there with the effective tax rate of sixty-
14. five and fifty-two, naturally. But, if you want to go
15. back to prior years and try to relate the varying tax
16. rates that a locality might have when compared with the
17. varying assessment ratios, you can come up with an effec-
18. tive and you can then get a comparison. Such as in 1974,
19. the 24.5% and 15% for the two localities, as far as
20. assessment ratio. Then the tax rate of \$2.50 and \$2.70,
21. yielding an effective rate of sixty-one and forty-one.
22. And you can do that through the others.

23. Q. All right, I think that helps explain it.

24. A. Now, on 9a we have a table showing the "Local Real

1. Property Tax Rates, All Virginia Cities, 1980". Begin-
2. ning with the one with the least tax rate and continuing
3. to the one with the greatest tax rate. This information
4. source was, "Tax Rates in Virginia Cities and Selected
5. Counties: 1980 - Joint Report No. 39, Virginia Municipal
6. League and Institute of Government, University of Virgin-
7. ia." There you will note that Harrisonburg is number two
8. there with a sixty-five cent tax rate. So, it's very
9. low compared to the other municipalities and selected
10. counties throughout the state. You will also note that
11. the mean for all cities was \$1.12. Now, if you will,
12. we'll move over to 9b. And on 9b you see a "Comparative
13. Annual Costs for a Typical Household." And there was
14. testimony yesterday by someone in the Park View Subdivis-
15. ion regarding what his costs were for the past year, and
16. that was Exhibit 9c. One thing Mr. Steadman indicated
17. yesterday which was incorrect, he had referred to a
18. sewer rate increase in the Park View Subdivision, and
19. that would not be the case. The sewer would decrease if
20. that area comes into the City, but Mr. Rouse covered that
21. in his testimony.

22. Q. Well, now, on 9b what you have done is attempt to show
23. the effect on a typical household in the annexation area
24. if annexed to the City of Harrisonburg, and then you used

1. Park View in column C, Fairway Hills in column E, and
2. Ashby Heights in column G.

3. A. Right.

4. Q. And indicate to the Court . . .

5. A. And the City back over in column A. And then for the
6. various categories, we take the real estate tax levy
7. for the varying ones, in the first heading there, and
8. you will see the City is \$292.50, for Park View \$234.00,
9. and also for the others. Then for personal property
10. you'll see that the second grouping of figures, \$103.35
11. for the City, \$109.20 for the others as shown. And there
12. we have a differential in the rate of \$2.65 in the City
13. and \$3.50 in the County, whereas before we had sixty-five
14. and fifty-two. Then we take the local license decals
15. and we'll see there in the City it's ten dollars for the
16. automobile and you do have to have one on your bike for
17. a dollar, so that's eleven dollars compared with fifteen
18. straight across in just a typical one car situation.
19. The utility taxes, the varying rates that are applied to
20. those are shown, and you will see for the City we have
21. \$34.37, then for Park View \$54.00, for Fairway Hills
22. \$46.36, and for Ashby Heights \$54.00. Then the charges
23. was water and sewer, assuming nine thousand gallons per
24. month. You can see there that in the City for water,

1. sewer and trash collection we have \$301.68, for the
2. Park View Subdivision \$512.76, for the Fairway Hills
3. Subdivision \$545.04, and for Ashby Heights \$328.20.
4. Then under a miscellaneous category, the recreation fees
5. as well as the homeowners insurance. You'll see a total
6. of \$150.00, \$167.00. Then under electricity, and again
7. this varies a little bit. We've picked out owners that
8. would be within the three different service type areas,
9. the Harrisonburg Electric Commission, the Shenandoah
10. Valley Cooperative, and Vepco. You can see under Harri-
11. sonburg you'd have \$902.40, again out in Park View you
12. might be hooked with either Harrisonburg or Vepco, and
13. you'll see the varying amounts there, \$902.40 for Harri-
14. sonburg and \$985.64 for Vepco. And then out in Ashby
15. Heights as well as Fairway Hills you have the Shenandoah
16. Valley at \$832.56. Then totaling all of those, you'll
17. end up with a comparison of the typical household in the
18. City of Harrisonburg \$1,795.30, for the Park View Sub-
19. division either \$1,994.36 or \$2,077.60, depending on
20. where they get their electricity, and then for Fairway
21. Hills \$1,949.16, and for Ashby Heights \$1,739.96.

22. Q. All right, sir.

23. A. Now I would like to direct your attention over to Exhib-
24. it 46. Exhibit 46 is entitled, "Estimated Annual Reduc-

1. tions in Local Funded Operating Expenses of Rockingham
2. County due to Proposed Annexation".

3. Q. Will you elaborate on that a minute before you get into
4. the numbers and tell the Court what you have done here?

5. A. Well, here we have taken a rundown of the budget items
6. as contained in the Rockingham County budget, and then
7. from the detailed working sheets we have gone in and
8. estimated what kind of reductions they might have within
9. those various departments because of the annexation of
10. this area to the City. But in so doing we have only
11. taken reductions as might be funded by local sources.
12. We have not taken those reductions that might be funded
13. from federal sources or state. And in so doing we have
14. come up with the varying amounts that you can see there
15. found throughout as far as the total budget amount and
16. then the annual reduction. And those reductions are
17. based on populations, they are based on overall assess-
18. ables, they are based on trying to identify whether or
19. not there is only a certain or limited number of items
20. within the department that might really be affected. In
21. other words, you can't go in and maybe prorate out each
22. salary as such for a given individual, but instead mater-
23. ials and that sort of thing. And in most cases what we
24. have attempted to do in identifying those and coming up

1. with the reductions is to make some comparison with what
2. the County had as way of reductions and where we could
3. identify those as more readily associated with local
4. funding we have utilized a similar figure with the County.
5. And in doing this you can see that for the various ones
6. shown throughout, the general government items, the total
7. there excluding the schools and capital outlay, we treat
8. the schools separately, you'll see that we have a reduc-
9. tion of \$165,710.00, out of a budget amount of \$5,768,552.
10. Now, that particular figure we will then carry over to
11. Exhibit 39--we'll move back to 39.

12. Q. Just for a moment, Mr. Wade, you have shown here in
13. the annual reduction in local funds, \$165,710.00. What
14. percentage is that of the total local funds?

15. A. I'm sorry, what percentage is it of what?

16. Q. Of the \$5,768,552.00.

17. A. It's about 2.8%.

18. Q. And that, so far as you can ascertain, they will not be
19. able to reduce their expenditures in these categories
20. by more than 2.8%.

21. A. That is correct.

22. Q. All right, what is the next exhibit?

23. A. Go over to 39. This one is entitled, "Potential Loss
24. of Net Tax Revenues to Rockingham County for the Area

1. Proposed for Annexation". Now, from the local levies
2. here we have taken the assessed values for the annexation
3. area and applied the tax rates, the varying tax rates
4. for the different categories that the County has, to
5. those assessed values. And they yield \$1,085,460.00
6. with the levies. To that we have added other taxes as
7. shown, and coming down through the first item there,
8. the local sales and use tax, that being a fairly sizeable
9. item, and that was obtained through the joint efforts of
10. the Commissioners of Revenue of both the City and the
11. County through the state, because that information the
12. details of which is fairly confidential, they will give
13. you the overall totals. This is a joint figure, the
14. \$818,250.00. And then the other taxes as shown in the
15. varying amounts have been added, and we come up with
16. 1.B.(10) of a total of \$1,048,604.00. Which, when added
17. to the 1.A., local levies of \$1,085,460.00, we have a
18. gross loss of revenues, under item 2, of \$2,134,064.00.
19. Now, the reduction in the County expenditures, we show
20. there under 3.A. the debt service to be assumed by the
21. City of Harrisonburg, and that figure again we had back
22. under Exhibit 37, \$144,086.00.

23. Q. That's the first year?

24. A. That's the first year. Then on the school operational

1. expenses from the local funds we have gone through and
2. analyzed their local expenditures, and for the number
3. of children that we are annexing we have estimated those
4. to be \$262,500.00 as a reduction. Then the 3.C., that's
5. item 46 that we just went over, the \$165,710.00 has been
6. brought back from Exhibit 46. When you total those re-
7. ductions, you have a total reduction in County expendi-
8. tures of \$572,296.00. Which, when deducted from item
9. 2 above, the gross loss, we come up with a net tax reve-
10. nue loss of \$1,561,768.00.

11. Q. That figure represents the City's computation of what
12. it deems to be the prospective lost net tax revenues
13. in the County in the first year of annexation?

14. A. That is correct.

15. Q. Mr. Wade, have you considered here the City's . . . what
16. the City will be obligated to pay for other expenses
17. associated with this annexation, such as capital improve-
18. ments and the like?

19. A. I have. If I might, I'll direct you to several exhibits
20. now to show that. If you will turn first to Exhibit 33.
21. This is, "Consolidation of Estimated Major Capital Im-
22. provements for Proposed Annexation Area". It's shown
23. by the various priorities, as someone has already testi-
24. fied to. And if you'll look there you'll see under the

1. various priorities total amounts that the City must find
2. a way to finance. And I will direct your attention just
3. to the priority 1 for the sake of this discussion at this
4. point. You will see that water and sewer improvements,
5. the total on item 3, of \$2,510,600.00.

6. Q. Now, those figures have been brought forward from another
7. exhibit, have they not?

8. A. Exhibit 31 and 32 that Mr. Steadman testified to. Then
9. you will see various other items that have also been
10. testified to by others throughout as you come on down.
11. You'll see the road improvements, the fire stations,
12. central garage improvements, new parks and vehicles,
13. street light improvements, school improvement, and the
14. like as you come on down. So, you have a grand total
15. of \$6,613,835.00 of capital improvements that need to be
16. funded during the priority 1 series. Then when we move
17. into priority 2 we have an additional amount to be fund-
18. ed, as well as in priority 3. We'll talk a little more
19. about that as we move on to a couple of other exhibits.
20. Now, on item 36, once we know how much debt we might be
21. faced with, we go to item 36 or Exhibit 36, and this is
22. a matter of showing as far as the "Legal Debt Limit and
23. Legal Debt Margin," as far as the existing City is con-
24. cerned as well as the enlarged City. We have here a

1. recap of how that is arrived at by using the real estate
2. values. The ten percent legal debt limit applied there
3. is giving you an amount for which the City could obli-
4. gate indebtedness. And then taking from that the out-
5. standing long-term indebtedness of the City as of Janu-
6. ary, 1981, and under that heading you'll see the
7. \$4,152,478.00. That is the outstanding long-term indebt-
8. edness of the City as of January 1, 1981. That from the
9. debt limit figure above of \$28,107.817.00, means that
10. you have a margin of approximately twenty-four million
11. dollars.

12. Q. That's in the present City?

13. A. In the present City. Now for the annexation area, you
14. add on the assessables for the area, you come up with
15. a new debt limit, you take off the existing outstanding
16. long-term indebtedness, and you see that you have a mar-
17. gin of some thirty-six million. So, there's ample room
18. as far as legally staying within the bounds of what you
19. can indebt the City for. Now, if you will move . . .

20. Q. Just to summarize that, the last figure shown on that
21. page is the amount which the City, if awarded this annex-
22. ation, could obligate itself under existing law, taking
23. into account a present outstanding long-term indebted-
24. ness of 4.1 million dollars.

1. A. That is correct. Now, if you will turn back to Exhibit
2. 34. Here we have an "Estimated Annual Revenue to the
3. City of Harrisonburg for the Area Proposed for Annexa-
4. tion". And, again, in going down through the various
5. categories or headings for the budget of the City, as
6. they prepare it, the format as they have it, we have
7. the items there as shown to the right compared with the
8. overall 1980-81 estimates for the existing City. For
9. instance, the first one, the general property taxes,
10. there we have used the assessed values of the annexation
11. area, just the same values as those reflected back in
12. exhibits earlier, the ones being taken from the County,
13. and applied this time the City rates to them, the vary-
14. ing tax rates, and you come up with \$1,070,567.00. It
15. is slightly less than the amount that are presently re-
16. sulting from the assessables for the County, because of
17. the varying tax rate. The City does not tax merchant's
18. capital, but they do have a business license which is
19. shown elsewhere. Then when you come on down, utilizing
20. your various sources of revenue for the annexation area,
21. you'll come up with a total there of \$2,938,001.00.
22. And then for the Public Transportation Fund you'll see
23. \$150,660.00. For a grand total estimated revenues of
24. \$3,088,661.00. I'm going to direct your attention next

1. to the expenditure side of this for comparison. And, if
2. you will, we will turn to the very next exhibit, Exhibit
3. 35.

4. Q. You have just shown us the revenues anticipated to be
5. derived from the annexation area, and you are now going
6. to show the Court the expenditures, operational expendi-
7. tures, contemplated in the annexation area. Is that cor-
8. rect?

9. A. That is correct.

10. Q. All right.

11. A. These are operational expenditures only, and as the
12. grand total, the last line on this table 35 shows, Ex-
13. hibit 35 shows, it excludes the debt service, capital
14. outlay for water and sewer funds and school funds.
15. So, it has nothing but operations in it. The estimated
16. additional expenditures, as shown, total for the varying
17. departments there \$1,102,094.00. To which you add two
18. amounts there in the next categories, and you end up with
19. a grand total of \$1,310,472.00. Now, again, I point out
20. that that does not have school operating funds in it,
21. and it does not have capital outlay and debt service
22. and the water and sewer funds in it.

23. Q. So, in column 1 you have shown the estimated expenditures
24. by various categories in the existing City and in column

1. 2 you show how those expenditures are expected to in-
2. crease on account of the annexation?

3. A. That is correct.

4. Q. All right.

5. A. Now, if you will turn to 47, the very last page in the
6. book. We have here shown an annual revenue for the
7. proposed annexation area from the exhibits we were just
8. referring to, Exhibit 34, which is the revenue one,
9. the \$3,088,661.00. Then we have the annual operating
10. expenses, excluding those items mentioned earlier,
11. \$1,310,472.00. Then we have the estimated annual school
12. operating expenses from local sources only, and we have
13. \$593,328.00. This was worked out in conjunction with
14. the school people. Then we have the estimated debt ser-
15. vice on the capital outlays that we looked at on Exhibit
16. 33. All of those, excluding the water and sewer, which
17. I will direct my attention to in a moment, but we'll take
18. those and estimate the debt service on them, we'll come
19. up with \$352,830.00. Then the debt service assumption
20. of Rockingham County, back to 37, the \$144,086.00. And
21. we come up with an estimated total annual expense of
22. \$2,400,716.00. And, again, I point out we still have
23. the water and sewer excluded. Which, when taken from
24. the first figure of the revenues gives you a net revenue,

1. excluding the LNTR payment to the County, of \$687,945.00.
2. Again, excluding the water and sewer. Then we have
3. shown the LNTR payment to the County of \$1,561,768.00,
4. from back on Exhibit 39, and you have a total net expense
5. to the City of \$873,823.00 for that first year.

6. Q. That also excludes certain capital improvements.

7. A. It still excludes the water and sewer situation.

8. Q. All right.

9. A. That particular figure has the reflection of the LNTR
10. payment to the County there which, for whatever time
11. frame, would remain essentially that sort of a figure.
12. After the LNTR payment was completed, then we would
13. have basically back to the line prior to that, a net
14. revenue there to be applied to water, sewer or other
15. capital outlays as shown on the various priorities.

16. MR. COGAR: Your Honors please, we have one
17. more exercise we need to go through with to show how the
18. City would propose to fund and meet these expenditures.
19. I wonder if we might take a short recess at this time.

20. JUDGE MOON: All right.

21. (Recess)

22. Q. Mr. Wade, you have shown by the calculations you have
23. performed and testified to a need on the part of the
24. City to fund or demonstrate the ability to this Court

1. to pay the \$873,823.00 shown on Exhibit 47. You have
2. shown a need on the part of the City to spend some 2.5
3. million dollars for water and sewer improvements within
4. the first four years following annexation, as is reflect-
5. ed on Exhibit 30 and 31. And Exhibit 32 shows the City's
6. figures, proposed figures, for the acquisition of County
7. utility lines which with or without Donnelley amounts to
8. some 2.5--with Donnelley amounts to some 2.5 million
9. dollars, without Donnelley something over 1.5 million
10. dollars. Have you made an analysis of the City's finan-
11. cial structure to ascertain whether the City has the fi-
12. nancial ability to fund these expenditures?

13. A. I have.

14. Q. Will you tell the Court what your analysis demonstrates.

15. A. My analysis found that the City has the wherewithal and
16. financial capability to fund this particular annexation.

17. Q. All right, before we get to the resources and means that
18. provide them with that ability, let's recap briefly the
19. three areas we're talking about. Let's go first to Ex-
20. hibit 47.

21. A. Exhibit 47, the net expense there to the City, \$873,823.00
22. per year, excluding the water and sewer. Now, the water
23. and sewer figures . . .

24. Q. Before moving to water and sewer, since these expendi-

1. tures operate over a different time frame. Looking at
2. Exhibit 47, you arrived at the \$873,823.00 after grind-
3. ing into your equation a loss of net tax revenue figure
4. of 1.5 million.
5. A. That is correct.
6. Q. And that could not, under the law, could not go or be
7. awarded for more than five years.
8. A. That is correct.
9. Q. So, what impact would the expiration of five years have
10. on this exhibit?
11. A. Well, an additional \$1,561,000.00 there that we would
12. no longer be paying.
13. Q. If it's awarded for five years.
14. A. If it's awarded for five years.
15. Q. The debt service assumption of \$144,000.00 is a first
16. year figure which diminishes over the years until 1999.
17. A. That is correct, and that's all shown on Exhibit 37a.
18. Q. The estimated annual operating expenses will continue.
19. A. They will.
20. Q. The estimated annual school operating expenditures from
21. local sources will continue indefinitely into the future.
22. A. That is correct.
23. Q. Now, on the debt service, estimated debt service on cap-
24. ital outlays, excluding water and sewer, is shown here

1. to be \$352,830.00. That is debt service on what?

2. A. Debt service on all of those items shown on Exhibit 33.

3. Q. All right, let's turn to Exhibit 33. I think the pre-
4. vious Exhibit 47 says excluding water and sewer, does
5. it not?

6. A. That's correct. So, if I look then at priority 1 at
7. the bottom line of \$6,613,835.00, and take from that
8. my line 3, which is the water and sewer, the \$2,510,600.00,
9. we will have remaining \$4,103,235.00. That's all of those
10. priority 1 capital improvements excluding water and sewer,
11. for which the debt service would be the \$352,830.00 shown
12. on 47.

13. Q. So, with what you have shown on Exhibit 47, which includes
14. the debt service on everything shown on Exhibit 33 except
15. water and sewer, that would leave you needing an amount
16. to fund the 2.5 million dollars of water and sewer im-
17. provements.

18. A. That is correct.

19. Q. And the final category is the amount to be paid, as
20. shown on Exhibit 32, to the City for the water and sewer
21. improvements which we seek to acquire in the annexation
22. area.

23. A. As shown on Exhibit 32b and 32c, to be paid to the County.
24. Those amounts being the \$1,236,405.00 and the \$1,368,877.00.

1. Q. And is it your understanding that for those improvements
2. awarded by the Court, if any, to the City, the City must
3. pay the County such amount as the Court may fix on the
4. effective date of annexation.

5. A. That is my understanding.

6. Q. Now, having outlined the area for the contemplated ex-
7. penditures shown by these exhibits, will you explain to
8. the Court the ability of the City, as you have analyzed
9. it, to meet these financial obligations.

10. A. All right. There are several different areas that I
11. will discuss, the first one being the assessed values.
12. We have just had a reassessment, the figures as shown
13. earlier. We have approximately \$368,000,000.00 in 1981
14. of real estate assessments. That's the normal amount
15. of real estate assessables shown plus the public service
16. amounts shown, if you go back to the particular table and
17. try to correlate that. At any rate, that figure when
18. compared with the comparable 1980 figures, and utilizing
19. the 1980 tax rate of sixty-five cents, if the tax rate
20. stays the same, we will have approximately \$572,000.00
21. of additional revenue to the City by reason of that re-
22. assessment and the growth that is reflected in that.
23. A second area that I might touch on has to do with water
24. and sewer service charges. The City is presently selling

1. somewhere in the neighborhood of a billion one hundred
2. million gallons of water on an annual basis. At the same
3. time its payments to the Harrisonburg-Rockingham Regional
4. Sewer Authority is based on approximately eight hundred
5. and fifty million gallons of sewage. If the City decided
6. to change the service charge structure on either or both
7. of those, I'll give you some figures that will reflect
8. what that would amount to. Looking just at the billion
9. one hundred million gallons, which is the water only,
10. if they changed the rate structure so that there was an
11. additional twenty-five cents per thousand gallons, it
12. would mean \$275,000.00 additional income. If you were
13. to take the sewage of eight hundred and fifty million
14. gallons for the year and apply a twenty-five cent rate
15. to it, you would have somewhere in the neighborhood of
16. about \$190,000.00 additional. Now, I'm not suggesting
17. that's what they'll do, I'm simply saying that is a
18. source and an amount that you can relate to as far as
19. a service charge change.

20. Q. On that point, if at sometime in the future the City de-
21. cides to do that, how would the water and sewer rates in
22. Harrisonburg compare with other localities in Virginia?

23. A. The water and sewer rates would compare very favorably.
24. Actually this is an area that's changing rather rapidly

1. throughout the whole state now because of the higher
2. degree of treatment required. You'll find the rates
3. varying considerably. But, as far as Harrisonburg is
4. concerned, they could have a rate change and still be in
5. a favorable position, comparable to the rest of the state.
6. Now, another area which I might mention, the connection
7. charges for the City amount to somewhere in the neighbor-
8. hood of six to eight hundred dollars. The rate structure
9. is such or the scale is such that there's a varying amount
10. there. But if you are going to connect onto water or
11. sewer, your charge at present is somewhere between six
12. and eight hundred dollars. Those connection charges for
13. new connections along any of these lines that have been
14. proposed have not been reflected in the overall estimates.
15. At the existing connection charge, five hundred connec-
16. tions at eight hundred dollars, of course, would give you
17. four hundred thousand dollars as a one-time source of
18. income. If you saw fit to make the connection charges a
19. greater amount, you could have of course additional in-
20. come in that area. And, again, I'm not suggesting that,
21. but I'm simply saying that is an area. It's not uncommon
22. now for connection charges around the state to be in the
23. twelve to fifteen hundred dollar area. As for debt ser-
24. vice, there's an item here I would like to point out.

1. There are two ways of setting up your debt service. You
2. can do it with a fixed amount each year to be paid as
3. far as amortizing the bonds and let the interest vary
4. according to the amount remaining, and you'll come up
5. with a varying amount; a greater amount at the beginning
6. that would slack on off as the interest became less. By
7. the same token, you could set it up on a scale similar
8. to what most of us are familiar with with house payments
9. or home payments. We try to have a uniform amount each
10. year, whereby we end up with a lot more interest and less
11. principal to begin with, but it is uniform throughout
12. the life of the indebtedness. And for an example here,
13. a two million dollar issue under the first method would
14. start off at \$285,000.00 and vary down to roughly
15. \$109,250.00 in the last year, assuming twenty year bonds
16. at 9.25% interest. Whereas if you wanted to just have
17. the uniform amount throughout, it would be \$223,000.00
18. each and every year for twenty years. There you can see
19. that up front you could have a lesser amount, but out in
20. the long haul you would have a greater amount. So, if
21. there was a need to have a lesser amount, you could fi-
22. nance it in that manner. Of course, that would cost you
23. more interest in the long run. Another item I'd like to
24. point out is that under the existing annual debt service

1. for the City of Harrisonburg, there are of course varying
2. amounts as you would expect to pay off those outstanding
3. indebtedness of over four million dollars, which we re-
4. ferred to in another exhibit as far as the legal debt
5. margin was concerned. But those varying amounts are such
6. that the fifth year from now, in 1985-86, we have a sub-
7. stantial decrease in the amount of indebtedness that's
8. being paid or the debt service on the indebtedness that's
9. being paid by the City on an annual basis. And that's
10. because of the payoff of some particular bonds. But in
11. particular in that year we pick up about \$325,000.00 that
12. the City is accustomed to paying along each year in the
13. way of debt service, and when this ends we'd have an addi-
14. tional amount there of \$325,000.00. It's interesting too
15. to point out that about ten years from now the bulk of
16. all of the City's indebtedness is paid off. There's one
17. small amount left beyond that would go on, some sixty-
18. five thousand or so, until its maturity. There's still
19. another area of interest, and that's the City has some
20. designated funds for capital improvements that are in
21. some cases committed and in other cases not committed.
22. And I might mention a couple of those. There is a reserve
23. right now, money on hand, for a municipal building, in-
24. cluding some land and all, if and when the City sees fit

1. to construct a new municipal building. At this time
2. there are no plans to do this in the foreseeable future,
3. but they have been building this fund up a little back
4. over a number of years. There's \$293,000.00 in that
5. particular fund. There is in future construction pro-
6. ject funds a reserve of \$618,000.00, not committed for
7. any projects at this time. And then the City has a poli-
8. cy of not earmarking any revenue sharing funds, no matter
9. how they might use them, until they actually have them
10. in hand. They don't earmark them ahead of time and know
11. that if they get those what they're going to spend them
12. on. So, they have a revenue sharing reserve at this
13. particular time of approximately three hundred thousand
14. dollars. This means that in those three there's a mil-
15. lion two hundred and eleven thousand dollars that could
16. be utilized for some of the improvements that we're talk-
17. ing about in this annexation. There's also, which is
18. common with most localities, they do have some sinking
19. funds in their water and sewer. And the combination
20. there of those sinking funds amounts to around two hun-
21. dred and seventy thousand dollars. It's uncommitted and
22. it could be utilized if we really needed to. Then in
23. their operating funds they have some fund balances which,
24. when totaled, total a little over a million two hundred

1. thousand dollars. So, those items I have just mentioned
2. indicate that the City does have readily available, if it
3. wants to put its hands on it and utilize it as such,
4. two million seven hundred and eighteen thousand dollars.
5. One other area that we might mention is that the exist-
6. ing refuse collection for the City is a charge of approx-
7. imately three dollars per month, it is three dollars per
8. month, for twice a month (sic) pick up. That's a fairly
9. low charge compared to private hauler charges, and if the
10. City saw fit to change that particular service charge
11. by whatever amount we might want to envision, whether
12. it's a dollar or two dollars or some other amount, there
13. is additional income there. Right now the enlarged City
14. with the annexation area, if we had a four dollar charge
15. instead of a three dollar charge per month, it would
16. bring in an extra hundred thousand dollars in round fig-
17. ures. Of course, two dollars would just be double that
18. and so forth. So, that's an area there that has a po-
19. tential; a low charge that could be raised if they saw
20. fit to.

21. Q. You did not mention any increase in the assessments of
22. taxable values in the annexation area, did you?

23. A. I did not.

24. Q. You are aware, I think, and you indicated in your earlier

1. testimony that that area had not been reassessed since
2. 1980, or for two years?

3. A. For two years. So, whenever that area is reassessed,
4. there would be a substantial increase there in assess-
5. ments just because of inflation. I've heard several
6. figures thrown around, but I have seen a report that
7. indicates that the area now, the County as a whole, may
8. be somewhere in the neighborhood of roughly seventy-nine
9. or eighty percent of the actual true market value as far
10. as the assessables are concerned. So, we would expect
11. a roughly twenty-five percent increase in those assess-
12. ables once the reassessment does occur. That would have
13. a substantial impact on income.

14. Q. Have you taken into account the future growth of assess-
15. ables in the enlarged City?

16. A. I have not shown anything for future growth as far as
17. additional revenues are concerned. One large industry,
18. one large business, would make a substantial change.

19. Q. You have not, have you, Mr. Wade, taken into account in
20. any of your financial exhibits any potential or future
21. increased revenues from an enlarged electrical service.

22. A. I have not.

23. Q. You have not constructed any exhibit to show this Court
24. year by year how the specific obligations would be met,

1. have you?

2. A. I have not.

3. Q. And why have you not done that?

4. A. Well, for the very real reason that exactly what the
5. City Council may see fit to do from year to year, I
6. have no way of knowing. I do know that under their nor-
7. mal budgetary process they evaluate all income and all
8. expenditures that might be expected, and then make what-
9. ever reflections as far as revenues are concerned that
10. might be necessary to meet those. I am simply trying to
11. point out here that they have the wherewithal of a lot
12. of latitude in making those directions because of a low
13. tax rate and because of certain other factors as far as
14. some reserves on hand.

15. Q. From the revenues you have looked at and from the expen-
16. ditures which are contemplated in your exhibits, is it
17. your opinion that the City has the physical and finan-
18. cial capability to undertake this annexation?

19. A. It is my opinion that they do.

20. MR. COGAR: I have no further questions at
21. this time.

22.
23. Cross Examination by Mr. Fitzgerald:

24. Q. Mr. Wade, what you're saying is the taxpayers of the

1. City and the taxpayers or the people of the area sought
2. to be annexed at this point don't know what's going to
3. happen to them tax-wise or fee-wise or charges-wise.
4. A. That is correct.
5. Q. The City Council has taken no action, adopted no plan,
6. the way that they intend to finance the annexation if
7. granted.
8. A. I'm not aware of any.
9. Q. Well, you would certainly be aware of it, wouldn't you,
10. sir?
11. A. I would hope so.
12. Q. So, they have not?
13. A. As I say, I'm not aware of it.
14. Q. Well, is it fair to say that so far as you know the City
15. has . . .
16. A. So far as I know, they have not.
17. Q. None has ever been presented to you.
18. A. No.
19. Q. And you are their consultant in this annexation case.
20. A. That is correct.
21. Q. The people don't know whether they're going to get a
22. raise in taxes as a result of this annexation.
23. A. Yes.
24. Q. Property taxes?

1. A. To repeat myself, that's true.
2. Q. Did you testify as to what, if the Council decided to
3. use the levy, increase the tax rate, how much it would
4. increase as a result of this annexation to the City resi-
5. dents, including the new residents if taken in?
6. A. I indicated a figure that if they were to increase a
7. rate by a given amount, it would yield this.
8. Q. And what was that amount? What amount would it take to
9. yield the \$873,000.00, what rate?
10. A. Oh, now, that's a different question. I haven't testi-
11. fied to that.
12. Q. Okay, let's testify to that. What rate on the property
13. assessables would it take to increase that, to make up
14. that amount of revenue?
15. A. What amount of revenue, Mr. Fitzgerald?
16. Q. Eight hundred and seventy-three thousand dollars.
17. A. Okay, if I wanted to make up \$873,000.00, looking at my
18. real estate only, the new assessment that the City has,
19. would yield an additional \$572,000.00, as I have indi-
20. cated.
21. Q. Yes sir.
22. A. So, if I want to think in terms of a rate increase on
23. top of that existing sixty-five cents rate, I would need
24. approximately nine cents on top of the sixty-five.

1. Q. Yes, Mr. Wade, but you haven't taken into account the
2. increased cost in the budget year 1981-82, have you?
3. That's going to use up a substantial part of that five
4. hundred thousand dollars, isn't it?

5. A. I don't know what it's going to do. I know that there
6. should be some increases during that year. And, again,
7. they are in the budget process now. So, I don't know
8. how much of that might be taken.

9. Q. The City Council has not yet adopted a budget, have
10. they?

11. A. No.

12. Q. Have you looked at any preliminary budgets for the City
13. for 1981-82?

14. A. No, I have not.

15. Q. You are taking into account that you say because of the
16. reassessment they're going to have five hundred thousand
17. dollars worth of revenue for the budget year 1981-82,
18. true?

19. A. Yes.

20. Q. But you haven't looked at what their expenditures might
21. be.

22. A. They have not gotten that budget schedule. Their normal
23. procedure is to go through the budgetary process and
24. have an adopted budget by July 1, and so consequently

1. those figures are not available to me. They just haven't
2. done it.

3. Q. Certainly by now they have a preliminary budget, don't
4. they, sir, for 1981-82.

5. A. I do not know.

6. Q. You have not asked for one?

7. A. I have not had one furnished to me, and I have not asked
8. for one.

9. Q. Well, isn't it, Mr. Wade, absolutely essential to put
10. any meaning to the five hundred thousand dollars you say
11. that the reassessment will produce for the City, to know
12. what the expenditures increase will be in the coming year?

13. A. I can simply answer that by the fact that as far as being
14. absolutely essential, no, it's not absolutely essential.

15. Q. Not for your purposes. You're saying . . . you told the
16. Court awhile ago that there was going to be five hundred
17. thousand dollars available for these annexation expendi-
18. tures in the first year. That's not so though, is it?

19. A. Wait just a minute. You're doing too much of my talking.
20. I said earlier . . .

21. Q. I'm following Mr. Cogar's example.

22. A. I said earlier that the City had had a reassessment and
23. that those real estate reassessments, if the City main-
24. tains its same tax rate of sixty-five cents, would yield

1. an additional five hundred and seventy-two thousand dol-
2. lars. That was what I said.

3. Q. Which would be available . . .

4. A. Which would be available for whatever they want to use
5. it for.

6. Q. Oh, I thought you were talking about how . . . telling
7. the Court how the City may pay for this annexation.

8. A. It could very well be that they will use it for this.

9. I don't know what their expenditures are going to be for
10. the next year. They may not have a great increase in
11. expenditures for next year. They have . . .

12. Q. Do you think that's a reasonable assumption?

13. A. You know, you ought to let me finish every now and then.

14. Q. Well, go ahead and finish.

15. A. Okay.

16. Q. And let me know when you are.

17. A. They . . .

18. MR. COGAR: He stops talking when he's fin-
19. ished.

20. Q. Go ahead.

21. A. They have, as the County will have whenever it reassess-
22. es, the unusual situation of what amounts to an abnormal
23. amount of assessables. That does not mean that just
24. because of that abnormal amount of assessables that

1. they're going to turn around and do a similar amount of
2. expenditures, because this happens every couple of years.
3. So, consequently, whatever their expenditures may be for
4. this year is something yet for them to decide, and it
5. could very well be very much in line with what they ex-
6. pended last year. So, I don't know how much of that, if
7. any, will be used.

8. Q. Is that it?

9. A. That's it.

10. Q. Do you think it's reasonable to assume that in this day
11. and time, you talked about inflation effects on assess-
12. ables, that inflation will not affect expenditures too?

13. A. I can say to you that, yes, inflation will affect expen-
14. ditures. But it's pretty customary around through all
15. the municipalities and local governments, counties in-
16. cluded, around the state right now, that not only are
17. we worried about inflation but we're also worried about
18. ways of not continuing to let that occur. So, consequent-
19. ly there is some real serious looking going on as to
20. whether or not you're going to add in our normal infla-
21. tion. So, I don't know how much they might have added
22. on for additional expenditures for the coming year.

23. Q. Nor will this Court.

24. A. Nor will this Court, that is correct. No one will know

1. until the Council has finished its deliberations for the
2. new budget.

3. Q. And the Council decides when, up to a point, that they're
4. going to do that. Is that true? They have to adopt a
5. budget by a given date, don't they?

6. A. As I said earlier, their budgetary process normally means
7. that they will have a budget ready and available for op-
8. eration July 1.

9. Q. And as to how soon before that is a decision of Council.

10. A. That is correct.

11. Q. If I followed your testimony correctly, Mr. Wade, you
12. have described a City that, to my knowledge, is in better
13. financial shape, in better condition, than any City you
14. have ever testified about. Do you agree with that?

15. A. I would say that they are in . . . comparable to other
16. cities they are in good financial shape.

17. Q. Good financial shape. They have the next to the lowest
18. city tax rate.

19. A. That's correct.

20. Q. They've got how much debt margin?

21. A. Thirty million was it? Thirty-six million maybe.

22. Q. You used this reassessment for some purposes and you
23. forgot it for others. If you used the new reassessment,
24. what is the debt margin then?

1. A. Another ten percent of the increase.

2. Q. What is that exhibit . . .

3. A. It's about ninety million, so maybe another nine mil-
4. lion.

5. Q. What is the exhibit on that?

6. A. Thirty-six.

7. Q. Exhibit 36. You show there real estate in the City of
8. Harrisonburg as two hundred and sixty-nine million dol-
9. lars, in round figures. It's actually three hundred and
10. sixty-some million, isn't it?

11. A. Well, again, the two sixty doesn't relate to the three
12. sixty, but if you'll take the two sixty plus the eleven,
13. the two eighty-one, the total, that will relate. See,
14. that has the public service in it. That will relate
15. to the new value of approximately three hundred and
16. sixty-eight million.

17. Q. So, how much additional assessables should you put in
18. there to get a true picture?

19. A. As I said just now, it's up close to ninety million;
20. well, it's just shy of that, it's sixty-seven million (sic).
21. So, take ten percent of it.

22. Q. Of nine million?

23. A. Ten percent of eighty-seven million, I guess it is.

24. It would be eight million seven hundred.

1. Q. So, you would add eight million seven hundred to the
2. existing City debt margin, which will give you what?

3. A. Twenty-three nine or roughly twenty-four and add eight
4. onto that, and you'll have thirty-two. Thirty-two nine,
5. somewhere in that range, thirty-two seven.

6. Q. So, it's thirty-three million dollars of debt margin
7. that the City has as of now.

8. A. That is correct.

9. Q. And they have only used four million of their thirty-
10. four million, is that correct?

11. A. That's all they have outstanding at this time.

12. O. Do you agree that that's a very low debt for a city the
13. size of Harrisonburg?

14. A. Yes, that's quite a low debt.

15. Q. If, in fact, the City doesn't increase for whatever rea-
16. son because of inflation or because of increased . . .
17. other reasons for increases, its expenditures for the
18. year 1981-82, and it's got an additional five hundred
19. thousand dollars if it held the same tax rate, the City
20. could in fact maintain its present condition, present
21. level of everything. and lower its tax rate without an-
22. nexation. couldn't it?

23. A. They could if that's what they saw fit to do.

24. Q. And there's no plan under the present situation to in-

1. crease either trash collection fees, sewer fees or water
2. fees, is there?
3. A. Not right now.
4. Q. You used the phrase "spill over" from the County when
5. you were talking about drawing the line. Did you draw
6. this line, Mr. Wade?
7. A. No sir, that was a concerted effort.
8. Q. A concerted effort. Did you have anything to do with
9. drawing the line?
10. A. I certainly did.
11. Q. Did you recommend to draw lines through parcels of land
12. in one ownership?
13. A. I did.
14. Q. And not follow property lines?
15. A. I did.
16. Q. You say you stayed, what, a thousand feet off major
17. highways?
18. A. Roughly a thousand off the major, two fifty off the
19. others.
20. Q. Is Route 42 a major highway?
21. A. As far as the major service areas are concerned, yes.
22. Q. Did you stay that far off of 42?
23. A. I think we did.
24. Q. Did you say that Park View is a spill over from the City

1. of Harrisonburg?
2. A. I don't recall saying that.
3. Q. I thought you said spill over.
4. A. Well, I didn't say spill over specifically to Park View.
5. Q. All of it hasn't spilled over then?
6. A. Well, certainly not all of it has spilled over.
7. Q. How long has Park View been there?
8. A. A good long time. It has a few lots that have been
9. built on over the years, in recent years.
10. Q. But Park View has been there for many years.
11. A. That's right.
12. Q. Certainly before the 1962 annexation case.
13. A. That's correct.
14. Q. How about Ashby Heights? There are no connecting streets
15. to the City, that's not a spill over, is it?
16. A. Well, you know, a spill over can be just people who
17. might go and relocate elsewhere. It doesn't mean that
18. the street is actually, physically connected.
19. Q. Well, Ashby Heights could be completely composed of
20. people from Fairfax County, couldn't it, as far as you
21. know?
22. A. I think I know better than that, but, yes. You could
23. have people from a lot of different areas.
24. Q. You heard the testimony about Fairway Hills, didn't you?

1. That was a real estate development project where one man
2. wanted to build a house out there, and as a result of
3. that, because of certain other factors, he had to buy a
4. whole tract of land and got the City to run the water
5. and sewer, to bail him out. Did you hear that testimony?

6. A. I didn't hear all of that.

7. Q. You did not. You gave a lot of statistics about popu-
8. lation increases, but you said somebody else was going
9. to talk about J.M.U.

10. A. That's correct.

11. Q. The fact of the matter is that you know that the increase
12. in population in the area annexed in 1962 is almost
13. totally the increase in the enrollment of J.M.U. You
14. know that, don't you?

15. A. No, I don't.

16. Q. You do not know that?

17. A. That's not the case. Because when you look at the enum-
18. eration districts, which is what I did, you can see where
19. the different pockets of population are. And right there
20. adjacent to the campus is one figure, but all the others,
21. I can't tell you how many students are scattered around
22. elsewhere; but not all of that is located within the
23. annexation area. And by visual inspection you can see
24. it too.

1. Q. How about within the campus of J.M.U.?
2. A. Right within the campus of J.M.U. in those new dormitor-
3. ies that are in the 1962 annexation area, there are
4. approximately 3,332 students.
5. Q. So, that accounts for that much of the increase?
6. A. That is correct; 3,332.
7. Q. Are you aware that in 1960 the U. S. Census did not in-
8. clude resident students as part of the population of
9. the area?
10. A. I didn't testify that it did.
11. Q. Well, did it?
12. A. I'm not certain when they started it, but I know they
13. have them in there now, and I know they had them in there
14. in 1970.
15. Q. You know they didn't have them in there in 1960 though.
16. A. I don't know that. I said I'm not certain when they
17. started.
18. Q. Does that make a difference in your opinion as to the
19. increase of population at all? If they count them in
20. 1980 and didn't in 1960?
21. A. If they counted the students in the population in 1980
22. and didn't in 1960?
23. Q. Yes sir.
24. A. It could have a bearing for that particular time, if

1. they in fact were not counted in there.

2. Q. Well, didn't you use that particular time frame? I
3. made a note, 1960 census and 1980 census.

4. A. But I didn't talk about J.M.U. I said somebody else
5. knows the particulars of that and they will testify to
6. that.

7. Q. All right, I listened to you talk about all the factors
8. you considered in drawing a line of annexation, and not
9. once did I hear you say anything about the effect on the
10. County. You didn't consider that, did you?

11. A. Yes, we did.

12. Q. Well, what effect did you find it had on the County?

13. A. Well, you know, as far as the County's situation is con-
14. cerned, when you look at the overall annexation we must
15. be concerned with what remains out there, the remaining
16. portion of the County.

17. Q. What exhibit do you have here that shows that?

18. MR. COGAR: He didn't say he had an exhibit,
19. Mr. Fitzgerald.

20. MR. FITZGERALD: Well, I asked him.

21. MR. COGAR: You just let him finish the
22. question and he'll tell you what he took into account.

23. MR. FITZGERALD: I asked the question what
24. exhibit did he have.

1. MR. COGAR: No, you interrupted one question
2. with another question.

3. JUDGE MOON: If there is an answer pending,
4. go ahead and answer the question.

5. A. Do you want me to answer the second question?

6. JUDGE MOON: Well, if you had not answered
7. the previous question, go ahead and finish your answer.

8. A. As far as the remaining portion of the County is concern-
9. ed, I think that there will be a positive effect because
10. of this annexation. And in particular I will relate it
11. to what has happened since the case was filed in 1975.
12. Basically the County has attempted to get into the water
13. and sewer business, particularly the water business.
14. Most of that came about after 1975. And we have out
15. there now a duplication of effort. And with the annexa-
16. tion that we are proposing and with purchasing the facil-
17. ities that we are proposing, we could eliminate that dup-
18. lication. And the County could go about taking care of
19. the rural population, which is what they appear to be
20. headed to do and like to do best. In fact, one of their
21. reports points out that to take care of the rural people
22. and to take care of providing schools, that's their main
23. function; but not to provide urban services. So, we
24. would have an advantageous effect by relieving them of

1. attempting to continue that in this area right here ad-
2. jacent to a municipality that's already able, willing
3. and out there serving municipal type services. They just
4. won't have to continue that. So, I think the remaining
5. County would be advantageously affected.

6. Q. Now, let's get back to the question. What studies have
7. you made . . . well, strike that question. Is Mr. Stead-
8. man a member of the same firm that you are in?

9. A. You know he is.

10. Q. What?

11. A. You know he is.

12. Q. Yes, but I don't know whether the record knows that or
13. not. Did you hear him say that the County would need
14. its commercial and industrial areas as well as the City
15. needs commercial and industrial areas?

16. A. He didn't say where though. You've got seven commercial
17. pockets elsewhere in the County. You have seven towns.
18. They all have commercial areas. There are other commer-
19. cial areas too, other than in those seven towns. So,
20. yes, the County needs some commercial area, and they
21. have it.

22. Q. Did you make a study of the effect on the County's sales
23. tax revenues if this annexation is granted?

24. A. If we had tried this case in 1975 we wouldn't have all

1. that discussion about all the sales tax, because most of
2. that wasn't even out there then.
3. Q. Can you answer the question, Mr. Wade? Did you make a
4. study of the effect on the sales tax?
5. A. Yes, we saw what it was. Eight hundred and eighteen
6. thousand dollars is the amount of sales tax that you
7. would be losing.
8. Q. Now, that's local sales tax, isn't it?
9. A. That's correct.
10. Q. Did you make a study of the sales tax distribution to
11. the County that's going to be affected by this annexa-
12. tion?
13. A. The sales tax distribution?
14. Q. From the state sales tax, yes.
15. A. You mean for the school situation?
16. Q. No, I mean . . . not for the school situation, I'm talk-
17. ing about the sales tax that's collected by the state
18. and paid back to the localities based on school age pop-
19. ulation in the jurisdiction, the cities or in the count-
20. ies. Did you make a study of the effect of that?
21. A. Okay, the eight hundred and eighteen thousand dollars is
22. what you'll lose, and we have those figures reflected.
23. Q. In local sales tax?
24. A. In local sales tax.

1. Q. I'm talking about state sales tax distribution.

2. A. Again then you're back into your school situation.

3. Q. I'm asking you a simple question, Mr. Wade. Did you
4. take into account the state sales tax distribution that
5. the County would lose if this annexation is granted?

6. A. The eight hundred and eighteen we did because of the
7. way it's distributed. The other state and federal funds
8. we did not for the reasons I said earlier. They will
9. follow the people wherever they go.

10. Q. Mr. Wade, the eight hundred and some thousand dollars
11. has nothing to do with the state distribution of sales
12. tax, does it? That's local sales tax levies.

13. A. That's the local sales tax levy, right.

14. Q. And is the answer to my question that you did not take
15. into account the effect of this annexation on the state
16. sales tax distribution to the County?

17. MR. COGAR: I object. He answered that ques-
18. tion.

19. MR. FITZGERALD: He has evaded the answer.

20. MR. COGAR: He didn't answer for a couple of
21. times, but his last answer was he did not take into
22. account any state or federal taxes. And I would like
23. to have that read back.

24. JUDGE MOON: No, just let him answer the ques-

1. tion. I wasn't clear on it. Answer his question, the
2. last question.

3. A. I did not take into consideration the state and federal
4. revenues to Rockingham County for the reason I stated
5. earlier, that they are basically related to the people
6. and is prorated accordingly. and they follow the people
7. wherever they go.

8. JUDGE MOON: Does that include the tax in
9. particular that he has reference to?

10. A. He's particularly asking about the state sales tax re-
11. turn, and it does include that one.

12. Q. Now you've answered the question.

13. JUDGE ARTHUR: Now I'm confused. The eight
14. hundred and eighteen thousand, does that include the
15. state sales tax as well as the local?

16. A. No. The eight eighteen is just the local amount.

17. JUDGE ARTHUR: When you made your last state-
18. ment that that does include that, what were you refer-
19. ring to?

20. A. Well, that was in answer to his, or one of their ques-
21. tions. It was asked did I include what he had asked
22. about.

23. JUDGE ARTHUR: Maybe you said excluded, I
24. thought you said included.

1. MR. FITZGERALD: No sir, he said he did not
2. take into account any state or federal revenues that the
3. County was receiving, the effect of annexation on those.
4. And Judge Moon asked him did that include that . . . not
5. taking into account include what I was asking him about
6. for three times, the state sales tax distribution, and
7. he finally said yes it did. So, if I get it correctly,
8. the eight hundred and some thousand dollars is the local
9. sales tax levied by the County Board of Supervisors on
10. sales; it's paid back to where it's collected from.
11. What I was asking him about is the state sales tax that
12. is distributed back to the localities, cities and count-
13. ies, based on the school age population.

14. A. I did not take the state and federal revenue distribution
15. back to the locality for the reason that they follow the
16. people.

17. Q. Did you take that into account when you were determining
18. what revenues the City would have to pay for its opera-
19. tional costs?

20. A. Yes, what other total revenues might be forthcoming to
21. the City we have reflected.

22. Q. You have reflected that. You said as one of the reasons
23. this annexation should be granted is that it would pro-
24. vide developers with just one unit of government that

1. they'd have to contend with rather than two. Won't there
2. be two units of government left if this annexation is
3. granted?

4. A. Of course.

5. Q. Do you project there's going to be no development out-
6. side the area sought for annexation?

7. A. No, I think there will be a lot of development outside
8. the area.

9. Q. A lot of development outside of the area.

10. A. Yes.

11. Q. Well then won't developers still have to contend with
12. two jurisdictions?

13. A. Well, it all depends on where they're trying to develop
14. and whether or not there are utilities even close by.

15. Q. Well, now, you said that the County ought to get out of
16. the utility business so the City would be the only one
17. in it. So it's necessary to have utilities developed,
18. I guess you'd agree with that.

19. A. Well, you know, you develop them where it's financially
20. feasible to do so and to serve the people.

21. Q. And development generally follows utilities, doesn't it,
22. sir?

23. A. It does.

24. Q. So that here you're going to have a boundary line, just

1. from looking at it, about three times as large as the
2. one you've got, where developers are going to have to
3. contend with two units of government, aren't they?

4. A. Well, if you're speaking of development beyond where we
5. are, whatever might take place there, if it's feasible
6. that they need to ask two units for whatever they are
7. after, yes, there will still be that.

8. Q. And if the County gets back to doing nothing but running
9. the school system, as you have suggested, following the
10. Commission's report, I would assume; then the City is
11. going to be the only one with utility lines, and if you
12. are going to develop, that's where the development is
13. going to take place, isn't it, right outside the City?

14. A. Well, you know, the urban areas have already been desig-
15. nated around the County. There's basically Harrisonburg
16. and the seven towns. And it also has been pointed out
17. that basically they have the urban services that might
18. be built upon. And I think most of the development is
19. going to take place around those urban centers.

20. Q. How about Dayton? You're going to be right up next to
21. Dayton, aren't you?

22. A. We certainly are. They're real good neighbors.

23. Q. Then you'll have three units of government there right
24. adjacent to each other, aren't you?

1. A. That's right.
2. Q. Two units is bad you say, but now you're creating three
3. adjacent jurisdictions.
4. A. Yes, we'll have three right there in certain portions.
5. Q. What kept you from drawing your line around Dayton? That
6. looks like an urban area.
7. A. Dayton is already an incorporated town.
8. Q. Well, that doesn't stop a city from annexing a town,
9. does it? It's an urban area . . .
10. A. Yes, it is.
11. Q. But you never contemplated annexing Dayton?
12. A. Never did.
13. Q. Now, I believe Mr. Cogar asked you about the City's re-
14. imbursement of the County. Is it reimbursement or com-
15. pensation to the County that you were talking about?
16. A. I don't know . . . it's a play on words. What is it you
17. want?
18. Q. It's no play on words. In your exhibit and testimony
19. were you contemplating reimbursing the County or compen-
20. sating the County as the result of the effect of this
21. annexation?
22. A. You can call it either one.
23. Q. It makes no difference to you.
24. A. I mean, you know, I don't know the technicality involved,

1. but it's money to the County.

2. Q. Let's look at your Exhibit 37. I guess it's 37a. You
3. show on 37a that the County has a debt of \$276,938.00
4. which was money, the balance of the loan, balance of bor-
5. rowed funds, that the County had to borrow to put up its
6. share of building the Vo-Tech School. Is that correct?

7. A. The outstanding amount down in D.1., that is correct.

8. Q. Now, do I read this correctly that you deduct that from
9. the debt assumption that the City is going to assume?

10. A. That is correct. Look down under D and you'll see where
11. it's been taken off.

12. Q. You take off what, \$395,625.00 of County debt? Is that
13. the total?

14. A. Yes, the total there associated with Massanutten is
15. \$395,625.00.

16. Q. But you say the City should not reimburse the . . . or
17. not assume the County indebtedness. Is that correct?

18. A. That is correct.

19. Q. And are you telling the Court that somewhere in that
20. agreement that Mr. Cogar introduced that there are pro-
21. visions to take care of that debt assumption?

22. A. I said there was an agreement that addresses capital
23. outlay and operations for the joint effort for the school,
24. and that that agreement is the one that would more appro-

1. priately do whatever is necessary to reflect the change
2. by reason of annexation; that that agreement should ad-
3. dress that. Those two bodies through that agreement.

4. Q. And you're telling us that somewhere in that agreement
5. there's a provision that takes into account if an annex-
6. ation occurs while the debt is outstanding?

7. A. I'm not saying that that agreement specifically spells
8. out annexation; but that agreement does address capital
9. outlay and operational expenses. So, the parties to
10. that agreement need to take whatever action might be
11. appropriate to reflect the changes by reason of annexa-
12. tion.

13. Q. Oh, so the agreement can be modified to take into account
14. this.

15. A. If it takes a modification, yes.

16. Q. The fact of the matter is, you would agree, I assume,
17. that the County's ability to pay or discharge its indebt-
18. edness is reduced by this annexation.

19. A. The County's ability to pay this indebtedness is reduced
20. by the amount of assessables that it will be losing.

21. Q. And you used the 14.11%.

22. A. That's correct.

23. Q. And you're saying the County's ability to discharge its
24. obligation under these bonds is reduced by 14.11%.

1. A. Well, not quite that. It's just that the way that it's
2. spelled out as far as statutes are concerned, we're
3. supposed to use a just proportion, that is the 14.11%.
4. But we have also reduced a lot of other expenditures.
5. So, I can't say that it's a straight reduction of reve-
6. nues; there are reductions of expenditures also.

7. Q. And a reduction of other revenues. But we're saying,
8. you're saying by this exhibit that the County's ability
9. to discharge its obligation under this bond of indebted-
10. ness is diminished by 14.11%, and therefore the City
11. should assume that amount.

12. A. No, this exhibit says that the 14.11% is the amount of
13. indebtedness that the City would assume . . .

14. Q. As a just proportion?

15. A. As a just proportion according to the statute. Now,
16. what that just proportion is supposed to take into ac-
17. count and how you want to term that, I guess that's any
18. way you want to.

19. Q. Yes, and the statute says "just proportion", doesn't it?

20. A. That's correct.

21. Q. You picked 14.11%, didn't you?

22. A. This is customary. We have done this in all the cases.

23. Q. Well, do you agree with it or don't agree with it.

24. A. I agree with it.

1. Q. You agree with it. So, you're saying that this is the
2. amount the City should pay for the County's indebtedness.
3. A. That's what I'm saying. The 14.11%.
4. Q. Based on the fact that the City is annexing 14.11% of
5. the County's assessables?
6. A. That's correct.
7. Q. Which is, in one measure, a mark of the County's ability
8. to discharge its obligations.
9. A. It is a measure, yes sir.
10. Q. For instance, the County nor the City gets any revenue
11. out of owning a school to discharge the debt, do they?
12. A. No sir.
13. Q. That's not where the money comes from, is it?
14. A. Not from the school.
15. Q. It's not like a mortgage on a house that you might rent
16. and pay the mortgage out of the rent. The schools are
17. liabilities.
18. A. Yes sir.
19. Q. So, the County has had to use its revenues, whether it
20. comes from assessables or whatever, to make these obli-
21. gations.
22. A. Yes. I might point out that this area here, because we
23. have a loss of net tax revenues, this area here is an
24. area that has a greater amount of assessables than it

1. does of corresponding expenses. So, consequently these
2. same assessables have helped to pay for all of those
3. other facilities spread all around the County. I mean,
4. there's no way we can take that with us if we annex;
5. but these people, having paid their assessables there,
6. rightly have a certain amount of money in all of the
7. other schools around the County.

8. Q. And they are County taxpayers, aren't they?

9. A. They are County taxpayers.

10. Q. Do you think that that ought to be given to the City
11. taxpayers who have not paid a cent of it? Take it with
12. them to the City?

13. A. I think that it ought to be taken into account when the
14. annexation court at its discretion can waive those sort
15. of factors to recognize that these people who are going
16. into the City are going to be the same County people
17. you're talking about right now. They're just going to
18. have on a City hat now. And they have a certain vested
19. interest in a lot of other things, and I think they ought
20. to get credit for it.

21. Q. Well, that presumes that every person that lives in this
22. area has lived there ever since the debt was created,
23. doesn't it? They're not necessarily the same people.

24. A. They're not necessarily the same people, but I think we

1. would find a 14.11% or thereabouts relationship back to
2. them.

3. Q. The fact of the matter is, to end up this matter of debt
4. assumption, the fact of the matter is that if this annex-
5. ation is granted the County will still have to discharge
6. that debt from whatever sources it has.

7. A. It still has to pay off the debt, yes sir.

8. Q. Unless the Court orders the City to assume a portion of
9. it.

10. A. Well, I assumed you were talking about the remaining
11. portion. The County still has to pay off the remaining
12. portion of the debt. That's what I thought you meant.

13. Q. The County is obligated, I believe you would agree, to
14. pay the entire debt. It has issued bonds and agreed to
15. pay the entire debt. It will have to pay the entire
16. debt unless this Court says the City should assume a
17. portion of it.

18. A. Yes.

19. Q. In your theory of determining the loss of net tax reve-
20. nues, I believe you made it abundantly clear that you
21. did not take into account the loss of revenues that the
22. County would lose as a result of annexation if they came
23. from federal or state sources.

24. A. That is correct.

1. Q. In developing your net loss of net tax revenues you told
2. the Court that you reviewed the County's operations to
3. see what savings there could be in the way of expendi-
4. tures if this annexation were granted, and in general
5. governmental expenditures you came up with a total of
6. \$165,710.00 savings, is that correct, from Exhibit 46?

7. A. Exhibit 46 is the grand total of all those general govern-
8. mental departmental areas, the \$165,710.00.

9. Q. Now, it would certainly be fair if you did not take into
10. account the loss of state or federal funds on the revenue
11. side not to take into account the savings of expenditures
12. which are funded by state or federal revenues, wouldn't
13. it?

14. A. We attempted to do just that.

15. Q. Well, look at your exhibit. Is the savings of \$36,385.00
16. the biggest one savings you've got on that exhibit?

17. A. Thirty-six thousand three hundred and eighty-five is
18. the largest.

19. Q. Item 53.

20. A. Yes.

21. Q. Are you familiar with the funding of welfare costs, so-
22. cial services?

23. A. Yes, and we think we have just the local share there.

24. Q. You think that the \$1,453,956.00 is local expenditures

1. for welfare?

2. A. No, no. That involves a lot, but within that total
3. makeup, there is funding from both local and state. And
4. out of the total \$1,453,956.00, there are certain items
5. we can identify as being those locally funded, and we've
6. only taken a small portion of those, and we've come up
7. with \$36,385.00 out of a total of \$1,453,956.00.

8. Q. What is the local . . .

9. A. It would probably run somewhere around fifteen percent.

10. Q. You reduced the local funds by fifteen percent?

11. A. No, no, if I got a straight line reduction that would be
12. more, much more, than the figure we're showing.

13. Q. How much local funds is in the welfare budget?

14. A. Somewhere in the neighborhood of probably fifteen per-
15. cent.

16. Q. Well, can you give us a figure?

17. A. I might be able to. (Witness looks through files) Okay,
18. you had, for 1980-81, \$1,453,956.00 total. From the
19. state you received \$1,053,500.00, meaning that the local
20. amount was \$400,456.00. Which, compared to the total,
21. was roughly twenty-seven and a half percent.

22. Q. Of welfare funds? Is that what you're talking about?

23. A. I'm answering your question of how much of the total
24. there was local, and that's what it was.

1. Q. Can you say it again?
2. A. You had a total amount of \$1,453,956.00, of which from
3. the state you received \$1,053,500.00, leaving a local
4. amount of \$400,456.00.
5. Q. So, what percent of the local funds that you determine
6. that the budget would be reduced by?
7. A. I took a relationship to the population of 9.1%.
8. Q. Did you make any study of the welfare cases in the area?
9. A. No, I did not.
10. Q. Well, doesn't that determine the welfare cost? The
11. welfare cases rather than the population?
12. A. Right, we took this as a reasonable approach to it. We
13. did not have access to information indicating what those
14. welfare cases were.
15. Q. They had not been asked for in interrogatories?
16. A. I can't tell you whether they were asked for specifically.
17. Q. In any event, you didn't ask for them.
18. A. I don't have them. I can say that.
19. Q. You just took a straight population.
20. A. Straight population.
21. Q. How about the Sheriff's Department? What did you figure
22. that could be reduced by?
23. A. Again, we went at the local effort on that. Well, there
24. are any number of items, but in essence we looked at,

1. again, the local expenditures for such items that might
2. be affected as a given deputy . . .

3. Q. How many deputies did you reduce it by, one?

4. A. Just one.

5. Q. So, in determining the savings there, the Sheriff's
6. Department would be reduced by one deputy, and certain
7. expenditures other than that.

8. A. And certain other expenditures that are incurred in here
9. with the operation, for a total amount of \$15,238.00.

10. Q. And you used the 1980-81 budget because at the time you
11. did this that was the most recent budget.

12. A. Yes, that's the budget we used.

13. Q. When did you make these computations?

14. A. We made computations back in the fall, and then during
15. and after the Commission hearings.

16. Q. And you have not changed those since that time?

17. A. Well, what you have before you, we worked on these up
18. to the filing of this.

19. Q. Were any changes made from the time you submitted this
20. to the Commission?

21. A. I would have to look back.

22. Q. Well, strike that question if you have to look it up.

23. If the expenditures on Exhibit 46, the authorized were
24. greater, your reductions would be correspondingly great-

1. er, would they not?

2. A. I don't know. It depends on the areas in which they
3. were greater. Not every item can you affect.

4. Q. I understand that, but if the total figure, and you used
5. percentage figures I believe, you said population.

6. A. Yes, but you didn't apply it to the great big grand total
7. like the one you mentioned, you didn't apply it to the
8. \$1,453,000.00 or the Sheriff one you mentioned, we did
9. not apply it to the total \$503,377.00; just selected
10. items within there.

11. Q. Yes sir.

12. A. So, depending on where you put your additional expendi-
13. tures, it may or may not.

14. Q. Exhibit 39 is entitled, "Potential Loss of Net Tax
15. Revenues", is that your language?

16. A. I don't know that we attempted to make a great deal of
17. meaning out of that word. I don't recall exactly how
18. that developed.

19. Q. Were you supposed to be looking for the prospective loss?

20. A. The prospective loss . . .

21. Q. That's what you were trying to determine.

22. A. It's a definition . . . we could change that to prospec-
23. tive if that would make you happy.

24. Q. That should be changed to prospective.

1. A. No, I said we could if that would make you happy.
2. Q. Well, if you don't want to, that's fine with me. It's
3. your exhibit.
4. A. Okay.
5. Q. What you've done then is to make an estimate of what you
6. call local levied taxes.
7. A. Right.
8. Q. Excluding any state funds or state revenues that are dis-
9. tributed to the County, and federal funds paid to the
10. County, leaving those out, and you come up with a gross
11. loss of revenue.
12. A. That's right.
13. Q. And then you have reflected the ability of the County if
14. the annexation is granted to reduce certain expenditures.
15. A. That's right.
16. Q. From local expenditures.
17. A. From local expenditures.
18. Q. And added the schools . . . you don't know how the school
19. reductions were determined, do you?
20. A. Yes, I do.
21. Q. How were they determined?
22. A. You have reflected in your 1980-81 Rockingham County bud-
23. get for schools a total amount of \$18,552,440.00. Now,
24. you also have reflected revenue from all sources other

1. than your local taxes and local sources, of \$11,472,925.00;
2. meaning that from local you needed \$7,079,515.00. If you
3. will take that last amount, the local effort for the
4. 1980-81 budget reflection, and divide it by your total
5. number of students for your County system, you'll have
6. approximately seven hundred dollars per student as a
7. local expenditure from local funds. Then if you will
8. look at the number that we are taking from the annexation
9. area that are presently in public schools, the 525, and
10. relate it to that local amount per child, but not the
11. full amount, because we were not able to take a straight
12. reduction for each and every pupil. We estimated that
13. somewhere in the neighborhood of seventy percent of that
14. amount should be a savings to the County, so that we
15. came up with an amount of \$262,500.00.

16. Q. In any event, you've come up on Exhibit 39 with a gross
17. revenue reduction of \$2,134,064.00 as a result of the
18. annexation to the County.

19. A. Correct.

20. Q. Did you make a calculation of how much the other revenues
21. that are not included in that, the state and federal rev-
22. enues, . . .

23. A. No, I did not.

24. Q. Did you make any calculation as to how much the County

1. is going to lose?
2. A. I did not make a calculation to reflect other than those
3. shown here.
4. Q. But you made a calculation of how much the City was go-
5. ing to gain of those revenues, didn't you?
6. A. That's correct.
7. Q. Well, what the City is going to gain has some comparison
8. to what the County is going to lose of those revenues,
9. doesn't it?
10. A. There would be some comparison. It's not always exact
11. amounts because of the way that they are funded.
12. Q. Well, let's look back over here at Exhibit 34. You've
13. got estimated revenue from the area to be annexed.
14. A. For the area, yes.
15. Q. From the area to be annexed, as I read my copy, unless
16. the exhibit has changed.
17. A. I'm sorry, I was looking at the title.
18. Q. It should be "from" up above there too, shouldn't it,
19. not "for"?
20. A. Well, if you want to make it "from", we can do that.
21. Q. What it purports to do is to show what taxes and revenues
22. are going to come from the area that you annex, right?
23. A. That's right. The area and everything associated with
24. it, as far as revenues to the City are concerned under

1. the City's present basis of taxing.

2. Q. And in general property taxes you're going to get
3. \$1,070,567.00 out of the area, is that correct?

4. A. That is correct.

5. Q. Don't you show the County losing \$1,085,000.00?

6. A. That is correct.

7. Q. Why the difference?

8. A. Well, I explained it earlier. We have a varying tax
9. rate. The County is at fifty-two cents and three fifty,
10. they are the main items, real estate and personal proper-
11. ty. While the City is at sixty-five and two fifty, but
12. doesn't tax merchants capital. So, when you run all of
13. that through, it does happen to end up to be a differen-
14. tial figure here, and a little bit less as a total.

15. Q. But you said the City did have a business privilege and
16. license tax.

17. A. I did there too.

18. Q. Now, that's carried as a separate item in the budget.

19. A. That is correct.

20. Q. Why don't you have it listed here?

21. A. It's listed in there.

22. Q. Where is it?

23. A. It's under other local taxes. That's another local tax.
24. It's within the \$1,225,400.00.

1. Q. What else is in there?

2. A. Well, quite a few things. Some of the major items in
3. there, the local sales tax is in there, the eight eighteen
4. two fifty that the County loses; the local sales tax,
5. it's in that figure. In fact, it's the largest in the
6. figure.

7. Q. The eight hundred and eighteen thousand the County is
8. going to lose is in there.

9. A. That's correct.

10. Q. And the business and professional licenses are in there.
11. How much is that?

12. A. The business and professional licenses amount to two
13. hundred and fifty thousand a hundred and fifty dollars.

14. Q. And what budget are you using to estimate that on, the
15. 1980-81?

16. A. No, the revenues are a result of conferring with depart-
17. ment heads and with the City Manager, and applying the
18. rates to what we know to be . . .

19. Q. I meant to ask you the rates that are applicable in the
20. present budget. Is it the same rate?

21. A. Yes, the same thing.

22. Q. And what else is in that?

23. A. Still another major item would be electric utility tax,
24. \$68,200.00; telephone utility tax, \$51,700.00; motor

1. vehicle licenses, and we're low on this figure, \$27,100.00.
2. That should be about \$42,000.00. We're about fifteen
3. thousand low right there. So, we're understated in rev-
4. enues that amount. And then about ten thousand for bank
5. franchise tax.

6. Q. Are there any state or federal revenues in this exhibit
7. at all?

8. A. It says "Other Local Taxes", so they're local.

9. Q. State and federal revenues here are local taxes?

10. A. No, no, no. I'm sorry, I'm back talking about that one
11. item. Do you mean the whole . . .

12. Q. In Exhibit 34 does it reflect any state or federal reve-
13. nues?

14. A. Yes, it does.

15. Q. And where is that included?

16. A. Okay, under the non-categorical aid, about three from
17. the bottom, the \$278,910.00, we have A.B.C. funds in
18. there.

19. Q. And what else?

20. A. We have a share of the sales tax that you were asking
21. about earlier.

22. Q. That's the one that's distributed back to the County
23. based on school age population.

24. A. That is correct.

1. Q. How much is that?

2. A. We have here \$126,180.00.

3. Q. All right, sir. What else is in there?

4. A. Let's see, you want some state and federal . . .

5. Q. Go ahead and give us the A.B.C. funds in there.

6. A. Twenty thousand.

7. Q. All right, sir.

8. A. We have . . .

9. JUDGE ARTHUR: Could you give us the sales
10. tax figure also?

11. A. \$126,180.00. I have my highway mileage revenue some-
12. where. That's what I'm looking for.

13. Q. Well, the County doesn't have any of that, does it?

14. A. No, but you'd asked me for anything from the state.

15. Q. We are talking about as being from the area to be annex-
16. ed. In this item, categorical aid, you've had A.B.C.
17. profits that the City will get of the area of twenty
18. thousand dollars, \$126,180.00 of state distribution of
19. sales tax. What else is in that \$278,910.00?

20. A. Tax on local deeds of approximately ten thousand dollars.

21. Q. Is that the tax applied to the recordation of deeds
22. recorded in the County land records?

23. A. I think that's what that's supposed to be. We have
24. reflected the shared expense of the Commissioner of

1. Revenue and Treasurer's Office that comes back.

2. Q. That's in there too?

3. A. That's in there.

4. Q. Do you know how much that is?

5. A. Yes, the Revenue and Treasurer, that's about twenty-six
6. thousand six hundred and sixty-eight dollars.

7. Q. In any event, all of these total up to \$278,910.00 that
8. the City will be getting out of the area if it's annex-
9. ed.

10. A. That's correct.

11. Q. In that one item of categorical aid.

12. A. It would be getting as a result of annexation.

13. Q. How about this non-categorical aid of \$156,180.00. What
14. items are included in there?

15. A. I was looking at the categorical aid rather than the
16. non-categorical. The categorical aid, that's where the
17. highway funds are.

18. JUDGE TRABUE: All those A.B.C. profits and
19. you were talking about the Commissioner of Revenue and
20. all that, that's under non-categorical aid.

21. A. That's correct. So, that \$156,180.00 is the summation
22. of the A.B.C., the local deeds and the share of the sales
23. tax that I gave you earlier. That is the non-categorical.
24. Now, the categorical is where the highway funds are.

1. Q. That's the money that the City will be getting out of
2. the area that the County does not now get?

3. A. Well, that's the highway mileage funding that the City
4. utilizes on its road maintenance and what-have-you.

5. Q. Is that the only item in the categorical aid?

6. A. That's the only thing we have reflected in categorical
7. aid. The \$278,910.00 is a summation of the highway
8. mileage for the primary and secondary roads.

9. Q. Mr. Wade, I asked you earlier if you had made any compu-
10. tations of what the County would lose in the way of state
11. sales tax distribution and these other state taxes, and
12. you said you had not made any calculations of that.

13. A. I have not.

14. Q. But you had to to get those figures for the City, didn't
15. you?

16. A. These figures are and may be the same figures that would
17. be a reduction for the County, but they have not been
18. made for that purpose. They were made for revenue to
19. the City, and . . .

20. Q. You didn't close one eye and look at one exhibit and
21. the other one with the other.

22. A. Let me finish, let me finish. And we worked these out
23. with Mr. Milam, who is very familiar with the way that
24. this is distributed; so, between the two of us we came

1. up with what the City revenues would be. And they may,
2. in fact, in some of those be the corresponding dollar
3. amount that the County used to get.

4. Q. Where is the federal revenue sharing fund included in
5. that?

6. A. I don't think it is.

7. Q. For the City in Exhibit 34?

8. A. No.

9. Q. You do not include in that estimated revenues, 1980-81,
10. for the existing City any amount for federal revenue
11. sharing funds.

12. A. I don't think we have it shown. I'm not positive, just
13. a moment. (Witness examines notes) I don't believe we
14. have that reflected in there.

15. Q. In any event, whether it's there or not there, it's a
16. fact, isn't it, Mr. Wade, that the annexation will cause
17. the County to lose for the time that federal revenue
18. sharing funds are in effect, it will lose "x" dollars
19. of federal revenue sharing funds and the City will gain
20. that.

21. A. Well, I don't know that there will be a straight corre-
22. lation there, but the basis distribution of that is on
23. population. So, it will be following the people. But
24. there is also a part in that formula that deals with

1. effort that the locality might make. So that depending
2. on how much effort a given locality is making of spending
3. their own funds compared to another, the dollar amount
4. could vary.

5. Q. Getting back to my question. It's a fact, isn't it, Mr.
6. Wade, that you would have to agree that whatever the dol-
7. lar amounts are, that the County will have its total fed-
8. eral revenue sharing funds reduced as a result of this
9. annexation, and the City will have its federal revenue
10. sharing funds increased as a result of the annexation.

11. A. But not necessarily by the same dollar amount.

12. Q. I didn't say that.

13. A. That's right.

14. Q. What I said is true, isn't it?

15. A. What you're saying is that that amount will be lost to
16. the County, or less to the County, . . .

17. Q. And more to the City.

18. A. And another amount, which I'm not certain what it will
19. be, will come to the City by reason of those people,
20. following those people, wherever they are.

21. Q. You talk about following people. You used that theory
22. when it came to reduction of revenues because certain
23. revenues followed the people. The property taxes follow
24. the people too, don't they?

1. A. Yes.

2. Q. But you didn't adhere to your policy then, did you?

3. A. Well, again, you are confusing the local and the state
4. and fed.

5. Q. I'm not trying to confuse anything, I'm trying to find
6. out what you did. You adhered to the policy that certain
7. revenues follow the people when it came to state revenues
8. and federal revenues . . .

9. A. Okay, . .

10. Q. Let me finish the question. It's my turn not to be in-
11. terrupted. And when it came to property taxes, for in-
12. stance, that follow the people, you didn't follow that
13. policy.

14. A. The properties are located physically within that area.

15. Q. Are the people located physically in that area too?

16. A. They are.

17. Q. Now, when it came to reducing expenditures, you followed--
18. you didn't follow the people there, did you?

19. A. We reduced expenditures by reason of expenses that are
20. associated with the people throughout the area as well
21. as the whole operation.

22. Q. Exactly. So, if the County was losing "x" percent of
23. its population, if that was the basis you used, you re-
24. duced the expenditure accordingly.

1. A. Selected expenditures.
2. Q. Selected. And if the County was losing "x" percent of
3. its school age population or its ADM, you reduced cer-
4. tain expenditures accordingly.
5. A. Again selectively.
6. Q. So, when it came to expenditures you did it one way and
7. revenues the other way, in respect to those items.
8. A. I wouldn't say that.
9. Q. All right, sir, we'll see what the exhibit says. Turn-
10. ing again to your Exhibit 34, let's look at the effect
11. of this annexation. What did you say from those other
12. exhibits that you'd be increasing your population by in
13. the City? Twenty percent roughly?
14. A. Roughly the new enlarged City would be . . . the annexa-
15. tion area would be about twenty percent of the enlarged
16. City.
17. Q. What would be the percent of the general property taxes
18. in the enlarged City of the area annexed?
19. A. Of the general property taxes?
20. Q. Yes, look at the first item in both columns on Exhibit
21. 34.
22. A. That, on a comparable figure, would be about thirty-one
23. percent.
24. Q. About thirty-one percent.

1. A. Right.
2. Q. So the new City would end up with an increase of thirty-
3. one percent of actual assessables . . . or thirty-one
4. percent of the new City would be in annexed assessables.
5. A. That's right.
6. Q. And twenty percent of it would be in population.
7. A. That's right.
8. Q. And how about with respect to other local taxes after
9. annexation.
10. A. Do you want me to do the same thing?
11. Q. Yes sir.
12. A. Okay. About twenty-eight percent.
13. Q. About twenty-eight percent. And at the same time the . . .
14. what would be the percent of school ADM added to the
15. City by the annexation?
16. A. You want the school ADM that's added to the City ADM?
17. Q. Yes sir. What would be the percent of the school ADM
18. after annexation of the students annexed?
19. A. About twenty-two percent.
20. Q. About twenty-two percent. Five hundred and some students
21. compared to how many do you have now?
22. A. Right now they have 2,412.
23. Q. In any event, getting back to your Exhibits 39 and 46,
24. if the loss of revenues were say affected only by infla-

1. tion for one year. I think somebody said inflation was
2. around twelve percent, or I believe Mr. Milam used a
3. twelve percent factor in saying the assessables had in-
4. flated that much lately. If you increased the gross loss
5. of revenues by twelve percent, your resulting loss of
6. net tax revenues would be greater, wouldn't it?

7. A. It all depends on what happens with the expenditures.

8. Q. And Mr. Milam said that expenses would grow at the same
9. rate or at least the same rate as revenues.

10. A. Well, you know, you're talking about expenditure growth
11. and not relating it to the different items that make up
12. expenditures. Personnel inflation costs might very well
13. be somewhere in the neighborhood of nine to twelve per-
14. cent. Other items might not be anything close to that.
15. So that just to categorically say that you're going to
16. increase because of inflation your revenues and your ex-
17. penditures by the very same amount, I don't think that's
18. a proper approach to it.

19. Q. Well, do you think that expenditures are growing faster
20. or slower than revenues?

21. A. It depends on the individual items.

22. Q. Well, on the average. You've made a lot of conclusions
23. on total figures there, Mr. Wade. On the overall picture
24. of local government could you tell the Court whether in

1. your judgment expenditures are growing faster or slower
2. than revenue growth?

3. A. Well, the way you go about setting up your budgets,
4. whether you're in the County or the City, you're going
5. to automatically gear your revenue to whatever your ex-
6. penditure growth is. So, if you want to make that com-
7. parison, you know, you're going to make them fit.

8. Q. That's the way City and County budgets are really devis-
9. ed, aren't they?

10. A. Certainly.

11. Q. You figure out what your expenditures are going to be
12. and you set your rates to make up the difference, or
13. make up the revenue you need.

14. A. Yes.

15. Q. You're not telling the Court that if they were to look
16. ahead for five years that they would expect the County
17. to stay exactly the same or static for five years, would
18. you? That's not real, is it?

19. A. I'm not saying that we're going to have a static condi-
20. tion for the next five years. I'm simply saying that
21. we have based our information here before the Court on
22. a given year and said that we would use that as a static
23. condition for projecting into the future whatever number
24. of years they might want to use for LNTR.

1. Q. Yes sir.

2. A. I might further say that as far as projecting into the
3. future, it's very, very speculative and awfully diffi-
4. cult, no matter which side you are speaking from. And
5. in connection with that I think it's most interesting
6. that if we just look back at the Lynchburg case, we would
7. have a situation very similar to what we have here in
8. these exhibits, which pointed out that if the County did
9. not get the whole million thirty-eight thousand, or what-
10. ever it was, per year and then escalate it on into the
11. future for LNTR, that it was going to have to increase
12. its taxes considerably. The Court awarded four hundred
13. and eighty-one thousand, I believe it was, as LNTR.
14. The County never increased its taxes for the next five
15. years. I'm a property owner in Campbell County and I
16. know that for a fact. Also, it was pointed out that as
17. far as the City was concerned in that particular case
18. that there was a theoretical possible tax rate increase
19. because of the annexation, and again the City never in-
20. creased its taxes for the next five years. In fact, the
21. annexation area had a reduced tax rate for those five
22. years.

23. Q. Having produced that argument, would you answer my ques-
24. tion. My question was, did you through your calcula-

1. tions based on a given budget year, the 1980-81 budget
2. year . . .

3. A. My calculations are based on the 1980-81 budget, and I
4. did not attempt to speculate into the future whether
5. there would be increases or decreases. A turn down in
6. the economy could very well be just the same as a turn
7. up as we have had.

8. Q. Yes.

9. A. So, I haven't attempted to project either one. I used
10. that one and multiplied it by one, two, three, four or
11. five for the number of years.

12. Q. If you can just stick to answering my questioning, we're
13. going to get through here. You used the 1980-81 County
14. budget to make your determination of what the loss of
15. net tax revenue would be as of this time.

16. A. That is correct.

17. Q. As occasioned by if the area were annexed under this
18. budget.

19. A. That is correct.

20. Q. Now, let's just assume, whether you like to assume or
21. not, if you would do this for my sake and perhaps for
22. the Court's. If, in fact, Mr. Milam is correct and rev-
23. enues and expenditures are increasing at the rate of
24. twelve percent a year, would you first multiply your

1. gross loss of revenue by twelve percent and add it to
2. that amount.
3. A. I think it's a meaningless exercise.
4. Q. Well, let me determine that.
5. A. For the five years for the Lynchburg case we had a
6. continuing increase . . .
7. Q. Can we get back to Harrisonburg now?
8. A. We had a continuing increase.
9. Q. Add twelve percent to the gross loss of revenues.
10. A. That figure, by taking that 1.12, would give you two
11. million three hundred and ninety thousand a hundred and
12. fifty-two dollars.
13. Q. Two million what?
14. A. Two million three hundred and ninety thousand a hundred
15. and fifty-two dollars.
16. Q. All right, now would you multiply, assuming expenditures
17. increased by the same amount, multiply the \$572,296.00,
18. add twelve percent to that.
19. A. And they may or may not have a direct relation.
20. Q. We all understand your theory.
21. A. No, but I mean . . .
22. Q. If you would just multiply that out.
23. A. You're asking me to take these revenues and project them
24. at a rate, and then take the selected reduction of ex-

1. penditures and projecting at a similar rate. And, you
2. know, the mathematics have to turn out to give us a
3. differential that's just a little bit more.

4. Q. I want to see how much.

5. A. Okay, but the fact is, the growth that we might have
6. could very readily affect the expenditures so that
7. it wouldn't be a similar thing.

8. Q. It could be even more, couldn't it?

9. A. It could be even less.

10. Q. Oh, less expenditures?

11. A. Yes.

12. Q. If you've got less, then the net loss would be even
13. greater, wouldn't it?

14. A. (Witness calculates figures) I'll get \$640,972.00.

15. Q. And what is the difference then between those figures?

16. A. I didn't put down the first figure. What was that?

17. Q. Two million three ninety one fifty-two.

18. A. One seven forty-nine one eighty, I believe.

19. Q. So that by the simple mathematical thing of increasing
20. both your gross revenues and your reduction in expenditures
21. by twelve percent, by your method, by just subtracting
22. those two items, the loss of net tax revenue would be
23. instead of \$1,561,000.00, it would be \$1,749,000.00.

24. A. I think it's a meaningless exercise; but if I apply a

1. twelve percent factor to both of those, that's the dif-
2. ferential you'll get.

3. Q. But you said that the expenses may not increase as much
4. as twelve percent.

5. A. That's right.

6. Q. The lower that expense item, . . .

7. A. That's right, and it might increase a lot more. It
8. might increase a whole lot more.

9. Q. You're the one who said it might not increase that much.

10. A. Well, I was just saying, you know, it's meaningless either
11. way.

12. Q. Well, do you agree that it's not likely the situation is
13. going to stay static for the next five years?

14. A. I told you that earlier, that it will not stay static.
15. But to speculate, I think, is wrong. I might point out
16. that the Commission, on pages 51 through 54, have a lot
17. to say about this, and agreed with this theory.

18. Q. I would ask you to let Mr. Cogar . . .

19. A. And there are three prominent county people . . .

20. Q. I haven't asked you a question. Let Mr. Cogar argue the
21. case.

22. A. Excuse me.

23. Q. In your computation for loss of net tax revenues, the
24. item or there's no figure in there that would affect it

1. regarding the assessables in the remaining part of the
2. County, is it?

3. MR. COGAR: I don't understand the question.
4. I don't know whether the witness does.

5. Q. Well, I'll ask it again for Mr. Cogar's benefit, and
6. maybe yours too, Mr. Wade. Whatever the assessables are
7. in the remaining portion of the County did not affect
8. your computations of the loss of net tax revenue one
9. penny, did it?

10. A. Yes, they do, because of debt assumption.

11. Q. Only debt assumption. So, if the assessables were more
12. in the remaining part of the County, the debt assumption
13. of the City would be less, true?

14. A. If we used the very same debt.

15. Q. Well, yes, we're assuming the debt is going to stay
16. constant. But if the assessables in the remaining
17. portion of the County were greater and the assessables
18. in the area annexed stayed the same, the debt assumption
19. for the City would be less, wouldn't it?

20. A. Yes.

21. Q. Because the ratio would be less. True?

22. A. That's right.

23. Q. If that's so, then the item of a lesser debt assumption
24. by the City of the County would increase the loss of net

1. tax revenue, wouldn't it?

2. A. No, because if the assessables were more in the remaining
3. portion of the County, I would have a lesser tax rate to
4. apply to the assessables that I'm taking. So, I would
5. have a lesser figure up there than the \$1,085,460.00.
6. If we'd follow the normal procedure that you indicated
7. earlier and take the total assessables and apply some
8. type of tax rate to come up with whatever you need, or
9. if I've got more assessables I'm going to reduce that
10. tax rate and then I'll have a lesser amount of debt.

11. Q. No, Mr. Wade, we're not reducing any tax rates. The tax
12. rates are staying constant. The values in the area are
13. staying constant. Everything is staying constant except
14. the values in the remaining portion of the County are
15. going to be increased. Now, that has the effect, as I
16. believe you just agreed, as to reducing the amount of
17. debt the City would have to assume. Is that true?

18. A. That's right.

19. Q. If the amount of debt the City has to assume of the
20. County's is less, according to your computations here,
21. the amount of loss of net tax revenue would increase.

22. A. Okay, but . . .

23. Q. Is that true?

24. A. No. Here's your problem. You're not putting the time

1. frame correct. If I'm going to take the larger assess-
2. ables in order to have a lesser proportion for my debt
3. assumption, then I've got to use those same assessables
4. for the whole area. And in deciding a tax rate, instead
5. of fifty-two cents it might be fifty cents.

6. Q. But, Mr. Wade, I said maintain a constant tax rate, don't
7. go changing tax rates. The item of the assessables of
8. the remaining portion of the County is nowhere in Exhibit
9. 47.

10. A. It's reflected in the manner in which we have put it
11. together, because of the ratio that I just mentioned as
12. well as the tax rate. So, it is reflected there.

13. Q. Do you remember your testimony before the Commission?

14. A. Yes.

15. Q. Did you say the same thing you're saying now?

16. A. You'll have to go back and refresh my memory.

17. Q. I have the page marked here; the marker is gone.

18. A. If I said something differently, I will help you, I
19. either misunderstood the question or didn't say it the
20. way it should have been.

21. Q. Do you want me to repeat it for you now?

22. A. Well, I was just trying to help you. I heard you say
23. you couldn't find it.

24. Q. I've found it. It's page 106, about the middle of the

1. page. The question is, " . . . that in those sections
2. there in determining the loss of, gross loss of revenues,
3. the growth of assessables in the remaining part of the
4. County would not change that at all. Now I would like to
5. see what it would change. Mr. Wade, the thing it would
6. change would be the amount of debt service the City
7. would assume, isn't that true? A. That's true. Q. And
8. that amount would be less, wouldn't it? A. That's true.
9. Q. And that amount would make the loss of that tax reve-
10. nue go up, wouldn't it? A. That's true."

11. A. Okay, all of those should have been false.

12. Q. You're denying your . . .

13. A. For the reason I just said.

14. Q. You're denying what you said was correct here?

15. A. I'm denying, yes. That's incorrect. I either misunder-
16. stood you or was worn out in the day.

17. Q. I want you to turn to your exhibit and show where in that
18. exhibit if the assessables in the remaining part of the
19. County were doubled, where it would reflect in that ex-
20. hibit, and show the change it would make.

21. A. Okay, if I had double as many assessables out there as
22. I have right now, I would undoubtedly have a much, much,
23. much lesser tax rate. So, the first item would have the
24. local levies entirely different from what you see here.

1. Also, as far as the assumption of debt, I would have quite
2. a different assumption proportionately. So, that figure
3. in turn would be different. Those two areas in particu-
4. lar.

5. Q. Mr. Wade, you said then, and do you want to deny this,
6. you said there, if the assumption of debt was less by
7. the City the County's loss of net tax revenue would go
8. up. Is that true, just that one factor?

9. A. All right, I've said it once, I'll say it again. That . .
10. I either misinterpreted the whole line of questioning
11. or I said it wrong. What I'm telling you here is right.

12. Q. Okay, let's forget what you said there for a moment.
13. Tell the Court if the amount of the County's debt that
14. the City assumes is less than what you have said in
15. your exhibit, what would happen to the computation of
16. your loss of net tax revenue? Just that one item is the
17. only thing you're going to change.

18. A. Okay, if you want to just change that one item and show
19. in here instead of a hundred and forty-four something
20. less than that, naturally that subtracted would give
21. a larger amount.

22. Q. Of what?

23. A. Of LNTR.

24. Q. Of loss of net tax revenue.

1. A. Right.
2. Q. So, if we changed that one factor . . .
3. A. Yes, but you can't change that one factor without having
4. a basic change . . .
5. Q. I understand that.
6. A. In the basis of assessables. And once you change assess-
7. ables, you're back up into your tax rate.
8. Q. Were you assuming that the County would change the tax
9. rate?
10. A. Well, if we follow the normal budgetary procedure, I
11. think so.
12. Q. All right. Mr. Wade, if the City of Harrisonburg would
13. have to rely solely on increasing the tax rate to pay
14. the additional operational costs of this annexation if
15. it was granted, have you determined what amount that
16. would be?
17. A. Using what facts?
18. Q. Any facts that you might have used.
19. A. You know, I could figure one, but I have not figured
20. it on just that one basis. Because I don't think they
21. would ever do that.
22. Q. Well, you may want to repudiate this too, Mr. Wade, but
23. before the Commission you said that one of the ways of
24. paying for this by the City would be, . . . "And one of

1. those ways could be a ten to seventeen cent tax increase
2. on the levy? A. That is a possibility."
3. A. Yes sir.
4. Q. "As I said, I don't think that will ever happen."
5. A. Yes sir, that's a possibility.
6. Q. It's a possibility.
7. A. Yes.
8. Q. Then you're not repudiating that.
9. A. No, I'm not. I also said in there too that looking back
10. at another case you'd just as soon not talk about that
11. we had similar projections and they never came to pass.
12. Q. Do you make other projections in other cases that do not
13. come to pass too?
14. A. Yes, that's correct.
15. Q. Then you do make projections at times, don't you, Mr.
16. Wade?
17. A. I've indicated that throughout.
18. Q. But you have said you do not choose to make any projec-
19. tions in this case insofar as the loss of net tax reve-
20. nues over the next five year period.
21. A. You're mixing everything up.
22. Q. I am? You talked about tax rates going down or staying
23. the same in Campbell County--I'll talk about it--and in
24. the City of Lynchburg. You didn't tell the Court how

1. much the reassessment, going to a hundred percent ratio
2. of assessables, amounted to increasing taxes, did you?

3. A. No, but the new tax rate was comparable to the old effec-
4. tive tax rate, so it all averaged out.

5. Q. It all averaged out, but there was a substantial reassess-
6. ment in both the City and the County?

7. A. Yes.

8. MR. FITZGERALD: That's all.

9. JUDGE MOON: Thank you. Let's recess for
10. lunch now.

11. (Luncheon Recess)

12.
13. MR. COGAR: We call Mr. William Sipe as an
14. adverse witness.

15.

16.

17.

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21.

22.

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24.

WILLIAM H. SIPE,

having been duly sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. State your name, please, sir.

A. William H. Sipe.

Q. Where do you reside, Mr. Sipe?

A. Route 2, Box 196, Elkton, Virginia.

Q. That is in Rockingham County?

A. Correct.

Q. How long have you resided there?

A. Forty-nine years.

Q. You have been a resident of Rockingham County all your life?

A. Yes sir, ninth generation.

Q. You are currently a member of the Board of Supervisors of Rockingham County?

A. Correct.

Q. You are the Chairman of the Board?

A. Right.

Q. How long have you served on the Board?

A. Three and a half years the first term, and a year and three months and fourteen days in this term.

Q. As a member of the Board and Chairman of the Board, you are opposed to the annexation sought by the City of

1. Harrisonburg.

2. A. I think that would be the understatement of the year.

3. Q. Are you familiar with the efforts which have been made
4. to bring a brewery to Rockingham County?

5. MR. FITZGERALD: May it please the Court, we
6. object to any testimony concerning a brewery coming to
7. Rockingham County. I assume that he's referring to the
8. Coors Brewery. It's not in the area sought for annexa-
9. tion, and its coming or not coming, staying or not stay-
10. ing, has absolutely nothing to do with annexation.

11. JUDGE MOON: They may want to extend the
12. line.

13. MR. FITZGERALD: Sir?

14. JUDGE MOON: They may want to extend the line.

15. A. That's what I'm afraid of, sir.

16. JUDGE MOON: Well, I think you can ask him
17. factual matters; opinions as to whether anything will
18. open up, that may be speculation. But I think anything,
19. any business, could be relevant. Just as to the gener-
20. al evidence that relates to annexation.

21. MR. FITZGERALD: Note the County's exception.

22. Q. I'll repeat the question for you, Mr. Sipe. Are you
23. familiar with the efforts which have been made in the
24. County to cause Coors to locate in Rockingham County?

1. A. I have personally optioned my farm to them, they have
2. exercised that option. That's my effort. The Board of
3. Supervisors rezoned the land for Adolph Coors Company,
4. and that's been their effort.

5. Q. Put up that vicinity map. Would you step over to the
6. map, City Exhibit H-1, and familiarize yourself with it,
7. if you need to, and find the location of the proposed
8. site.

9. A. The site that we rezoned?

10. Q. That's right.

11. A. Or the whole tract of land that they have bought.

12. Q. Well, just the general location.

13. A. The general location would be to the east of the N & W
14. Railroad and U. S. 340, in the area lying between 340
15. and 754, or about approximately two miles. That would
16. be one area. The other area is on the west side of 340
17. down to the Shenandoah River and the railroad and 340,
18. Route 642, and this is the area that they have optioned
19. and are exercising their options now on that area in
20. there. The area that was rezoned originally was on the
21. west side of 340, it was three hundred feet north of
22. 649, it ran approximately a mile and a half north along
23. the railroad track, about fourteen hundred feet deep
24. off of the railroad track towards the river. They aban-

1. doned that and went to the east side of 340. Four hun-
2. dred and some acres was rezoned to industrial, a condi-
3. tional rezoning, the condition being for a brewery op-
4. eration.

5. Q. Mr. Sipe, would you take the pencil . . . well, let me
6. ask you this. What is the total amount of land optioned
7. to Coors in that area?

8. A. Approximately--I can't give you the acre figure right
9. down to the acre.

10. Q. No, just in order of magnitude.

11. A. Approximately two thousand acres.

12. Q. Now, with that red pencil would you outline in a general
13. way the boundaries of that tract.

14. A. Let me get my glasses on. (Witness draws on map)

15. Q. All right, you have outlined a tract which is on either
16. side of the Norfolk and Western Railroad line south of
17. Elkton on Exhibit H-4. Rather than ask the witness to
18. do it, Mr. Fitzgerald, do you have any objection if I
19. color that in so it will show up on the map?

20. MR. FITZGERALD: No, that follows your same
21. method of testifying.

22. MR. COGAR: Thank you. (Mr. Cogar colors in
23. area on Exhibit H-4 in red) Let the record show that
24. I have colored it in in red.

1. MR. FITZGERALD: Blood.

2. MR. COGAR: Blood red.

3. Q. Now, sir, when to your knowledge did Coors first become
4. interested in this tract?

5. A. I was told on November the 28th, 1978 that . . . by Mr.
6. Kenneth Harner, another land owner who happens to own
7. the home place that I was born on, beside of where I
8. live now, that Mr. Clark would like to see me and him in
9. his office at the first convenient opportunity.

10. Q. The Mr. Clark you refer to is Henry Clark, who has serv-
11. ed as the attorney for Coors in this area?

12. A. That is correct, it's well known.

13. MR. FITZGERALD: May it please the Court, I
14. would like to renew my objection to the line of ques-
15. tioning. It to me apparently is totally immaterial.
16. Unless Mr. Cogar can state the materiality of it, I
17. submit the objection ought to be sustained.

18. MR. COGAR: Well, I think there's already been
19. a ruling on it.

20. JUDGE MOON: Well, the Court has ruled that
21. any zoning or ownership of any property may or may not
22. be . . . the weight of it may not have very much value,
23. but the zoning that is throughout the County, who owns
24. property throughout the County, the nature of the owner-

1. three weeks.

2. Q. They have further publicly stated, have they not, that
3. the only site that they are interested in in the eastern
4. part of the United States is the Rockingham County site?

5. A. Publicly, yes. Otherwise I don't know. They may be
6. interested in others.

7. Q. Well, you had occasion to comment on what Coors said
8. publicly, have you not?

9. A. In accord with their press releases, yes.

10. Q. You have made comments that have been published in the
11. newspaper.

12. A. Over the last three years probably.

13. Q. Well, I mean since they made this announcement.

14. A. Yes. I know what you're referring to.

15. Q. After dropping all other options and saying this was the
16. only site, they have also exercised their options on
17. all remaining acreage at that site, have they not?

18. A. I would assume they are. I don't know whether they're
19. picking up the whole two thousand acres or not. But
20. according to newspaper articles, that was what was
21. indicated.

22. Q. When would these options have expired?

23. A. March 31, 1981.

24. Q. They have exercised the option on your property, which

1. I think is about, what, fifteen percent of that area?

2. A. No.

3. Q. How many acres do you have?

4. A. A hundred and forty-four.

5. Q. All right, excuse me.

6. A. I wouldn't mind having fifteen percent of that.

7. Q. Nor would I. When will you close?

8. A. Well, that's at the discretion of me and Coors.

9. Q. They have exercised the option, you just haven't done the
10. paperwork, is that correct?

11. A. Well, that's right, I've got a lot of paperwork to do.

12. Q. I'm curious to know how with what you have involved in
13. that site, what your state of knowledge is with respect
14. to when you're going to actually close on the deal.

15. Have you discussed that with anyone?

16. A. In 1981.

17. Q. You've discussed that with Mr. Clark, have you not?

18. A. Yes. We have not set a definite date for closing.

19. Q. So, it could be next December?

20. A. Yes. Now, this is getting into my personal affairs.

21. MR. FITZGERALD: I understood Mr. Cogar to
22. state that he was not going to question Mr. Sipe about
23. his personal dealings with Coors.

24. MR. COGAR: No.

1. MR. FITZGERALD: It looks like to me this is
2. exactly what you're doing.

3. JUDGE MOON: Well, if you have a contract and
4. it has a closing date in there, I don't know of any
5. privilege that attaches to it.

6. Q. Do you have a closing date in your contract?

7. A. The contract says that I will deliver a deed within
8. thirty days, but I also have an option, at their sugges-
9. tion, that to help them out on cash flow, that in order
10. to facilitate transfer or exchange of property, this type
11. arrangement is more complicated than just closing out
12. period. There are other properties that have to be clos-
13. ed on by them in their name that will be transferred to
14. me as exchange. So, this is going to stretch out. And
15. that's the reason it's going to be flexible. And we have
16. the option of taking it in cash or in exchange or a com-
17. bination of the two.

18. Q. Is it your understanding from your conversations with
19. Coors and others that Coors intends to finance the build-
20. ing of this brewery without . . . out of cash without
21. borrowings?

22. A. That is correct.

23. Q. And is it anticipated this brewery will cost three hun-
24. dred and fifty to five hundred million dollars when it

1. is completed.
2. A. That's not the figure I've heard.
3. Q. What is the figure you've heard?
4. A. Two hundred.
5. Q. That's first stage?
6. A. That is complete. That is today's figures. I think
7. you have it confused with the original configuration
8. that they were talking about, and that was a brewery
9. with a twenty-five million barrel capacity that would be
10. built over a period of maybe twenty years or twenty-five
11. years. That has been downscaled to a maximum of ten
12. million barrels.
13. Q. To be built over what period?
14. A. No one knows. They haven't said they're going to build
15. one yet.
- ~~16. Q. You had the downscaled volume figures, and I would as-~~
- ~~17. ~~sume you would have had the downscaled . . .~~~~
- ~~18. A. That was what their application was before E.P.A. The~~
- ~~19. ~~capacity had to be stated in their application.~~~~
20. Q. Do you know what the order of magnitude of the total
21. purchase price of that tract was or is?
22. A. I cannot speak to that. I don't have that knowledge.
23. Q. I'm not asking you the exact figure.
24. A. No, I do not.

1. Q. It was rezoned in July of 1979, for the first time.
2. A. Correct.
3. Q. From what to what?
4. A. From A-1 to M-1. That was two hundred and some acres.
5. Q. What was the zoning on that land prior to its rezoning?
6. A. I don't follow your question.
7. Q. How was it zoned before it was rezoned?
8. A. Which part are you talking about?
9. Q. The parcel that was rezoned.
10. A. The first original rezoning?
11. Q. Yes.
12. A. It was A-1. And it was zoned to M-1, manufacturing.
13. Q. Agricultural to manufacturing?
14. A. Right.
15. Q. You resigned from the Board in advance of that rezoning.
16. A. Correct.
17. Q. And what was the date of your resignation?
18. A. I believe it was July the 5th, effective July the 5th or
19. 6th of 1979, or thereabouts.
20. Q. When did you return to the Board of Supervisors?
21. A. January 1, 1980.
22. Q. Thereafter because of things you were saying when you
23. were before Exhibit H-1, it was necessary to rezone
24. additional acreage, is that correct?

1. A. A different site.
2. Q. It was across the highway.
3. A. Yes. It was conditioned upon two things. One, that
4. the other site would be rezoned back to A-1, and the re-
5. zoning of land on the east side of four hundred and
6. some acres to M-1, which was in A-1.
7. Q. That's on the east side of 340?
8. A. Right, and to the west of 754.
9. Q. And how many acres on the east side were rezoned indus-
10. trial?
11. A. Approximately four hundred and seventy-one, I believe.
12. I hate to quote that figure because I could be off a
13. little bit on acreage. The whole brewery, if the decis-
14. ion would be made, which has not been made, they were
15. saying that a significant amount of it would be open
16. space. And that was what came before the Planning Com-
17. mission and what came before the Board of Supervisors.
18. It's public knowledge.
19. Q. And that which was rezoned to M-1 on the east side of
20. U. S. 340 was in agricultural before they rezoned it
21. industrial?
22. A. Yes. A-1 takes in a lot of different land types. Most
23. of it is in woods or second growth brush, some agricul-
24. tural land, yes.

1. Q. That was in January where?

2. A. January, 1981.

3. Q. Where?

4. A. At Thomas Harrison Junior High School.

5. Q. All right, sir, it's a fact, is it not, that all permits
6. necessary for the building of this brewery, local, state
7. and federal, have been acquired?

8. A. All I'm not sure about, but I know a significant number
9. of them have been. Now, what all permits they will need,
10. I cannot answer to that. But it's certainly public know-
11. ledge that they've received State Water Control Board,
12. but that has to be amended, they've got to go through
13. maybe another public hearing on that. There's State Air
14. and E.P.A.

15. Q. They have not received a building permit, have they?

16. A. I don't think they've asked for one yet.

17. Q. They have obtained the federal E.P.A. permit?

18. A. That's right.

19. Q. They have received a permit from the state related to
20. pollution discharge?

21. A. Yes.

22. Q. Well, are there any other permits that you know of that
23. they have to obtain before building on that site?

24. A. I don't know. Let me refer to the E.P.A. permit. Yes,

1. they issued an E.P.A. permit, they were issued an E.P.A.
2. permit; but Coors, I would assume, would have to sit
3. down and evaluate that permit and the limitations and
4. take those things into consideration, whether it's eco-
5. nomically feasible to do that. They didn't get where
6. they are by being dumb business people.

7. Q. You were quoted on March 21 of this year, Mr. Sipe, as
8. saying at the announcement of the obtaining of the E.P.A.
9. permit, "I guess twenty-eight months of suspense is over,
10. as far as I'm concerned. I know that the news will be
11. welcomed by a large number of people, especially in East
12. Rockingham." Were you accurately quoted?

13. A. Yes. And the reason I said that, sir, was this. That
14. I've been put in the position of not knowing what was
15. going to happen to my farm operation and my personal
16. business and my family's, and also the fact that a lot
17. of people have anticipated something happening, and this
18. certainly was one step of many.

19. Q. To get where Coors is at this time, there has been fair-
20. ly extensive involvement by County officials and members
21. of the Board. Is that correct?

22. A. In what way?

23. Q. In rezoning, conversations with people at Coors, in con-
24. versations with land owners who favored and opposed the

1. rezoning.

2. A. The Board has had, well, really countless, I guess,
3. people asking about Coors, expressing their opinions,
4. pro or con, this type of thing. We've been through two
5. big public hearings on it. So, yes, the Board was ex-
6. posed . . .

7. Q. The Board has actively worked and encouraged the loca-
8. tion of this industry, have they not?

9. A. We have, in the sense that we've honored their requests
10. and evaluated them and weighed them and made decisions
11. on them, as far as the Board is concerned.

12. Q. And Coors has invested, without regard to the land,
13. three or four hundred thousand dollars in obtaining per-
14. mits and in studies. You've heard those figures, have
15. you not?

16. A. I've heard some figures that come out from time to time.
17. I've never totaled them.

18. Q. Prior to exercising or renewing their options before
19. they got the E.P.A. permit, they had to exercise their
20. options on some part of that land, did they not?

21. A. They exercised on several, yes.

22. Q. And renewed on those that they could.

23. A. Yes.

24. Q. Now, in the twenty-eight month period that you referred

1. to, during which time I understand you to have had a num-
2. ber of conversations with representatives of Coors, mem-
3. bers of the Coors' family; did you ever or did you or any
4. other member of the Board or any member of the adminis-
5. trative staff of Rockingham County ever seek any assur-
6. ance from Coors that they would locate at this site in
7. event that rezoning was granted?

8. A. They expressed a very positive interest in the area.

9. If it please the Court, I would like to read this state-
10. ment which was issued on March 20, 1981. It's a press
11. release from Golden, Colorado, Adolph Coors Company.
12. With the Court's permission, I would like to read this
13. letter, and maybe it will answer some of your questions.

14. JUDGE MOON: Any objection?

15. A. It's "Coors - News Release. Contact: Bob Keyser. For
16. immediate release 3/20/81. Golden, Colorado - Adolph
17. Coors Company, the nation's fifth largest brewer, announc-
18. ed Friday its decision to purchase approximately 1,820
19. acres of land for a possible second brewery. The decis-
20. ion follows Coors receiving notification of the final
21. Prevention of Significant Deterioration (PSD) permit for
22. the site near Elkton, Virginia. William K. Coors, Chair-
23. man of the Board and Chief Executive Officer said, Buy-
24. ing this property in the east provides our Board of Direc-

1. tors with an appropriate site should a decision be made
2. to build a second brewery. No such decision has been
3. made." That's part of the statement.

4. Q. Is there anymore of that statement you'd like to read?

5. A. Yes sir, I'll read the whole thing if you want me to.

6. Q. No, I'm just . . . you're doing it on your own initia-
7. tive.

8. A. "This site has a good mix of those specific technical
9. qualities we feel would allow us to eventually brew addi-
10. tional quantities of what we consider to be the nation's
11. highest quality malt beverage products - Coors beer,
12. Coors said. The company carefully evaluated such tech-
13. nical areas as water quality and availability, transpor-
14. tation, fuel and labor availability, and especially the
15. quality of life for a potential Coors work force, said
16. Coors. We found this site suitable and able to stand up
17. to the Coors quality standards, Coors said. Coors began
18. investigating the Virginia site in June, 1978. The pro-
19. perty is bounded on the west by the South Fork of the
20. Shenandoah River and on the east by the Blue Ridge Moun-
21. tains and the Shenandoah National Park. An intensive
22. site evaluation project was undertaken by the Company
23. and several consulting firms. The final stages of the
24. evaluation process included applying for air and water

1. quality permits from the State of Virginia and the U. S.
2. Environmental Protection Agency. Lowell C. Sund, Senior
3. Vice President of Administration, said, Coors asked no
4. more than to be judged on the technical merits of the
5. project. That is exactly what happened, Sund said.
6. Coors did its homework and has proved that it can meet
7. or do considerably better than the stiff requirements
8. set to put a plant on this site. In addition to the
9. technical evaluation of the site, Coors said the company
10. has completed preliminary engineering studies on the
11. plant design. The company did not disclose the cost of
12. the property but indicated it had previously purchased
13. two hundred and forty acres. When the options are ex-
14. exercised, the Coors property will consist of two thousand
15. and sixty acres. Options for the property were obtained
16. from twenty-seven different landowners - the smallest
17. pledging three-quarters of an acre, the largest three
18. hundred and eighty-one. Company officials said the op-
19. tions would be exercised and the transaction completed,
20. for the most part, by June 1. Coors officials confirmed
21. that the Company Board of Directors had also made a de-
22. cision to allow options on twenty-five hundred acres
23. near Lenoir, Tennessee to expire. Coors currently sells
24. its beer in nineteen states, as far east as central Ten-

1. nessee." So, no decision has been made.

2. Q. In the twenty-eight months that you have followed this
3. project prior to this last public utterance on the sub-
4. ject, you have met on a significant number of occasions
5. with representatives of Coors, have you not? As a mem-
6. ber of the Board of Supervisors.

7. A. Do you want me to state each one specifically?

8. Q. I don't want you to go into any great detail, I just . .

9. A. It won't be too much, because there's not many times I
10. did. I met with the Coors--the Coors family now, on
11. February 5, 1979, in Golden, Colorado. I arrived there
12. on Sunday evening . . .

13. Q. That's not important.

14. A. I met with Bill Coors, Joe Coors, Peter Coors and Jeff
15. Coors. I left there the next day. On the 22nd of Febru-
16. ary, Mr. Bill Coors and his wife came to Harrisonburg at
17. the Country Club for a news conference and a dinner put
18. on by--or a luncheon rather, put on by some of the busi-
19. ness people in the community. That night the Coors enter-
20. tained at the Sheraton the land owners involved in the
21. transaction. The only other time I ever saw Bill Coors
22. since that time was when he came to the County in Octo-
23. ber of 1979 to speak to the Chamber of Commerce at Bridge-
24. water College. Joe Coors and his wife were on the site

1. verbally notified that they were genuinely interested.

2. Is that correct?

3. A. They were interested in it to the point that they were
4. going to pursue it to see if they could get the neces-
5. sary permits and then they would evaluate them and make
6. a decision as to whether they would build or not, or even
7. build a second brewery.

8. Q. But you never got anything in writing?

9. A. That's correct.

10. Q. All right, sir. The second question is this. Have you
11. or any member of the Board, or has any person who works
12. for the Board, to your knowledge asked Coors or any re-
13. presentative of Coors to withhold the making of the de-
14. cision to move here pending the completion of this annex-
15. ation case?

16. A. My answer is a positive and absolutely not.

17. Q. All you know is that they have made no decision?

18. A. Correct.

19. Q. Or that the only decision that they have made is not
20. to make a decision at this time.

21. A. The only thing I know is, they have not made the decision
22. at this time.

23. MR. COGAR: Thank you.

24.

1. Cross Examination by Mr. Fitzgerald:

2. Q. Mr. Sipe, you mentioned that you resigned from the Board
3. of Supervisors when this came up?

4. A. Yes sir.

5. Q. You later ran for the Board?

6. A. Correct.

7. Q. In November of that year?

8. A. Yes, 1979.

9. Q. 1979. And you were reelected to the Board?

10. A. Yes, the local newspaper said by a landslide.

11. Q. All right, by a landslide. Have you become familiar
12. with what the operation would be if they did build a
13. brewery at this location, generally speaking?

14. A. Well, that operation will take many forms.

15. Q. Well, let me change the question. Would there be any
16. retail sales there that you know of?

17. A. No.

18. Q. Any sales tax collected there that you know of?

19. A. No.

20. Q. In your judgment if this annexation is granted, which of
21. the jurisdictions in this area would be the real bene-
22. ficiary of the location of a sizeable brewery at that
23. location?

24. A. Repeat that question for me.

1. Q. In your judgment if this annexation is granted, and if
2. the plant should be built there, the brewery, which of
3. the jurisdictions in this region would be the prime bene-
4. ficiary?

5. A. Oh, without question the City of Harrisonburg.

6. Q. And on what do you base that judgment?

7. A. Well, taking sixty-five percent of the County's total
8. sales tax, you know, they've got a license to steal now
9. and that would be like Jesse James in broad daylight.
10. It kind of reminds me of an old one eyed tomcat sitting
11. back watching the mouse getting ready to fall in a crock
12. of cream. If I don't wake up the dog I've got it made.

13. Q. Are you saying that whatever growth is generated by that
14. plant, the employees and such, would be coming toward
15. the Valley Mall area to do their shopping?

16. A. Yeah, that's the pot of gold at the end of the rainbow.

17. Q. And also into the existing City of Harrisonburg?

18. A. Yes sir.

19. Q. In your judgment would the people with the school child-
20. ren that would be generated by this development, if it
21. came, be most likely to live in the County rather than
22. the City?

23. A. Yes. If you look at the unemployment and underemployment
24. situation, especially dealing with the east side of the

1. County where--and this is bank figures that were brought
2. out in a public hearing, that sixty-five percent of the
3. depositors in a local bank in Elkton were commuting out-
4. side the County for work. And the reason for this going
5. was because local jobs were not available. And certainly
6. you will find a significant number of people in that area
7. working there, and I'm sure that Rockingham County would
8. get the bulk of the school children to educate.

9. Q. So, the County would pick up the cost of education.

10. A. We'd have to pay the price.

11. Q. And the City if the annexation was granted would pick
12. up the bulk of the sales tax.

13. A. Right.

14. Q. Can you tell the Court whether or not in this twenty-eight
15. months or however many months it was, in all of this ef-
16. fort that the County made to try to attract industry to
17. the County, did the City of Harrisonburg, the officials
18. of the City of Harrisonburg, offer to assist the County
19. in any way?

20. A. Not one red word, not one word did they ever utter in
21. support of it publicly, or otherwise as far as I've heard.

22. Q. Was it politically a hard decision for a Board of Super-
23. visors to make?

24. A. Yes. There was considerable controversy.

1. Q. Would it have been politically hard for the City Council
2. to have made any statement helpful to the County?

3. A. No, it wouldn't have been hard.

4. Q. They could have done it?

5. A. Sure.

6. Q. But they did not do it.

7. A. That's right.

8. MR. FITZGERALD: That's all.

9.

10. Re-Direct Examination by Mr. Cogar:

11. Q. That's you? (Counsel shows photograph on magazine to
12. witness)

13. A. Correct.

14. Q. On the March, 1981 cover of the Commonwealth Magazine.

15. A. Yes.

16. Q. I assume since you're the featured personality on the
17. cover that you have read the article associated with it?

18. A. Yes.

19. Q. And if you read the article it shows that there was di-
20. vision within the County, a fairly wide-spread division,
21. as to whether that should or should not be located there.
22. Was there not?

23. A. Yes, there was a very loud minority.

24. Q. It was a political issue within the County?

1. that hat . . . that hat was given to me by a constituent
2. and it's the first time I wore it.

3. MR. COGAR: Thank you, Mr. Sipe.
4.

5. Re-Cross Examination by Mr. Fitzgerald:

6. Q. That prompts another question. Did the City make any
7. expression when the County made an effort and got Don-
8. nelley? Do you recall that?

9. A. No, they fought us all the way.

10. MR. FITZGERALD: All right, that's all.
11.

12. JUDGE TRABUE: Mr. Sipe, I gather that whether
13. Coors builds or not is going to have a significant fi-
14. nancial impact or could have a significant financial im-
15. pact on Rockingham County?

16. MR. FITZGERALD: Did Your Honor say whether or
17. not?

18. JUDGE TRABUE: If they build it could have a
19. significant impact.

20. A. If they build it could have a financial impact on both
21. the City and the County. I don't see how you could
22. separate the area and break it down. But it's going to
23. have a significant impact on the whole total area; not
24. only Rockingham County, but the Counties of Page, Greene,

1. and Augusta.

2. JUDGE TRABUE: Has the County Board of Super-
3. visors made any kind of economic impact study to deter-
4. mine what, if any, the tax increase would be if they
5. would build? Have you made any estimates of the increase
6. in real estate taxes or machinery and tools, merchants
7. capital tax?

8. A. No, we do not know what those breakdowns would be.

9. JUDGE TRABUE: You've made no estimate of it?

10. A. No. Not that I'm aware of. I'm not privy to it if there
11. has been.

12. JUDGE TRABUE: Has any consideration been
13. given to any change in the tax structure as it might re-
14. late to Coors?

15. A. No.

16. JUDGE TRABUE: In the 1981-82 budget in the
17. County?

18. A. No sir.

19. JUDGE TRABUE: Do you anticipate any change
20. in the real estate assessables as a result of the rezon-
21. ing? If they don't build.

22. A. It's in land use and it stays in that until the use is
23. changed, and then the corporation or company or whatever
24. that changes the use pays the rollback.

JUDGE MOON: Thank you, sir.

CHARLES H. BARNES, JR.,

having been duly sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. State your name, please, sir.

A. Charles H. Barnes, Jr.

Q. Mr. Barnes, I'll ask you to turn to Exhibit Q-1. I'll ask you whether this correctly represents your educational and professional experience and background?

A. Yes, it does.

Q. By whom are you presently employed?

A. I'm presently employed by Wiley and Wilson.

Q. What is your educational background?

A. I have a Bachelor of Science Degree in Civil Engineering from V.P.I. and a Master of Science Degree from West Virginia University.

Q. From the time of your graduation to the present, what has your employment experience been?

A. Upon completing my education at V.P.I. in 1964, I joined the Virginia Department of Highways, completed their highway engineer training program, and in September of 1965 I received an academic fellowship from West Virginia University for one year of graduate studies. After which

1. time I returned and spent two years with the Department.

2. Q. What were your responsibilities with the Virginia Depart-
3. ment of Highways?

4. A. While I was with the Department of Highways I was respon-
5. sible for directing transportation planning studies in
6. five urbanized areas of the state.

7. Q. Are those studies similar to those that we've heard re-
8. ferred to here now as major thoroughfare plans?

9. A. Very similar, the same study.

10. Q. And you oversaw five of those while you were with the
11. Highway Department?

12. A. Yes sir.

13. Q. After leaving the Highway Department, you went to work
14. where?

15. A. In 1968 I left the Department and went to the City of
16. Petersburg as Director of Traffic and Planning for ap-
17. proximately three years.

18. Q. What position did you next assume?

19. A. I left the City of Petersburg in March of 1971 and joined
20. Wiley and Wilson as head of their newly created Planning
21. Department.

22. Q. And you have been with Wiley and Wilson for the past ten
23. years?

24. A. For the past ten years. In 1973 I left the Planning De-

1. partment and was appointed Project Manager, and I've been
2. there for the past eight years.

3. Q. What have your principal areas of responsibility been?

4. A. I've been Project Manager of preparation of environmental
5. impact assessments on major transportation and thorough-
6. fare arteries, such as Route 1 in Alexandria, Virginia,
7. the extension of the Lynchburg Expressway in Lynchburg,
8. and some similar type studies involved in there in North
9. Carolina for the North Carolina Department of Transporta-
10. tion, particularly Greensboro. I've prepared water qual-
11. ity management plans for several planning district com-
12. missions back in the 1973-74 era. I've been involved in
13. annexation work while with Wiley and Wilson. I did some
14. work on the Bristol annexation case, the Lynchburg case,
15. and am here today on the Harrisonburg case.

16. Q. I believe you said you had been the City Planning Direc-
17. tor for the City of Petersburg?

18. A. That is correct.

19. Q. And you are presently a member of the Lynchburg Board of
20. Zoning Appeals.

21. A. In July of 1977 I was appointed by the Judge of the
22. 5th Circuit Court for a five-year term to the Lynchburg
23. Board of Zoning Appeals.

24. Q. When was your first involvement with this annexation pro-

1. ceeding?

2. A. I first became involved with the annexation proceeding
3. about a year ago to this day.

4. Q. And in what capacity?

5. A. In preparing the land use inventories for the existing
6. City and updating inventories of the existing City, and
7. also for the annexation area. In preparation of exhibits
8. having to do with demographic data, population trends.

9. Q. Have you thoroughly familiarized yourself with the City
10. and the area sought to be annexed?

11. A. Yes, I have.

12. Q. Have you prepared certain exhibits reflecting demographic
13. trends in this area?

14. A. Yes, I have. If you'll turn in your exhibit book to
15. Exhibit 3, "General Data Sheet", sheet 1 of 3, section 1.
16. The City of Harrisonburg has a total area of 5.98 square
17. miles. The County of Rockingham, 865.06 square miles.
18. And the proposed annexation area, 14.14 square miles.
19. The density, or the population, if you go to number 2,
20. the 1980 official census population for the City of
21. Harrisonburg has been recorded as 19,671; the County of
22. Rockingham, 57,038; and in the area proposed to be annex-
23. ed, 5,165. Now, if we look at the densities of these
24. three sets of statistics, the City with 19,671 people

1. and 5.98 square miles has a density of approximately
2. 3,289 persons per square mile. The County of Rockingham
3. with its 57,038 and 865 square miles yields a density
4. of about 65 persons per square mile. The annexation area,
5. the population of 5,165 and 14.14 square miles, yields a
6. density of about 365 persons per square mile.

7. Q. If you combine the present City with the . . . the pre-
8. sent City's population with the population of the annexa-
9. tion area, what would the density be of the annexation
10. area as described in the ordinance?

11. A. If you add the population of the City plus the population
12. of the annexation area, 19,671 plus 5,165, you get
13. 24,836 people and an area of 20.12 square miles, for a
14. yield of density of 1,234 persons per square mile.

15. Q. From a planning perspective is there any correlation
16. between the density of an area and the feasibility of
17. providing urban services?

18. A. Yes, Mr. Cogar. I think 3,289 persons per square mile
19. very dramatically illustrates that this is certainly an
20. urban area; whereas 65 persons per square mile would
21. certainly indicate that the County is a rural-type devel-
22. opment. This continued urbanization in the County that
23. we see in the annexation area, the area that surrounds
24. the City, this is going to intensify the need for urban

1. services. And these services can be more efficiently
2. provided by the City of Harrisonburg. The increasing de-
3. mands for public services requires a certain pattern of
4. land use density that's sufficient to provide such a ser-
5. vice. The delivery of public service systems, water,
6. sewer, transportation, police protection, fire protec-
7. tion, road improvements, drainage improvements, electric
8. power, all of these types of related urban services, are
9. certainly much more efficient for government and pri-
10. vate utilities to provide in a more compact urban densi-
11. ty than in a scattered rural-type pattern that we have
12. beyond this. And this scattered development pattern is
13. a major factor in increasing government and private util-
14. ity cost. I think we must remember that these costs are
15. shared by all residents of the County, not just those
16. residents surrounding the City.

17. Q. Does the sparse population within the County have any
18. particular impact on energy conservation and mobility of
19. people?

20. A. It certainly does. We are all aware that energy conser-
21. vation has become an important issue in recent years,
22. and it's more than likely to become critical, more
23. critical, in the future. Alternative land use patterns
24. can have a significant effect on energy consumption;

1. gasoline consumption used for commuting from home to
2. work, schools, shopping. They vary greatly between a
3. scattered land use plan and a more compact community pat-
4. tern. There are many opportunities for mass transporta-
5. tion. This was exemplified by a previous witness. For
6. car pooling as a means of transportation to the community
7. of Harrisonburg that has an urban community-type develop-
8. ment as opposed to a scattered rural development.

9. Q. Mr. Barnes, turn now if you will to Tabular Exhibit 4 and
10. 5. Will you tell the Court what these exhibits purport
11. to show?

12. A. Okay, Exhibit 4 is an analysis of the population for
13. the City of Harrisonburg and surrounding areas, and we
14. list the population figures for 1920 and decades up
15. through the 1980 census. You see the City of Harrison-
16. burg in 1960 with a population of 11,916, and it exper-
17. ienced a ten percent growth from 1950 to 1960. In 1970
18. that population increased to 14,605, a twenty-two and
19. a half percent growth over the previous decade. And in
20. 1980 a population of 19,671, or a thirty-five percent
21. approximate growth. Now, if we look directly underneath
22. that and go back to 1960 for the enrollment at James Mad-
23. ison University, 1,494 students enrolled at James Madison.
24. In 1970 this enrollment had increased to 4,041; a dramat-

1. ic increase, more than double the enrollment, 170%. And
2. then in 1980, that enrollment at James Madison increased
3. from 4,041 to 8,817; 118% increase.

4. Q. All right, now, Mr. Barnes, the figures that you have
5. given for the City of Harrisonburg for 1960, 1970 and
6. 1980 are census figures, as I understand it, and the
7. James Madison University figures are enrollment figures.

8. A. That's correct, the James Madison are enrollment figures.

9. Q. All right, continue.

10. A. In looking at the James Madison enrollment figures, that
11. fairly large percentage increase in enrollment, and then
12. looking right up above that at the increase in population
13. in the City of Harrisonburg, the 1960, 1970 and 1980 pop-
14. ulation figures for the City of Harrisonburg do include
15. the enrollment figures at James Madison University. They
16. are included with the City census figures.

17. JUDGE MOON: Did you say 1960, 1970 and 1980
18. are included?

19. A. That's correct. James Madison enrollment figures are
20. included in those population figures.

21. JUDGE TRABUE: That doesn't assume that all
22. of the enrollment is within the City limits, does it?
23. That's not what you're saying.

24. A. You mean that all of the enrollment resides within the

1. City limits?

2. JUDGE TRABUE: Right.

3. A. No sir. A subsequent witness will testify to a breakdown
4. of those enrollment figures, as to what percent is on
5. campus, in the City, in the County and other. I don't
6. have those figures, but those will be provided. I can
7. state that in the comprehensive plan prepared by the
8. City's consultant, Harland Bartholomew, that that report-
9. ed, that plan reported, that approximately eighty-five
10. percent of the growth of Harrisonburg over the last de-
11. cade, from 1970 to 1980, can be attributed to the in-
12. creased enrollment at James Madison University. Now,
13. if we take the 8,817 and take eighty-five percent of
14. that projected increase, take out the 4,041 or 4,776
15. increase, that would mean that about 4,060 of the popu-
16. lation increase was in enrollment figures at James Madi-
17. son. So, in effect, what we're saying is, that there's
18. been a fairly small growth in the City, excluding James
19. Madison University enrollment. With that growth we also
20. have an increase in associated faculty and staff to sup-
21. port the tremendous growth that has taken place at the
22. college. There has been a very small growth in the City
23. beyond that directly attributed to the growth at James
24. Madison. It hasn't been a zero growth in population, but

1. it hasn't been a significant growth. I would say probab-
2. ly maybe out of the twenty percent, about a thousand of
3. that growth could be attributed to beyond James Madison
4. University.

5. Q. Will you turn to Exhibit 5, and tell the Court what that
6. is.

7. A. Okay, Exhibit 5 is a graphical illustration of the figures
8. that we saw on Exhibit 4. And I think it's important to
9. point out that the bottom two curves here, you can see
10. that the growth of the City of Harrisonburg is approxi-
11. mately parallel to that of the growth of James Madison
12. University.

13. Q. If you subtracted out of the City of Harrisonburg's popu-
14. lation for the period 1970 to 1980 the James Madison en-
15. rollment which resides in the City, what would that curve
16. do?

17. A. If you took the James Madison growth out of the City of
18. Harrisonburg, that curve would drop.

19. Q. Mr. Barnes, are you familiar with the land use in the
20. City?

21. A. Yes sir, I am.

22. Q. I would like for you to turn to Map Exhibit H-6 and
23. the associated tab exhibit.

24. A. Okay, if we look at Map Exhibit H-6, which you have there

1. in your map book, and then Exhibit 10 in the tabular book,
2. you'll see a listing of the uses of land within the City
3. of Harrisonburg by category, the number of acres that
4. are in each category, and then the percent of total.
5. You see 942 acres of land in the classification of single
6. family, and I won't go down through the list here; but
7. I think we may want to point out that the City has a
8. rather typical land use pattern for cities of this size.
9. Of the total 3,827 acres which is in the present boundar-
10. ies, about thirty-one percent of that is devoted to resi-
11. dential usage. About seven percent for commercial acti-
12. vities, about eight percent for light and heavy indus-
13. trial enterprise, and then approximately thirty percent
14. of the City's present area is devoted to public and semi-
15. public. We have 13.9 acres in highways, streets and
16. roads. So that 16.2 and 13.9, about thirty percent of
17. that is basically for public and semipublic use. And
18. if we look on H-6 here we can certainly see the large
19. pockets of green space, James Madison University campus,
20. Westover Park, the high school, playgrounds, the Armory
21. complex; they make up a significant portion of that pub-
22. lic and semipublic land use. If we look at the number of
23. acres that are vacant, we see 839.3 acres or roughly
24. twenty-two percent of the City's total acreage would be

1. classified as vacant land. We have performed an impor-
2. tant analysis of that vacant land, of the 839 acres, and
3. if you'll turn the page to Exhibit 11 you'll note that
4. we have netted out of the gross vacant land four categor-
5. ies of land that we feel have impediments to development.
6. First would be that area classified as flood plains,
7. about fifty-five acres. Now, we all are aware that wet-
8. ness and flooding, besides causing property damage, can
9. also affect the stability of foundations and the suita-
10. bility for construction of basements. In many places
11. development should be discouraged in areas where you
12. have flood plains. In rock outcroppings we have about
13. seventy-seven acres that fall in that category. These
14. are generalized soils with practically no depth to bed
15. rock, they are very shallow. Excavations for utility
16. lines and footers become very expensive when you get
17. into this type of soil condition. Also in areas without
18. a central sewage system, these soils are unsuitable for
19. use in septic tank drain fields. If you recall on the
20. bus tour last Tuesday when we went down Route 11 South
21. and turned around at the Rockingham Motel, directly across
22. the road there was construction underway and you saw a
23. couple of drilling rigs out there blasting rock. This
24. is the type of impediment that you run into that makes

1. construction expensive. We have a third category of
2. excessive slopes, greater than fifteen percent. We're
3. not saying that this type of land cannot be used for
4. development, we're just saying that this is an area where
5. you would probably have to use alternative designs to
6. develop this type of land. I think probably some exam-
7. ples of that on the bus tour was when we stopped the bus
8. on the first trip up to Park View, the houses that were
9. situated along the western side of the road there were
10. fairly traditional type construction. If you looked at
11. the houses on the east side, the steep slopes, certainly
12. there was some care and consideration taken in the design
13. of those facilities, they probably had to be designed
14. to fit the lot. There were several different entrances
15. and terrace levels, it was not your traditional type
16. construction. And then a fourth category that we have
17. listed is that land that falls within an area that is
18. susceptible to sinkholes. And we all know that the Valley
19. area here is in an area of limestone, we have ground wat-
20. er and sub-surface water that sometimes will cause this
21. limestone to create a cavity, and the top surface of that
22. cavity will depress and we have an area that is identi-
23. fied as a sinkhole. The geological area in Harrisonburg,
24. its outer edge is called the Beekmantown Geological Soils

1. Area, and you see a tremendous amount of it in the Valley.
2. What we're saying here is that care should be taken in
3. planning development in this area to ensure a stable
4. foundation. I think on our bus tour a sinkhole was point-
5. ed out over in Harris Gardens. There was a depression
6. there and I think those are used for recreational pur-
7. poses. These environmental factors that we have listed
8. on the soil impediments are not complete bars to develop-
9. ment, but they certainly restrict the land use and they
10. also limit its development potential.

11. Q. When we look on Exhibit 11 at the net vacant land, we
12. see that that has been netted down to 497 acres. If that
13. 497 acres were all in one tract but had none of the other
14. impediments that you have spoken to, and a developer un-
15. dertook to develop it let's say for residential or shop-
16. ping centers, how much of it would have to be used, by
17. rule of thumb, for streets and highways?

18. A. Well, right in here where we have certainly a rolling
19. terrain, usually we assume that anywhere from twenty to
20. twenty-five percent; so, if you have a four hundred acre
21. tract of land, about twenty to twenty-five percent of
22. that land would be used in street rights-of-way and pub-
23. lic easements that would not come under the category of
24. residential use or whatever the particular activity is.

1. So, if we were talking about a single family residential
2. neighborhood, roughly one-fourth of that land would come
3. under the area or fall under the area of public streets
4. and rights-of-way.

5. Q. From the background of your experience, Mr. Barnes, will
6. you tell the Court what commercial and industrial devel-
7. opers are looking for in sites today?

8. A. Well, you know, I think we have a couple of prime examples
9. here. What happened in 1965 with Dunham-Bush and 1970
10. with Kawneer. Developers today very often require very
11. large tracts of land, to accommodate not only the princi-
12. pal structure but the ancillary features that belong to
13. that particular development; the requisite parking that
14. is required for that development. They are seeking ac-
15. cess to transportation facilities, such as your major
16. arterial highways, your interstate highways. There is
17. some importance on rail sidings, but I think that impor-
18. tance has diminished since the 1950's and it's not as
19. important to locate near rail sidings as it has been in
20. past years. But, if you look at H-6, Mr. Cogar, there
21. is just a very few undeveloped sites on that map there
22. that fall within that category. We see some small par-
23. cels here that are almost landlocked, really, from the
24. standpoint of accessibility. They probably could get the

1. water and sewer facilities that are needed. That's
2. another item developers are looking for, will water and
3. sewer be available. If they are large users industrial-
4. ly, if they have a large sewage disposal, certainly they
5. are interested in water and waste water treatment. And
6. we just don't see that many large, vacant parcels avail-
7. able in the existing City.

8. Q. Are there any sites in the City as desirable for a devel-
9. opment for a mall or a plant such as Walker or other in-
10. dustries like this as those chosen by these industries
11. in the surrounding annexation area?

12. A. I don't think there are any sites that fall within that
13. category in the existing City. We know that in 1965
14. Dunham-Bush came to the area, they asked to come into
15. the City, the City had the water they needed and the
16. sewer. And in 1970 Kawneer came. In the last two de-
17. cades, other than Dunham-Bush and Kawneer, we really
18. haven't seen any industrial growth in the City. Now,
19. we did point out a site the other day on the bus tour
20. right up here (indicating), an industrial tract of land,
21. I believe a company is coming there by the name of AMP.
22. They're involved in some kind of electronic supply manu-
23. facturing, they employ about a hundred and fifty people.
24. That's the only major industry or only new industry that

1. has located in this area within the past two decades in-
2. side the existing City. The competitive superiority of
3. the sites in the area surrounding the City far exceed
4. those sites that are available within the existing City.
5. And if I could, Mr. Cogar, I would refer to a statement
6. that was made in the Commission on Local Government's
7. findings, and I would quote from page thirteen: "As
8. testimony to the competitive superiority of the sites
9. in the area proposed for annexation, it should be noted
10. that all of the major industrial growth in the Harrison-
11. burg-Rockingham County area within the last ten years
12. has occurred beyond the City's boundaries. The evidence
13. suggests to the Commission that the City of Harrisonburg
14. will remain . . . "

15. . MR. FITZGERALD: If it please the Court, is
16. he reading from the Commission's report now? I'll give
17. the Court credit to read the Commission's report, with-
18. out having the witness read it.

19. JUDGE MOON: Sustained.

20. A. I just wanted to reemphasize the statement made by the
21. Commission.

22. MR. FITZGERALD: I object to the Commission's
23. report being read to the Court.

24. JUDGE MOON: I sustain the objection.

1. A. Another thing that you have to consider too if you're
2. looking for available sites for development, whether it
3. be industrial, commercial, residential, what-have-you,
4. is whether or not that site is available for development.
5. Land availability. It may be that the owner has farmed
6. that land for nine generations and he wants to continue
7. farming. It may not be available. There may be restric-
8. tive covenants that cover that land that will restrict
9. the type of development. That certainly complicates the
10. use potentialities of vacant land, in addition to the
11. four impediments that we mentioned.

12. Q. Does the fact that the sites which we see shown as vacant
13. on H-6 are scattered throughout the City pose any impedi-
14. ment to development?

15. A. The fact that they are scattered throughout the City,
16. the use potentialities of these scattered vacant sites
17. I think certainly are considered in the City's land use
18. plan, and it may be that in the planning process for the
19. development of these vacant sites, the City may have to
20. analyze this area here in its land use plan and decide
21. that the best use for that land may be in a residential
22. use. Therefore that is not land that would be available
23. for commercial or industrial activity. If that has gone
24. through the planning process and that plan has been

1. adopted and then some developer comes in there and says
2. he would like to put something other than what the pro-
3. jected use is.

4. Q. All right, sir. In your opinion is the City of Harrison-
5. burg being adversely impacted by the location and reloca-
6. tion of businesses to the adjacent County area, as was
7. shown on City Exhibit H-32?

8. A. Well, let's turn to that Exhibit H-32 again. There's
9. previous evidence by Mr. Sullivan that there is a press-
10. ing and growing need for the City of Harrisonburg to
11. expand its tax resources. The City's commercial and re-
12. tail trade center has shifted some five hundred yards
13. east of the Interstate 81-Route 33 interchange. Nine
14. businesses, I believe, have relocated from downtown;
15. two of the majors, two of the anchor stores at this Mall,
16. J. C. Penney and Leggett, are no longer here. If you go
17. across the street you can see the vacant buildings and
18. you also saw it demonstrated on the exhibit here yester-
19. day. That retail trade center has shifted to 33 East.
20. You might say it's a "hemorrhaging" effect. Not only has
21. the retail trade shifted to the Mall, but we see shoot-
22. ing arrows, people are leaving the downtown area and
23. going out to points beyond the existing City.

24. Q. From your perspective as a planner, what does this por-

1. tend for the City?

2. A. Well, Mr. Cogar, I think the growth that we are witness-
3. ing today beyond the City limits, that growth will inevi-
4. tably increase. The City has practically used up what
5. vacant lands it has left. It's reached the point of
6. almost saturation. You should have some land available
7. for vacancies, vacant land available. You shouldn't have
8. all of your land use categories used up. There should
9. be some spaces left for open space. I don't think re-
10. development is the answer. The federal moneys are just
11. simply not there like they have been, and we all see
12. examples of this, and we'll probably see more in the
13. future. This trend that we see taking place is very
14. unlikely to be reversed. They are gone, they are not
15. coming back. The increased growth by James Madison
16. University, without revenues and service fees, is going
17. to certainly cause taxes to increase on the remaining
18. properties if the City is to maintain anything like its
19. present level of services. Future growth is inevitable
20. beyond the City's present boundaries.

21. Q. Have you made any studies to ascertain the impact of the
22. Mall and commercial establishments beyond the City's
23. limits in Rockingham County on the City's sales tax re-
24. venues?

1. A. Yes, I have, Mr. Cogar. We have looked at the total tax-
2. able sales in the City of Harrisonburg and Rockingham
3. County from 1972 through 1980. Now, these taxable sales
4. figures were presented by the State Taxation Department
5. and are published in an annual report. The taxable year
6. of these sales is from February 1, say of 1980, through
7. January 31, 1981. That is the most recent year. If we
8. look at 1972, we find that the total taxable percent or
9. total taxable sales of the City of Harrisonburg was 63%.
10. For the County of Rockingham it was 37%. If we go to
11. 1980, the most recent year published, the City has de-
12. clined from 63% to 52%; the County has increased from
13. 37% to 48% of total taxable sales.

14. Q. Have you made an analysis of the land use in the annexa-
15. tion area?

16. A. Yes, I have, Mr. Cogar. If we'll turn to Exhibit H-8,
17. in the book of map exhibits.

18. Q. Do you have an associated tabular exhibit, Exhibit 12?

19. A. Right, Tabular Exhibit 12. We look at this tabular ex-
20. hibit and we see that we have about eight hundred acres
21. of single family, eighty-three two family, thirty-seven
22. mobile homes, two hundred and thirty-three commercial,
23. five hundred and fifty-two public and semipublic, light
24. industry two forty-three, heavy industry seventy-four,

1. a total vacancy there of seven thousand and twenty acres.
2. Now, these are the figures, the figures that are reported
3. in here are the summary of land use in the annexation
4. area that was prepared by Wiley and Wilson and also Mr.
5. Sullivan, the City Planning Department. The land use
6. inventory was prepared in 1978-79 and has been updated
7. by both Mr. Sullivan and myself. Of the total of seven
8. thousand and twenty acres of land that we have analyzed,
9. I think some of that vacant land would fall within the
10. same category as the impediments that we discussed in
11. the existing City. For example, if we look at . . .

12. Q. Excuse me, before we go into that, Mr. Barnes, you show
13. on Exhibit 12 a total acreage in the annexation area of
14. 9,049.60 acres, of which 7,020.5 is shown to be vacant
15. and agricultural. Correct?

16. A. That's correct.

17. Q. You have seen the County exhibits which also analyze the
18. vacant land in the annexation area, have you not?

19. A. That's correct, and let me discuss that. We do have a
20. difference here in the vacant land.

21. Q. The total is the same, is it not?

22. A. The total is the same. We're still talking about nine
23. thousand plus acres. If we look at vacant land, we have
24. not stratified the categories by crop land, pasture land,

1. wood land and open. We have simply just said it was
2. vacant land. Now, within our vacant land in the annexa-
3. tion area we have also included streets and roads and
4. highways.

5. Q. Those are existing streets and roads and highways.

6. A. Existing streets and roads and highways. Now, the County,
7. I believe, has a figure in their exhibit of 612 acres of
8. roads and streets. Now, if you take out of our 7,020
9. acres of vacant land that 612 acres, we have a total of
10. 6,408 acres of vacant land. That would not include the
11. streets.

12. Q. If you subtract from the 7,020 acres of vacant land . . .

13. A. The six hundred and twelve acres.

14. Q. The existing streets . . .

15. A. You'll have 6,408 acres of vacant land by our analysis,
16. taking out the County's roads and streets. Now, if you
17. add up the County's interpolation, crop land, pasture
18. land, wooded land and open space, you'll have 6,157 acres
19. of vacant land. So, we're talking about 6,408, the City's,
20. versus 6,157, the County's; or roughly 250 acres of va-
21. cant land in a nine thousand total aggregate. So, a
22. very diminimous amount of the total amount of acres.

23. Q. So, on this subject at least there is a significant
24. measure of agreement.

1. A. That's right. It's a matter of the methodology that's
2. used in classification of land use. For example, turn-
3. ing to the County's exhibit book, Exhibit 77, if you
4. look at their exhibit, I'll just point out a couple of
5. examples. Like James Madison University, for example,
6. we had classified that entire parcel as public and semi-
7. public. The County has not. They have a significant
8. amount of that shown in the vacant category. So, owner-
9. ship there, we felt that would fall in public and semi-
10. public use. There are some types of examples that we
11. would have a difference of opinion on the total amount.

12. Q. Well, whether it be 6,150 or 6,408, do you find in the
13. vacant land in the area sought to be annexed impediments
14. similar to those which you have addressed yourself to
15. in the existing City?

16. A. Yes, I do, Mr. Cogar. Like I said, we have analyzed
17. the vacant land in the annexation area, and we have made
18. the same type of analysis of physical conditions for the
19. annexation area as we did for the City. We know for
20. example from our studies that there are about 120 acres
21. of land in the annexation area that would fall within
22. the category of flood hazard areas. Again, we have
23. analyzed those areas that have excessive slopes, and we
24. find that about 600 acres of that land falls within that

1. category. Because it increases the cost of development
2. we have also looked at that portion of the annexation
3. area that falls in the category of rock outcroppings.
4. We have roughly about a thousand acres of soil within
5. that category.

6. Q. In the annexation area do you encounter any of these
7. geological conditions, sinkhole characteristics, that
8. you have described as existing in the vacant land remain-
9. ing in the City?

10. A. Yes, I have, Mr. Cogar. We have looked at this Beekman-
11. town geological formation that I made reference to in
12. my earlier testimony. And I think it's fair to say that
13. just about everything east of 81 falls within that geo-
14. logical formation.

15. Q. Does that mean it is undevelopable?

16. A. No sir, not at all. For all practical purposes you may
17. say it falls within this category of undevelopable, but
18. we know that's not true. For example, if you look out
19. here at the Valley Mall. Valley Mall falls within the
20. area that's identified as the Beekmantown geological
21. formation. Now, we know that there is no problems with
22. the foundation there. True, there was a tremendous amount
23. of excavation and excess material removed and stockpiled
24. behind the Mall, but that does not fall within an area

1. that we would say would be built over a sinkhole. Now,
2. if you come down further and look at the site for the
3. steam recovery plant that Mr. Driver made reference to .

4. Q. Point that site out, if you would.

5. A. It's right here (indicating on map). If we look at that
6. site there, that also falls within this Beekmantown
7. geologic formation. Now, some test borings were made
8. at the location of that plant to identify the type of
9. soil conditions that they may encounter, and it was
10. found that, in fact, they did have to do some extra
11. piling and so forth to reach soil stability to support
12. that plant.

13. Q. Will that increase the cost of that project?

14. A. It more than likely will increase the cost of the pro-
15. ject. Then you might ask yourself why not go look at
16. another site. Well, there are certain factors involved
17. with that site. The location of that site, you don't
18. want it setting right adjacent to a residential area,
19. you also have to consider the purpose of the plant is
20. to sell steam to James Madison University. The Univer-
21. sity where you're going to sell the steam has to be
22. fairly close to where you're going to generate the
23. steam, because you have a certain amount of heat loss
24. when you transport that steam from the recovery plant

1. to the campus. So, for all practical purposes, you just
2. have to spend the extra money to reach additional soil
3. suitability or stability in the foundation, so you go in
4. and you put pilings or pour concrete or whatever you have
5. to do. That depends on what the geotechnical scientists
6. say in their report. Now, if you go out to the Valley
7. Mall, for example, that area, that Beekmantown geologic
8. formation comes down 81 and into here. We know that the
9. properties down there have not experienced any difficulty
10. in soil suitability and foundations. We go on further
11. outside the annexation area, down to the regional waste-
12. water treatment plant, and there was something like
13. a half a million dollars spent in pouring concrete for
14. the foundation for that treatment plant to reach soil
15. stability. That plant is located in the Beekmantown
16. geologic formation. So, what it does, we're saying it
17. raises a flag, that before you do any significant type
18. of development in this area, you had better have some
19. geotechnical studies made, or you may find yourself sink-
20. ing.

21. Q. Do you anticipate that as development progresses over the
22. years that you might get netted down in that area to
23. something like what you have netted down in sinkholes
24. in the existing City?

1. A. Mr. Cogar, I could say ten percent of that land might fall
2. within that category, I could say fifteen to twenty per-
3. cent. I think it's really difficult to quote a figure
4. on how many acres would fall within that category. I
5. think what it is, it raises a flag to alarm you that
6. you're in that formation, and you'd better take the neces-
7. sary steps to be sure that you don't have a problem.
8. So, I don't think we can put it in terms of numbers of
9. acres that fall within that sinkhole susceptibility.
10. In a large geological formation like that that is a gen-
11. eralized problem.

12. Q. Well, taking all the factors that you have discussed
13. into account, let me ask you about one other. For the
14. development of these substantial tracts of open land,
15. how much ought to be taken out for roads, streets and
16. highways?

17. A. As I pointed out before, Mr. Cogar, I think we're look-
18. ing at very large tracts of land. We know, for example,
19. that there is a paper subdivision between Ashby Heights
20. and Forest Hills. If you look at the total acreage in
21. that tract of land and net out the streets in there,
22. probably twenty to twenty-five percent of that total
23. acreage and development will fall within the category
24. of public rights-of-way.

1. Q. Given those things to which you have addressed yourself,
2. in your opinion what percentage of this sixty-one or
3. sixty-four hundred acres of vacant land is going to de-
4. velop before we hit the hard impediments that you've
5. testified to in the City?

6. A. Mr. Cogar, it would be extremely difficult to quantify
7. that figure, because we are talking about an area that
8. is in a large geological formation, the Beekmantown
9. formation, and I just wouldn't be comfortable with put-
10. ting a figure on what percentage of that land would
11. fall within sinkhole susceptibility.

12. Q. Are you familiar with the major transportation arteries,
13. the highway and rail, as are shown on Exhibit H-1B?

14. A. Yes, I am, Mr. Cogar. I think before going to that
15. subject area I would like to try to introduce a few
16. more things that are related to the land use in the
17. annexation area.

18. Q. All right, do that.

19. A. If I could, I have an overlay here of the County's
20. zoning filed with the Clerk of the Court in the annexation
21. area. And, if I might, I'll just take this zoning and
22. lay it over the County's land use.

23. Q. You're talking about . . .

24. A. This is the County's zoning in the proposed annexation

1. area.

2. Q. Now, the overlay that you have in your hand shows exist-
3. ing County zoning as is reflected on the County exhibits?

4. A. This is existing County zoning, Mr. Cogar, that was fil-
5. ed before the Clerk. We made photographs and pictures
6. of exhibits filed at that time, and what this exemplifies
7. is the County zoning.

8. Q. Bring that around in front there, if you can.

9. A. Around here?

10. Q. Yes. Bring it right over here so we can move it up;
11. that overlay is a little difficult to see.

12. JUDGE MOON: We'll take a break and during
13. the break you can set it up.

14. (Recess)

15. Q. Mr. Barnes, there is next to you on the easel a . . .

16. A. Excuse me, Mr. Cogar, before we get started on this
17. I would like to clarify something on the existing land
18. use in the annexation area.

19. MR. FITZGERALD: If it please the Court, I
20. think we would proceed in better order if Counsel asks
21. questions and the witness answers them. I object to
22. opening statements by witnesses.

23. JUDGE MOON: Well, it may be clearing up
24. something he's made a mistake on or something like that,

1. and that's all right. Are you correcting a question al-
2. ready asked?

3. A. What I'm correcting is exhibits that I have reference to.
4. I need to clarify something in the book exhibit, the
5. large exhibit.

6. Q. All right, clarify it, if you will, please.

7. A. Okay. If you'll look at Exhibit H-8 in the book and
8. H-8 on the large exhibit here, there are a few differ-
9. ences. The reason being that it was a matter of timing.
10. This report had to go to the printer because of a series
11. of overlays, of runs with different colors, and as al-
12. ways we're continually trying to update and monitor these
13. various changes, and these are the latest. At the time
14. we were ready to file this large exhibit it was pointed
15. out that we had missed a couple of large industries here
16. in the Pleasant Valley Industrial Park. It's not a hard
17. thing to do.

18. Q. All right, then, Mr. Barnes, just so the record will be
19. clear on this, you are pointing to Exhibit H-8, and in
20. the southeast corner of the Industrial Park touching the
21. annexation border there is shown a rectangular purple
22. square which is not shown on the companion exhibit in
23. the small book, is that correct?

24. A. We missed Packaging Corporation, Banta and Wampler Chem-

1. ical. And there's another one that we missed up here,
2. Heritage Haven.

3. Q. Now, you're pointing to the northwest corner of the annex-
4. ation area on Exhibit H-8 to an orange spot, which is
5. almost on the outer edge at the northwest corner, and
6. you're saying that that does not appear in the small
7. companion exhibit book. Is that correct?

8. A. That is correct. And I believe, Mr. Cogar, there's one
9. other little triangle piece of land the City purchased
10. for Westover Park that is shown on the large map which
11. is not shown in the book form. It's a little small
12. triangle piece of land just outside the west corporate
13. limits outside Hillandale Park.

14. Q. Well, I can't tell the difference from here, but the
15. record will show what you refer to.

16. A. I just wanted to point those out.

17. Q. Both the large H-8 and the small one were filed at the
18. same time with the Clerk, were they not?

19. A. That is correct. They were filed at the same time with
20. the Clerk and those changes on the large map have been
21. made prior to filing.

22. MR. FITZGERALD: Made when?

23. A. Made prior to filing.

24. Q. All right, on the easel before you now, Mr. Barnes, there

1. is Exhibit 58a for identification, which is a base map,
2. and superimposed on that is Exhibit 58b for identifica-
3. tion, which is an acetate overlay which bears the legend
4. "Existing County Zoning in Proposed Annexation Area".

5. Will you tell me what that overlay is, how it was con-
6. structed and when it was constructed, and what it was
7. constructed from.

8. A. The construction of this overlay was made in our Planning
9. Department in Lynchburg. At the time of the filing of
10. the County exhibits, Mr. Steadman and Mr. Sullivan and
11. I believe the Clerk of the Court was present, we made
12. photographs of the exhibits that were filed by the County
13. with the annexation court. This is a replica of that
14. slide and the photographs that were made of the exhibits
15. that were filed by the County at that time. And we have
16. replicated what was filed on this clear acetate overlay.

17. Q. So, what is shown on Exhibit 58b is the County's zoning
18. as shown on their exhibit which you have copied.

19. A. That is correct.

20. JUDGE TRABUE: What is that exhibit number
21. that you are referring to? The County exhibit number.

22. Q. What is the County exhibit that you copied it from, Mr.
23. Barnes?

24. A. I don't believe the County has a zoning map filed in

1. their book.

2. Q. It's one of their large maps?

3. A. One of their large maps.

4. CLERK: What is 58a?

5. MR. COGAR: 58a is the map that's beneath
6. the acetate.

7. A. And then 58b would be the existing County zoning in the
8. proposed annexation area. You can see the County ver-
9. sion of the zoning that the County has. The white area
10. within this boundary is classified as A-1, agriculture.
11. Now, I might say that we have not depicted on here the
12. zoning in the areas beyond the annexation line. We have
13. only depicted the zoning within the annexation area.

14. Q. Is there zoning beyond the annexation line?

15. A. I'm sure there is, Mr. Cogar. I believe previous testi-
16. mony by Mr. Sipe indicated that a fairly large tract of
17. land below Elkton was zoned for some type of industrial
18. purpose.

19. Q. All right. What is the significance of this map?

20. A. The significance of this map is, I think, that the County
21. certainly sees a trend of ultimate growth beyond the
22. existing corporate limits, particularly the area to the
23. south of the City, the commercial, strip commercial cor-
24. ridor down Route 11 South, the commercial zoning, B-1,

1. central business on both sides of Route 11 from the exist-
2. ing corporate limit line all the way down to the proposed
3. line. The sector of residential development that's pro-
4. posed between Ridge Road and Port Republic Road. The
5. continuing commercial development along Route 33 East.
6. Some of this is developed, some undeveloped. They have
7. chosen to zone this property that is undeveloped for
8. prospective R-2 residential development, for example,
9. about along Route 710.

10. Q. What is the purple development?

11. A. The purple development is the industrial development.
12. And if we look at the industrial land use in the exist-
13. ing area, we see that the area is zoned for industrial
14. activities, that area is probably twice the size of that
15. which is in existing industrial activity use. The same
16. applies to commercial.

17. Q. Now, are there land uses within the annexation area which,
18. if shown on this map, would be in areas other than where
19. the zoning is shown in the annexation area?

20. A. You know, I think what this overlay originally started
21. to do, some of those may pop out, but it may be a little
22. difficult to distinguish what's land use and what's zon-
23. ing. But, for example, if you look out on 33 West and
24. you see this residential development out here, that is

1. in an area that's zoned agricultural. If we look, for
2. example, at Wetsel's recent expansion between Kratzer
3. Road and the Southern Railroad here, an industrial ac-
4. tivity, we'll see that that area is zoned agricultural.

5. JUDGE MOON: Does that violate the zoning
6. ordinance or is it a variance or what?

7. A. Your Honor, a subsequent witness will testify to the
8. adequacies and the correlation of zoning . . .

9. JUDGE MOON: I take it you can carry on a
10. lot of activities in agricultural areas.

11. A. Right. There are some conflicts here. A subsequent wit-
12. ness is prepared to testify on this.

13. JUDGE MOON: All right.

14. A. For example, the Deer Run Apartment complex is in an
15. area that's zoned R-1, low density residential. The
16. use activity is a higher density residential. Maybe
17. the zoning permits single family use in a low family
18. zoning, I'm not sure. Maybe it permits industrial use
19. in an agricultural zoning, I'm not sure. I'm not pre-
20. pared to testify to that.

21. Q. Have you determined, Mr. Barnes, whether there is avail-
22. able through the state records which indicate the prime
23. agricultural land in Rockingham County?

24. A. Yes, I have, Mr. Cogar. As a matter of fact, I have a

1. subsequent exhibit which I'd like to introduce at this
2. time. It's the result of a map that we received from
3. the U. S. Department of Agriculture. It delineates the
4. prime agricultural land in the annexation area. That
5. is land which is classified by the U. S. Department of
6. Agriculture, Soil Conservation Service.

7. Q. All right, you have placed upon the 58a and 58b previous-
8. ly testified to an acetate overlay which has been marked
9. Exhibit 59 for identification, and it bears the legend,
10. "Prime Agricultural Land in the Proposed Annexation Area."
11. Tell the Court what this shows.

12. A. What this shows is delineated in a light green on the
13. clear acetate that's superimposed over the County zoning.
14. This illustrates that area, that soil condition, that has
15. been designated by the U. S. Department of Agriculture,
16. Soil Conservation Service, as prime agricultural land.
17. And you can see that a substantial amount of it falls
18. within areas zoned for uses other than agricultural uses.
19. For example, Route 11 South where we have basically com-
20. mercial zoning. A good portion of that is prime agricul-
21. ture land. And the Pleasant Valley Industrial Park, the
22. area between 710 and 659, the Park View area, and then
23. we see some of the prime agricultural land remaining in
24. areas that are zoned agriculture. So, without planim-

1. etering exactly how much land we have, just a ballpark
2. estimate to look at it, I would say probably fifty per-
3. cent of that land that's classified as agricultural land,
4. prime agricultural land, is in areas zoned for use other
5. than agricultural.

6. Q. And by visual comparison of Exhibit 8, which is the exist-
7. ing land use in the area, it's apparent that a signifi-
8. cant amount of that land has already been developed, has
9. it not?

10. A. That's correct.

11. MR. COGAR: If Your Honors please, I offer
12. Exhibit 58, 58a, and 59.

13. JUDGE MOON: Is that 59 or 58c?

14. MR. COGAR: Excuse me. What I had previously
15. referred to as 59 is 58c.

16. MR. FITZGERALD: I object to the introduction
17. of all these exhibits that are being presented now. We
18. had some sort of a rule, I thought we were supposed to
19. live by, to have exhibits prefiled so that each side
20. would have some opportunity to examine the source of the
21. material and be prepared to cross examine it. And con-
22. stantly in this case--and I haven't objected each time--
23. but constantly we come up with new exhibits that very
24. well could have been made and copies presented to the

1. the utilities in the area had not been prefiled. That
2. to me was very significant evidence, I knew it was com-
3. ing. At the time I made that objection I prefaced my
4. remarks, as this record will show, by the statement that
5. there would inevitably appear from both sides exhibits
6. that would be offered into evidence which were not of
7. the same consequence as that which I sought at that
8. time. Now, if some sort of groundwork is being laid here
9. at this time, as I suggest on the record there is, for
10. a mass substitution, a mass introduction of new exhibits
11. down the road, I do not want this thought to be a waiver
12. in any way of my right to be just about as . . .

13. JUDGE MOON: We're going to rule on each one
14. as it comes up, and we'll just have to determine whether
15. or not it's fair play or prejudice.

16. MR. COGAR: If we have a real dry gulcher in
17. here, Judge, we're going to object.

18. JUDGE MOON: Well, we will try to set the
19. rules, and what you all agree among yourselves, you can
20. violate your own rules, but we'll try to stick to having
21. a consistent rule ourselves.

22. MR. FITZGERALD: Yes sir. I'll make no comment.

23. Q. Mr. Barnes, would you put up now Exhibit H-1B.

24. A. Okay, I think you have H-1B in your map exhibit book,

1. the same as H-1B here, and what this basically describes
2. is the major transportation corridors that Mr. Sullivan
3. testified to yesterday. We have Route 11, north and
4. south, 33 east and west, Route 42, Interstate 81, and
5. Route 659, which is in the secondary system, but the
6. reason we put that in there as a major corridor is the
7. fact that it does come into the interstate, there's an
8. interchange there. You can see here that what we have
9. is a hub, a center of activity that started some two
10. hundred years ago, the County and the City. It started
11. in the center of the City and has radiated out along
12. the highways that connect that hub, it looks like spokes,
13. then you see sectors of development between those spokes.
14. That in turn has shifted somewhat with the introduction
15. of Route 81 to the east, and now we have two centers of
16. activity in this area. What people do in these particu-
17. lar places that were described in the land use analysis,
18. in residential communities, people in residences make
19. trips, so many trips per day; where they work, their
20. employment, so many trips made per day going to work.
21. Places of leisure time activity, where they have recrea-
22. tion and park facilities, they produce trips. Where they
23. shop, bodies of retail sales, they are trip generating
24. activities. And you can go on and list a various number

1. of socioeconomic parameters that come in the category of
2. traffic.

3. Q. All right, what is the relationship of these corridors
4. to growth in the past, present and future?

5. A. The relationship of these corridors to growth, Mr. Cogar,
6. is the fact that if you want to get from Point A to Point
7. B, most people travel the path of least resistance, the
8. minimum time frame. If I want to go from here to the
9. Sheraton, I don't go down Main Street, then out 659 and
10. go that way, I take Route 33. What these are, these are
11. major thoroughfares, major links, that interconnect these
12. various trip generating activities within this area.

13. Q. All right, sir, in your earlier testimony you have stated
14. that during your tenure with the State Department of
15. Highways you had worked on major arterial plans, and I
16. think we have heard testimony in this case that there is
17. in existence a major arterial plan for this area through
18. the year 1995. Is that correct?

19. A. That is correct.

20. Q. Explain to the Court the purpose for which such plans are
21. developed, by whom, and for what reason.

22. A. Okay, sir, the reason for the plans is that the state,
23. the State Highway Department in particular, likes to look
24. at an urbanizing area to see what its past, present and

1. future growth plans are and where development will take
2. place in that area, so that they can adequately plan for
3. future traffic facilities, highways, to accommodate that
4. future projected growth. Now as Mr. Sullivan testified
5. to earlier, I believe it was yesterday, in 1966 the City
6. of Harrisonburg was one of the first municipalities in
7. the Commonwealth of Virginia to have a major arterial
8. plan. The 1962 Federal Aid Highway Act required by leg-
9. islation that all cities fifty thousand and above must
10. have a continuing comprehensive transportation plan pro-
11. cess. Harrisonburg was ahead of the game, primarily due
12. to the fact that the Highway Department foresaw that this
13. was a growth area and they prepared a plan at that time
14. for transportation arteries to serve the needs of that
15. area. Unfortunately, this study did not go beyond the
16. 1962 corporate limits. Now, in the update process in the
17. late seventies, 1978 I believe it was, this plan was re-
18. cently adopted, the 1995 major thoroughfare plan, they
19. did in fact look at an area beyond the existing City.

20. Q. The plan to which you have referred, the 1995 major thor-
21. oughfare plan, is Exhibit 49 which is in evidence?

22. A. That is correct.

23. Q. All right. Now, you have indicated when the study began.
24. How was it developed?

1. A. The study began in 1975 or thereabouts, I believe, the
2. update study.

3. Q. For what purpose is such a plan developed?

4. A. Why is the plan developed?

5. Q. Yes.

6. A. The plan is developed to allow localities to try to pro-
7. gram what the needs will be and where the facilities
8. should be built for future growth within that area.
9. And to establish some list of priorities for future
10. construction of those needed facilities. And basically
11. they look at a twenty year plan. This is called the
12. 1995 major thoroughfare plan.

13. Q. What factors are taken into account in determining the
14. location of future highways?

15. A. Well, they look at land use activities and they generate
16. a land use plan. And within that plan they have where
17. future development, types of development, will take place.
18. And, as I said before, these types of development, gener-
19. ate movement of people and goods from Point A to Point B.
20. They look at the capacities of utilities in that area,
21. the delivery of public services, water and sewer, schools
22. and what-have-you, transportation. They look at project-
23. ed population forecasts, employment forecasts, school
24. enrollment, retail sales. There are twenty-three differ-

1. ent parameters of projected socioeconomic characteristics
2. within that area.

3. Q. You had mentioned trip generation, is that something they
4. also consider?

5. A. That's correct.

6. Q. By the way, have you developed any information indicating
7. the flow of traffic in and out of the City of Harrison-
8. burg?

9. A. Yes, I have, Mr. Cogar. If you'll turn to Exhibit H-37
10. and H-38, the last two in the book.

11. Q. All right, sir, directing your attention to H-37, what
12. does this purport to show?

13. A. All right, H-37 depicts the "Morning Peak Hour Traffic
14. Patterns" at the existing corporate limits.

15. Q. Is the information shown on this map the result of an
16. investigation that was made by you?

17. A. The information illustrated on this map is the result of
18. studies made by Mr. Driver's department under my super-
19. vision, and Mr. Driver's also. And what we see here
20. are arrows that show the in-bound traffic movement and
21. the out-bound traffic movement, the vehicles at the cor-
22. porate limit line, on Exhibit 37 during the morning peak
23. hours. Now, the width of that arrow is directly related
24. to the number of vehicles. For example, if we look up

1. on Route 33 at the corporate limit line we'll see 638
2. vehicles in-bound during the morning peak hour, and 437
3. vehicles out-bound. And there's a scale at the bottom
4. of your drawing here that you can measure, actually meas-
5. ure the volume of the vehicles. What this points out,
6. the significance of this is, that during the morning
7. peak hour we see a heavier concentration of people coming
8. into the City than we see of people going out of the City.
9. If you'll look at the bottom there, 283 in-bound and 186
10. out-bound. This would be, up here on 33, it would be
11. 638 vehicles in-bound and 437 out-bound.

12. Q. All right, sir. Do you have something which would show
13. similar information for the afternoon?

14. A. H-38 is "Evening Peak Hour Traffic Patterns". I might
15. add, Mr. Cogar, that the morning peak hour traffic pat-
16. terns were taken between the hours of 7:00 A.M. and 9:00
17. A.M. These are normally considered the two hours of
18. morning peak hour. Now, this is a one hour peak hour.
19. The counts were made at fifteen minute intervals, every
20. fifteen minutes for the two hours from 7:00 to 9:00 A.M.
21. And from 7:30 to 8:30, for example, that is the highest
22. peak hour, continuous fifteen minute intervals. The
23. same thing for the evening peak hour, it was taken from
24. 4:00 to 6:00 P.M. Here again you can see the numbers

1. are rather large going out of the City. If you look here
2. at Kratzer Road, for example, going out to Donnelley,
3. you'll see that the in-bound traffic is heavier. Of
4. course that's due to the people that work at Donnelley
5. who live either in the City or at some point south of
6. the City that have to travel into the City. Likewise,
7. if you look at Route 11 South, they are about the same,
8. you have some people from the Pleasant Valley Industrial
9. Park coming into the City. But we do see a heavier move-
10. ment on 33, 659, 42, Mt. Clinton Pike, Route 11 North.
11. The directional distribution is considerably different
12. in the evening peak hours.

13. Q. I'm uncertain about one thing you said. For the evening
14. peak hour patterns, what time of day were these counts
15. taken?

16. A. These were taken from 4:00 P.M. to 6:00 P.M. I think
17. probably if you would look out there at the shopping
18. center on 33 East, you'll see that from the hours of
19. 4:00 to 6:00 P.M. that Valley Mall is open for business,
20. whereas in the morning peak hour you'll see considerably
21. less in the volume of traffic; from seven to nine in
22. the morning that Valley Mall is not open at that time
23. for business.

24. Q. The thing that I didn't understand, you testified that

1. in obtaining this information you did it on a fifteen
2. minute interval basis. Whereas I would assume, for ex-
3. ample on Exhibit H-38 on Route 33 going east, where you
4. show 1,165 vehicles exiting the City, that's the total
5. number of vehicles that left the City limit during that
6. two hour period? Is that right?

7. A. No sir, that is the total number of vehicles that left
8. that station during the highest hour of fifteen minute
9. continuous intervals out of the two hour period. And
10. it may have been from 4:15 to 5:15, it may have been from
11. 5:00 to 6:00.

12. Q. All right, so you had eight fifteen minute segments in
13. which you counted, and you added the four highest.

14. A. The four highest fifteen minute segments is considered
15. the peak hour, and that's standard procedure that's prac-
16. ticed by our Highway Department.

17. Q. Do you have any idea on the in-bound and out-bound whether
18. the in-bound were coming from the annexation area or
19. out-bound going to the annexation area? Do you have any
20. information indicating the source or destination?

21. A. Mr. Cogar, as I stated, this was just a count that was
22. taken of vehicles. We did not stop the vehicles and
23. ask them where they were coming from or where they were
24. going to and so forth and do a representative sample of

1. an origin/destination survey. That is quite lengthy,
2. involves a lot of people and it's very costly. These
3. represent actual numbers of people passing the corporate
4. limit line into and out of the City. Now, I do have a
5. figure in answer to interrogatories. In the County, in
6. the location of employment, and these are people that
7. were surveyed in the census that was conducted by the
8. consultants for the County in the annexation area, and
9. the location of employment of 1,109 of those people were
10. employed in the County, 876 of those people residing in
11. the annexation area were employed in the City, and 186
12. were employed other than in the City or the County.

13. Q. Now, from the census data taken by the County in the an-
14. nexation area we have determined what percentage of
15. those who responded worked in the City? .

16. A. That's correct.

17. Q. What percent?

18. A. About forty percent. About forty percent of those who
19. responded to the survey indicated that their location of
20. employment was in the City.

21. Q. Do you have any other information from that census?

22. A. I have one other piece of information. The question was
23. asked as to what was their residence prior to moving to
24. their present location, which would be in the annexation

1. area, and about twenty-seven percent of those people re-
2. sponded that prior to moving there they lived in the
3. City.

4. Q. All right, back to the thoroughfare plan for a moment.
5. Is there not to be found in the thoroughfare plan a
6. line which is known as the cordon line?

7. A. Yes sir, Mr. Cogar, if we'll turn in our exhibit book
8. to Exhibit H-10 and H-1A. Let's look at Exhibit H-1A . .

9. Q. Before you do that, will you tell the Court what a cordon
10. line is?

11. A. Okay. A cordon line is a study area boundary really.
12. In transportation studies they establish a boundary
13. around an area that they feel is likely to become urban-
14. ized within a certain period of time, and they identify
15. that line as a cordon line. Now, the thoroughfare plan
16. defines a study area boundary to include all of the areas
17. in and around the City of Harrisonburg which are antici-
18. pated to be urban in character by the year 1995. That
19. is the cordon line as defined by the Highway Department.
20. Exhibit H-1A, you see a lot of lines here . . .

21. Q. Excuse me, I had to turn away there and I'm sorry, Mr.
22. Barnes, and I apologize to the Court. What did you say
23. the cordon line embraced?

24. A. The cordon line embraces that area that is likely to be-

1. come urban in character by the design year or the hori-
2. zon year of 1995.

3. Q. Now, on Exhibit H-10 will you show the Court how the
4. cordon line relates to the area sought for annexation.

5. A. Okay, H-10 does not show all of the area, Mr. Cogar.
6. H-1A shows it all in a regional context and then you can
7. come down to the more definitive definition.

8. Q. All right.

9. A. It's easier to see there.

10. Q. Okay, do that.

11. A. Do H-1A first?

12. Q. Yes.

13. A. H-1A is a map of the County, and we see the existing City
14. in red, the proposed expansion in yellow, and then we
15. see a line identified in blue, dark blue, and that is
16. the transportation cordon line, the study area boundary,
17. that has been delineated in this 1995 thoroughfare plan.
18. You can see that it encompasses the interchange to the
19. north on I-81, then basically it follows this yellow
20. area, some places it ducks in and ducks out, then over
21. here on the northeast corner again we come out here to
22. the interchange north of the City.

23. Q. Will you move to H-10 and relate it to the annexation
24. area.

1. A. Okay, on H-10 we have taken that line and superimposed
2. it on the one to eight hundred base map. And, again,
3. that is defined as the cordon line, and you can see the
4. yellow line here that basically follows that line. It
5. comes inside a little over here and a little outside here.
6. And you head back up to the I-81 interchange.

7. Q. Now, Mr. Barnes, from the point of view of an urban plan-
8. ner, will you state to the Court what you see to be the
9. feasibility or the desirability of the annexation pro-
10. posed by the City of Harrisonburg?

11. A. Mr. Cogar, as I have tried to communicate in my testi-
12. mony, the state has certainly recognized this area to be
13. an urban area. The City has identified it as an urban
14. area, the County has recognized it as an urban area in
15. their land use plan. Urban areas need urban services,
16. and I think it's been demonstrated upon this record that
17. the City of Harrisonburg, if you consider the full range
18. of municipal services that the City offers, the City is
19. better able to meet the needs of this urban area than
20. Rockingham County which has hundreds and hundreds of
21. square miles of territory devoted primarily to agricultur-
22. al resources. Rockingham on the face of it is a rural
23. County with a rural orientation. It has other pockets
24. of development which are significant as I have indicated.

1. But it does not have the resources in terms of money, in
2. terms of personnel, planning, or even the desire to ad-
3. dress the needs of this urban area which is the very
4. heart of this part of the Valley. For all the reasons
5. I've stated, if these needs are to be met, they can best
6. be met by the City of Harrisonburg with its full range
7. of municipal services.

8. ~~MR. COGAR: You may examine, Mr. Fitzgerald.~~

9.
10. Cross Examination by Mr. Fitzgerald:

11. Q. If this annexation is granted, sir, will the County of
12. Rockingham still have to provide any water to any of its
13. citizens?

14. A. Will the County of Rockingham have to provide any water?

15. Q. Yes sir.

16. A. Mr. Fitzgerald, I am not an expert in water and sewer
17. systems. They have been previously described by Mr.
18. Steadman and Mr. Driver.

19. Q. You just made an earth shaking statement that the County
20. of Rockingham didn't have the money to provide urban ser-
21. vices for any urban development. My question is, you
22. having made that statement, are you saying that if this
23. annexation is granted the County will have no water needs
24. of its citizens who are left that it must address itself

1. to.

2. A. I think that this area if this annexation is granted,
3. certainly the County won't have need to provide water
4. in a community of growth that's urban in character.
5. They may provide water in some scattered developments,
6. and that may be best provided by wells or some other
7. system. But certainly not the type of water system
8. that we have here.

9. Q. Have you sat over there in a seat and listened to all
10. of the presentation of the City up until now?

11. A. I have tried to.

12. Q. Can you tell the Court that from making your judgment as
13. to what the County can do and cannot do, that you consid-
14. er that the County will not have any need to provide
15. water for any of its citizens if this annexation is grant-
16. ed?

17. A. I can't say that the County does not have a need to pro-
18. vide water to its citizens. I don't know what the water
19. systems are in Grottoes, Broadway, Timberville, Elkton,
20. Bridgewater, and it looks like even possibly some system
21. there.

22. Q. You think there's a water system needed out there where
23. Coors has their property?

24. A. I guess if they're going to manufacture a product with

1. water, they'll have to have some source.

2. Q. Do you think the County may have to supply them water?

3. A. I'm not sure what the arrangements are.

4. Q. How about the Massanetta area? Is there any sewer service necessary out there?

6. A. I don't know.

7. Q. You don't know. How in the world did you make such a
8. profound judgment about what the County could do or
9. could not do if you don't know what the County's needs
10. are?

11. A. What I said, Mr. Fitzgerald, was that the County outside
12. of this area has hundreds and hundreds of square miles
13. of territory. And it's basically rural except for these
14. urban pockets.

15. Q. And you say it's going to serve water to those areas,
16. to the farms? Is that what you're saying?

17. A. I didn't say that. I said it was not efficient to serve
18. water to scattered development.

19. Q. Well, can you just answer the question. Do you know
20. whether or not the County will have to serve water to
21. any of its citizens if this annexation is granted outside
22. of the annexation area?

23. A. I don't know.

24. Q. You don't know. How about sewerage. Is that the same

1. answer, you don't know?
2. A. I don't know.
3. Q. It is not feasible to provide utilities to farm land, is
4. it, sir?
5. A. No sir.
6. Q. It is true that you have to achieve a certain amount of
7. density in order to make the providing of the water and
8. sewer services feasible.
9. A. That's correct.
10. Q. And if whatever density you have achieved to start pro-
11. viding those services is continually eroded, it just may
12. compound the problem of providing the service, doesn't
13. it, sir?
14. A. I think that has to be related to the source, to the
15. system, to the magnitude of the system you're talking
16. about, to continue to provide that service.
17. Q. Well, is it your judgment and are you telling the Court
18. that there should be no what you call urban area in the
19. County other than the towns?
20. A. I think the urban areas in the County should be in the
21. City and in the seven incorporated towns. It looks like
22. they may even have an eighth town.
23. Q. You think Coors is going to be a town? Is that what you
24. meant by the eighth one?

1. A. I can tell you what they've done in James City County.
2. Q. Coors has?
3. A. Not Coors, but there is a brewery.
4. Q. They created a town down there?
5. A. They created a town.
6. Q. What's the name of the town in James City County?
7. A. Kings Mill.
8. Q. That's a town?
9. A. It's becoming a town.
10. Q. It is becoming an incorporated town?
11. A. I didn't say that. It's becoming an urbanized area.
12. It has the density to support a utility system.
13. Q. Well, if that's true, then the County is still going
14. to have to be concerned with providing urban services,
15. isn't it?
16. A. I don't know that the County is providing any services
17. down there, sir. I suspect that the industry is.
18. Q. You said the County does not have the money to provide
19. the needed urban services, and yet the City's proposition
20. would further deplete their money resources, wouldn't it?
21. A. I don't know that. I think the County is going to be
22. compensated for their loss of revenue.
23. Q. Forever?
24. A. For the next five years.

1. Q. Five years. Did you hear Mr. Wade say that there were
2. going to be reductions in the County revenues that the
3. City doesn't propose to compensate for?
4. A. No sir.
5. Q. You didn't hear that?
6. A. No sir.
7. Q. On this peak hour traffic thing, or map rather, H-38,
8. you said, as I heard you, that on the evenings . . . do
9. you want to put that back up there? (Map put on easel)
10. Are these, first of all, are these lines for roads sup-
11. posed to indicate the size of the road?
12. A. No sir, the width of that indicates the volume of traf-
13. fic that's on that road.
14. Q. I'm not talking about your green or orange decoration
15. on the map, I'm talking about the lines for the road.
16. Are they supposed to indicate somewhat the size of the
17. road? 81 is shown as a rather wide . . .
18. A. 81 is shown as a right-of-way.
19. Q. And it's shown as a double dark line.
20. A. Yes.
21. Q. And it's larger than Route 42 on the map, isn't it?
22. A. Probably this is a one hundred and fifty or two hundred
23. feet right-of-way and this one would probably be eighty
24. to a hundred.

1. Q. But it's supposed to have some sort of relationship to
2. the size of the road.

3. A. Right.

4. Q. Can you tell us why you show Route 33 as almost twice as
5. wide as Route 81?

6. A. You mean this black line?

7. Q. Yes sir.

8. A. Mr. Fitzgerald, this base map was provided to Wiley and
9. Wilson by Mr. Overman.

10. Q. And you didn't put the Route 33 lines on that?

11. A. No sir.

12. Q. You're sure of that?

13. A. We were sent the map back last summer and asked to update
14. that part in the City, and we did. For example, we indi-
15. cated Cantrell Avenue, which was not on the map. And
16. we pointed out some things to the County that needed to
17. be changed, but that map basically is the same map that
18. came.

19. Q. And you didn't change Route 33?

20. A. No sir.

21. Q. You said that the green arrow showed 1,155 peak hour
22. traffic load out-bound in the evening.

23. A. Correct.

24. Q. When there was only 873 of the orange going in in the

1. morning.
2. A. That's right.
3. Q. That's not correct, is it?
4. A. No, 873 going in in the afternoon.
5. Q. At the same peak hour.
6. A. Right. More people going out of the City than coming
7. in the City in the evening.
8. Q. And more people going into the City in the morning than
9. coming out in the morning.
10. A. That's right. And I think I also pointed out that dur-
11. ing that time in the evening, this activity, this right
12. here was open.
13. Q. Whereas the stores in the City are closed.
14. A. Well, . . .
15. Q. By and large.
16. A. By and large. These don't stay open until nine o'clock.
17. Q. The stores by and large in the City close at five o'clock,
18. don't they?
19. A. I think that's probably true in most cities.
20. Q. Now, I believe you gave some statistics about people
21. living in the County or the area and working in the
22. City. Most of those people, I guess your testimony would
23. be, are coming into the City to work or do business of
24. some sort.

1. A. Well, yes, I think what I said was forty percent of those
2. people surveyed said that they worked in the City. So,
3. I assume that they take a home to work trip in the morn-
4. ing peak hour, and come from somewhere in this area into
5. the City.

6. Q. Well, you would agree with one of the other witnesses who
7. testified that people are not coming in in the morning
8. to live in the City, they're coming in to work and to
9. shop?

10. A. I guess there are people coming in to work in this
11. building right here.

12. Q. Yes sir, the County office building and the County Court-
13. house. But they're not coming into the City in the
14. morning and coming home, are they?

15. A. No sir.

16. Q. They're going out in the evening going home.

17. A. That's right.

18. Q. And would that indicate to you a very healthy situation
19. insofar as the City is concerned, that they are getting
20. the business done in the City, collecting the taxes on
21. the business in the City, but the County is educating
22. the children out in the County?

23. A. Would that indicate a healthy situation?

24. Q. Isn't that a healthy situation as far as the City is

1. concerned?
2. A. No sir.
3. Q. That's unhealthy?
4. A. I think I pointed out the fact that the City's retail
5. sales have declined eleven percent in the past eight
6. years and the County's have increased.
7. Q. Is there some rule in your book or any book you subscribe
8. to that the County cannot increase its commercial activi-
9. ty?
10. A. But the City has lost its commercial activity.
11. Q. It has?
12. A. It's lost a good portion of it. That the reason that
13. that has increased in the County from thirty-seven to
14. forty-eight, I suspect that has a lot to do with it.
15. Q. And it shouldn't have happened, is that what you're say-
16. ing?
17. A. I'm not saying it shouldn't have happened. I'm saying
18. there was no place for it to happen in the City.
19. Q. There was not a place for it to happen?
20. A. No.
21. Q. You lament the fact that the City instead of having
22. sixty-three percent of the sales tax only has fifty-two
23. percent now.
24. A. That's what the taxation department's records show.

1. Q. That's what you said, isn't it?
2. A. Yes.
3. Q. But don't you have to relate that to something for it to
4. be meaningful?
5. A. How do you mean relate it to something?
6. Q. Well, tell the Court while the City has fifty-two percent
7. of the sales tax of the County and City combined, how
8. much of the total population, combined population, does
9. the City have?
10. A. Combined with the County?
11. Q. The County and City combined, just like you did the
12. taxes.
13. A. I think I have those figures. About twenty percent.
14. Q. About twenty percent. The City has got twenty percent
15. of the population and fifty-two percent of the sales tax.
16. How about ADM, school children, have you got that figure?
17. A. No sir.
18. Q. It's about the same, isn't it, about twenty percent?
19. A. Yes. The City is providing the water out there. The
20. reason that Mall came here, the source of water is the
21. City.
22. Q. Did you know the County already had another source when
23. the City said we'll sell you the water?
24. A. I know that if the City had not agreed to sell them

1. water, I would think they would have to.

2. Q. You don't know that the County was ready to go ahead and
3. start its own system there in terms of water when the
4. City came up and said we'd like to sell you the water?

5. A. No.

6. Q. You don't know that?

7. A. No.

8. Q. Okay, we'll put that evidence on. But getting back to
9. that, the City doesn't provide that water free out there,
10. does it?

11. A. No sir.

12. Q. The City sells it out there. It sells it in other
13. places where it's profitable, doesn't it?

14. A. I don't know whether it's that profitable. I think Mr.
15. Driver testified . . .

16. Q. He testified they did it where it was profitable. But
17. because the City sells water out there and it's profit-
18. able, you think the City ought to get over fifty percent
19. of the sales tax from the area when it only has twenty
20. percent of the population?

21. A. I don't know that that's a valid correlation.

22. Q. How much of the sales tax of the total area, County and
23. City, do you think the City should be getting?

24. A. I think the City should be concerned about its decline

1. in taxable sales from 1972 to 1980.

2. Q. Are you telling this Court that the City's sales declined
3. from 1972 to 1980?

4. A. I'm saying the total taxable sales of the County and the
5. City, the City's percentage of the total taxable sales,
6. has declined from sixty-three percent in 1972 to fifty-
7. two percent in 1980.

8. Q. Let's don't talk in these percentages, let's talk in
9. dollars. Don't you know that the City's taxable sales
10. have increased every year, every year right on up through
11. the years, including this past year.

12. A. I know they have increased, but they have not increased
13. as rapidly as the County's.

14. Q. And that's a problem, isn't it? Has the population in-
15. creased as rapidly as the County's?

16. A. The population where?

17. Q. In the City. We're talking about the City of Harrison-
18. burg and the County of Rockingham.

19. A. If you look at James Madison University, the growth there.

20. Q. We've been taking that into account when we figured it
21. has twenty percent of the population, or I have. I asked
22. you, has the City's population been increasing as fast
23. as the population of the County over the same period?

24. A. It's probably been increasing faster. The County's pop-

1. ulation, 15%, 18%, 19%; the City, 10%, 22%, 35%.

2. Q. The population of the City has increased what then?

3. A. Well, from 1960 to 1970 it increased twenty-four and a
4. half percent, from 1970 to 1980 thirty-five percent.

5. But James Madison is included.

6. Q. Those students spend money in the City, don't they?

7. A. They spend money in the City, they also use the City's
8. streets and roads.

9. Q. They use the parking meters too, I would suppose, if they
10. use the streets and roads.

11. A. Use the parking meters?

12. Q. Yes sir.

13. A. I guess if they have to park on the parking deck like I
14. had to over here this morning they do.

15. Q. Well, everywhere you look there's a parking meter around
16. the City.

17. A. Twenty-five cents for ten hours of parking is right cheap.

18. Q. And does the City want people to come in and use those
19. meters or don't they?

20. A. I don't know.

21. Q. Do you know what day of the week these counts were made?

22. A. They were made during an average weekday in the month of
23. January.

24. Q. What is an average weekday?

1. A. The Highway Department takes counts from Monday through
2. Friday unless the Friday is preceding a holiday weekend
3. or Monday succeeds a holiday weekend.

4. Q. You're not telling us the Highway Department made these.

5. A. I'm just telling you the standard that's used, and that's
6. the standard that we used in collecting these counts.

7. Q. But you don't know what day of the week?

8. A. I have the count, the actual count, and the days and the
9. time of day and the weather conditions and so forth that
10. these counts were taken.

11. Q. Do you know what location the counters stood at?

12. A. Yes sir, I personally inspected them. The driver that
13. made these counts was sitting in a parking lot right in
14. front of a restaurant next to the Cloverleaf.

15. Q. And would that restaurant be right in front of a shopping
16. center?

17. A. He was taking counts at the corporate limits.

18. Q. Isn't there a shopping center there?

19. A. There's a shopping center here, there's all kinds of
20. activities along this route. As a matter of fact, I
21. went out there yesterday afternoon and somebody was tak-
22. ing counts then.

23. Q. Well, did you order that?

24. A. Right across the street, the Highway Department, a man

1. and his wife, were sitting in the median taking counts
2. the same day we were taking them. They were also classi-
3. fying them by tractor-trailer, buses, whatever.

4. Q. Can we get back to what the City is doing here? The
5. counter was standing there at the entrance to Cloverleaf
6. Shopping Center?

7. A. No sir, he was standing right here at the corporate lim-
8. its.

9. Q. And that's not near the Cloverleaf Shopping Center?

10. A. It's near there, but he wasn't in the parking lot at the
11. shopping center. He was out at the edge of the right-of-
12. way of the road. Just beyond this cloverleaf interchange
13. and he got everybody coming into the City.

14. Q. So, what you're saying, he was counting cars coming into
15. that shopping center too.

16. A. He was counting cars coming into that point of the City
17. and going anywhere in the City or anywhere outside of the
18. City.

19. Q. Can you answer my question? It would include cars going
20. into the Cloverleaf Shopping Center.

21. A. It would include cars going anywhere.

22. Q. Can you just answer my question?

23. A. Yes, it would include cars going to the shopping center.

24. Q. All right.

1. A. But it also would include cars going anywhere else.

2. Q. Yes sir.

3. A. Why would they be going to the shopping center from seven
4. to nine in the morning when it probably isn't open at
5. that time?

6. JUDGE MOON: Mr. Fitzgerald is not under oath.

7. JUDGE TRABUE: That's the evening peak hour
8. traffic pattern.

9. Q. Those people going out of the City, the green arrows,
10. could have been going onto Route 81.

11. A. They could have been.

12. Q. As well as on out Route 33.

13. A. Yes.

14. Q. Isn't that a major interchange for 81 right through here?
15. Route 81 and 33?.

16. A. Anytime you've got a cloverleaf you've got a major inter-
17. change.

18. Q. So, then, it's a pretty fair assumption that a consider-
19. able amount of those cars you show going eastbound were
20. actually going north or south on Interstate 81.

21. A. I didn't make a directional turn survey. I'm sure that
22. type of information is available. All I did was count
23. the people coming in and going out past that point.

24. Q. But that green arrow is on the other side of the inter-

1. change going in the direction of east on Route 33.
2. A. Mr. Fitzgerald, everything that was taken is exemplified
3. by that arrow. The data source was at that point right
4. there.
5. Q. Right there.
6. A. If I put that green arrow overtop of that yellow arrow,
7. you really would be confused.
8. Q. I doubt it.
9. A. To show it, to illustrate it, I had to spread it out.
10. Q. But you never mentioned until I asked you that a good
11. bit of that traffic could have been going on Route 81
12. north and south, did you?
13. A. Like I say, they could have been going south on 81, they
14. could have been going north on 81, they could have been
15. going east on 33.
16. Q. You don't know?
17. A. I don't know. I did not take an origin/destination sur-
18. vey.
19. Q. An origin/destination survey to find out whether they
20. were going north and south on 81? Are you telling the
21. Court you needed an origin/destination survey to stand
22. and look to see where the traffic was going?
23. A. Mr. Fitzgerald, I did not take a turning movement at
24. that interchange.

1. Q. A turning movement?

2. A. That's right.

3. Q. If you had gotten over on the other side of the inter-
4. change in the evening and counted the cars going east,
5. you would have eliminated the cars going on Route 81
6. north and south, wouldn't you?

7. A. The corporate limit happens to be on the west side. I
8. took it at the corporate limits.

9. Q. I wish it were, but I see a big line over here on the
10. other side.

11. A. Well, you'll also see that that corporate limit line
12. juts in and is running through that interchange.

13. Q. So, you didn't think it important to be able to show
14. whether the traffic was going north or south on 81, or
15. east on 33.

16. A. No sir, like I say, we can get that information from
17. turning movement, if you think it's necessary.

18. Q. Is that the same down on Port Republic Road?

19. A. Yes sir, it was taken inside the interchange at the cor-
20. porate limits.

21. Q. So, half or more of this traffic could be going north
22. and south on Interstate 81, you don't know.

23. A. I don't know.

24. Q. You pointed to this, I believe it's been called a paper

1. subdivision, that's located next to Forest Hills?

2. A. Yes sir.

3. Q. And you said that in your judgment the streets that are
4. platted there would take up twenty-five percent of that
5. land?

6. A. I said of this total land here, the streets would prob-
7. ably take up twenty to twenty-five percent.

8. Q. You said twenty to twenty-five?

9. A. Twenty to twenty-five percent.

10. Q. And that's your judgment?

11. A. Yes sir, that's a general rule of thumb.

12. Q. You made the statement that future growth was inevitable
13. beyond the City limits.

14. A. Yes sir, that's correct. I think we see it happening.

15. Q. Yes, well, is it going to grow further on out beyond the
16. area sought for annexation too?

17. A. I think since the days of Rome civilization has basically
18. followed the sewer lines and the water lines, and the
19. delivery of public services.

20. Q. The delivery of public services?

21. A. Yes, water and sewer, transportation.

22. Q. So, you assume there's going to be growth in the County
23. after this annexation if it is granted?

24. A. If the County makes provisions for systems for delivery

1. of water and sewer such as the City has, I think they
2. could anticipate some growth.

3. Q. If the County makes provisions for water and sewer.

4. A. If they make the provisions for it.

5. Q. Did I misunderstand you to tell the Court that one of the
6. businesses that moved out of the area to the Mall was
7. Penney's that left a vacant store over here?

8. A. No sir, I think I said Penney's and Leggett's have moved
9. out of downtown to the Mall. The Leggett building is
10. now vacant; the Penney's building is in occupancy.

11. Q. Yes. And it could very well be that the Leggett's build-
12. ing next month is rented and occupied, couldn't it?

13. A. It's unlikely, but it could.

14. Q. What?

15. A. It's probably unlikely, but it could be.

16. Q. Why is it unlikely?

17. A. Mr. Fitzgerald, I think if a major department store is
18. coming to Harrisonburg, they're not going to come to
19. downtown; they're going to come out here (indicating on
20. map).

21. Q. Is there space out there for them?

22. A. They can make space, there's plenty of sites.

23. Q. But who said it had to be a major department store?

24. A. If it was a major department store when it was downtown,

1. I would assume a major department store would replace that
2. square footage.
3. Q. You don't think it could be used for any other major de-
4. partment store?
5. A. No sir, I didn't say that.
6. Q. What does the City need? Does it need some vacant land?
7. I believe you said it has no land in the City now that
8. is large enough for a shopping mall.
9. A. That's correct.
10. Q. Does it need a shopping mall?
11. A. I think this whole regional area needs a shopping mall.
12. Q. It does need one, another one?
13. A. Not another one, I didn't say another one. I said it
14. needs a mall and it has a mall.
15. Q. It's already got one.
16. A. That's right.
17. Q. So you're not saying it needs vacant land for one, as I
18. understood you to say.
19. A. No.
20. Q. In answer to Mr. Cogar you said that the City did not
21. have vacant land on which it could develop a shopping
22. mall, and that was your justification . . .
23. A. For commercial or industrial development. I don't think
24. I specifically stated a mall.

1. Q. Well, I wrote it down, and I guess the record will have
2. to straighten it out; but you're not saying that the
3. City needs vacant land big enough to develop a shopping
4. mall on?

5. A. I'm saying the City needs vacant land for all types of
6. growth, residential, commercial, public, industrial.

7. Q. And this annexation is the answer to that, is that
8. correct?

9. A. Well, I think the City is pretty well saturated, there's
10. not much land left. We see where the action is, we see
11. where the development is taking place.

12. Q. Let me ask you something. If the shopping mall has hurt,
13. as you say, downtown business, what do you think develop-
14. ment of more business in the area sought for annexation
15. is going to do to downtown business?

16. A. Well, where are you speaking of more business activity?
17. Development, commercial development, like the County has
18. down Route 11 South?

19. Q. Mr. Barnes, I'm trying to fathom what you have said.
20. You testified very profoundly on direct examination that
21. the City needed vacant land for commercial development.
22. Now, what in the world is that commercial development,
23. where are you even going to put it? What in the world
24. is that going to do to the commercial area downtown if

1. existing commercials in the area is already hurting it?
2. A. It depends on the type of commercial activity.
3. Q. Well, what types do you need in the City?
4. A. Well, you know, if the area develops residentially, then
5. there are certain service type facilities that come with
6. that type of development. Certain type commercial acti-
7. vity, industrial activity, multi-family apartment units.
8. Q. For that neighborhood shopping, you don't need great
9. big, large tracts of commercial land for development like
10. you were talking about the City needs.
11. A. I said the City needed land for future development.
12. Q. Commercial?
13. A. Commercial, industrial, residential.
14. Q. What kind of commercial were you talking about?
15. A. Any type.
16. Q. Any type. That would include a shopping mall, wouldn't
17. it?
18. A. I think if a shopping mall were going to come to this
19. area, another shopping mall, the first thing the develop-
20. er of that mall would do would be a market study to see
21. if another shopping mall was justified in an area this
22. size.
23. Q. Well, I don't have that gentleman here to cross examine,
24. Mr. Barnes. Can you tell us what you had in mind that

1. the City needs in the way of commercial development? Is
2. it a shopping mall, is it neighborhood commercial, or
3. what in the world is it?
4. A. It could be neighborhood commercial.
5. Q. Well, you've got small tracts of land throughout the
6. City for that, haven't you?
7. A. I don't know that they're all, you know, vacant.
8. Q. If you don't have enough residential land vacant to de-
9. velop, you don't have any necessity to build commercial to
10. supply developed residential, do you?
11. A. I don't understand the question.
12. Q. You said that you might need neighborhood commercial de-
13. velopment in the City as the City further develops.
14. A. You need all types of land.
15. Q. Is that what you said? That's what you said, isn't it?
16. A. I said you need commercial, industrial, residential.
17. Q. And I have been trying for about ten minutes to find
18. out what kind of commercial you're talking about the
19. City needs, and you said neighborhood commercial.
20. A. Commercial. It can be neighborhood, it can be malls.
21. Q. Well, let's start with neighborhood.
22. A. It can be a motel.
23. Q. Where does the City need neighborhood commercial now?
24. A. Where do they need it now?

1. Q. Yes sir. That's what you said they needed.

2. A. I said they needed land for development of these types of
3. activities; they are just about saturated in the existing
4. City.

5. Q. Well, what is it that they need land for development since
6. they're already saturated with it?

7. A. They need land for the growth that is taking place in
8. this area, that's taking place around the City.

9. Q. Well, we're talking about what the City needs. No matter
10. if the whole area was developed around it. What does the
11. City need? You said it needs vacant land for commercial
12. growth.

13. A. I think the City needs some commercial activity, that's
14. certainly indicative of the decline in sales.

15. Q. Well, vacant land doesn't give you commercial activity,
16. does it? It gives you the possibility of it.

17. A. You've got to have the vacant land potential for somebody
18. to develop it.

19. Q. Yes sir. So, are we talking about vacant land or are we
20. talking about grabbing off the County's Valley Mall?
21. Which are we talking about?

22. A. We're talking about needing vacant land.

23. Q. All right, well, let's start again then. The Valley Mall
24. is not vacant?

1. A. No sir. I think the rainbow arrow points that out.

2. Q. The Valley Mall is developed.

3. A. The Valley Mall is developed and the two major developers
4. in that Mall, department stores in that Mall, were former-
5. ly in downtown. What I'm saying is . . .

6. Q. We're talking about vacant land.

7. A. This hub of retail activity has shifted from downtown
8. to the Valley Mall.

9. Q. Can we get back . . . I've asked you several times, Mr.
10. Barnes, what you needed, what the City needed, and you
11. said vacant land. The Valley Mall is not vacant, is it?

12. MR. COGAR: Your Honor please, I would like to
13. interpose an objection at this time. I don't think there
14. is anything that's been gone over for the last twenty to
15. twenty-five minutes that can't be argued at the conclu-
16. sion of this case. If it's Mr. Fitzgerald's intention to
17. try to reduce this case to what the needs are on whatever
18. day of the month it is in April right now, he's ignoring
19. all of the things that the Court is required to take into
20. account, and especially the necessity and expediency for
21. annexation which looks and projects into the future. And
22. you don't have to identify need as of a given hour, and
23. I think the witness' testimony is clear. This is argu-
24. ment, it's repetitive argument, and he can make it at the

1. conclusion of the case; but I do object to it.

2. MR. FITZGERALD: Your Honor, this is not ar-
3. gument. This witness takes the stand and tells this
4. Court very profoundly that in his professional judgment
5. this City needs vacant land for commercial development.
6. He makes that statement and I think I'm entitled to ex-
7. plore it to find out what vacant land is needed and where.

8. JUDGE MOON: I'll overrule the objection. I
9. think the problem is you're somewhat vague in the ques-
10. tion. As I understand you're asking the specific type
11. of commercial development that's needed in the City?

12. MR. FITZGERALD: Yes sir, and where it's need-
13. ed.

14. JUDGE MOON: All right. Can you answer that
15. question? I mean, he's just asking you to be more spe-
16. cific in the type of commercial activity.

17. A. I think certainly if this area came into the City that
18. one of the first things the City would do would be to
19. develop a land use plan for the orderly growth and devel-
20. opment of that annexed area. And within that land use
21. plan areas of residential development, industrial develop-
22. ment, commercial development, public parks development,
23. would be identified on the land use plan.

24. JUDGE MOON: He's asking you though is there

1. any particular commercial development that the City needs.
2. Is there any particular, is my understanding of the ques-
3. tion. If you don't know, say you don't know, and we can
4. go on. I think you're continuing to say that you need it,
5. but he's asking you to be specific. If you can't be spe-
6. cific, just say you can't be, and maybe we can move on.
7. But if you know, answer the question.

8. A. If I know of a specific area of commercial activity?

9. JUDGE MOON: Well, ask it, Mr. Fitzgerald, one
10. more time.

11. MR. FITZGERALD: All right, sir.

12. Q. I'll preface it by reminding you of the statement you
13. made several times in the questioning on direct examina-
14. tion, that the City needs vacant land for commercial de-
15. velopment. Now, my question is simply, what kind of com-
16. mercial developments does the City need and where?

17. A. I don't know.

18. Q. You don't know. Would the same thing be true of your
19. statement that the City needs industrial land for devel-
20. opment? Do you know what kind of industrial land, vacant
21. land rather, and where?

22. MR. COGAR: Just a moment. For purposes of
23. clarification are you asking him what they need as of
24. 5:13 P.M. on April 14, 1981 or into the future? Do you

1. have a time reference that you can give the witness?

2. MR. FITZGERALD: If you want to write down
3. what you want the witness to say, Mr. Cogar . . .

4. MR. COGAR: No, I'd just like for you to make
5. the question a little more specific.

6. MR. FITZGERALD: I didn't testify that . . .
7. I'm not going to argue the point.

8. Q. You have testified and you say you don't know what, when
9. you said the City needs vacant land for industrial growth,
10. you don't know what kind or where. That's what you said,
11. didn't you?

12. A. I would say in some future year, in planning for this
13. area . . .

14. Q. You got your answer.

15. A. There will be a need for industrial development.

16. Q. But as of now you do not know.

17. A. No.

18. Q. This matter of density. What did you say the density
19. was in the area that is sought for annexation?

20. A. I believe I said that it was 365 persons per square mile.

21. Q. And what is the density of the existing City?

22. A. Three thousand two hundred and eighty-nine persons per
23. square mile.

24. Q. And you said the density of the combined area with the

1. City was what?

2. A. Twelve hundred and thirty-four persons per square mile.

3. Q. But actually, Mr. Barnes, the density of the existing
4. City, however dense it may be, and the density of the
5. area is not going to change one iota if this annexation
6. is granted, is it? The density in those areas are going
7. to remain the same.

8. A. The density of what area?

9. Q. The density within the line of the existing City, if
10. the area is annexed to the City, the density in the City
11. is going to remain the same, isn't it? In the existing
12. City.

13. A. The persons per square mile within the existing City is
14. 3,289. The persons per square mile in the new City
15. would be 1,234 persons per square mile.

16. Q. But insofar as changing the density of population within
17. the existing City, nobody is going to be moved out or
18. thinned out, are they?

19. A. You mean in the 20.12 square miles?

20. Q. No sir, I mean in the existing City, approximately six
21. square miles.

22. A. In the six square miles? That density will remain 3,289.

23. Q. Your Exhibit 12, did you testify to 12? Do you have it
24. there?

1. A. Yes sir.

2. Q. There's . . . am I right that you show on that exhibit
3. in vacant and agricultural land almost double the size
4. of the existing City?

5. A. Yes sir. I think I said streets would have to be netted
6. out of that.

7. Q. But it's a question of totaling 3,800 acres as compared
8. to 7,000 acres, isn't it?

9. A. Yes sir.

10. Q. And the streets have to be netted out of both of them,
11. don't they?

12. A. The streets have been netted out of . . . well, okay,
13. right.

14. Q. You told the Court that the area in the City had condi-
15. tions that made it difficult to develop in certain areas.

16. A. Yes sir, I think I said it had constraints, physical
17. conditions that would fall within four categories.

18. Q. I think that the only figure I've heard the City use
19. in this case about the size of the County includes some-
20. thing like eight hundred and sixty-some square miles.

21. A. Eight hundred and sixty-five square miles.

22. Q. Yes. Is any of that land unavailable for development?

23. A. Any of the eight hundred and sixty-five?

24. Q. Yes sir.

1. A. I don't know.

2. Q. You've never heard of the National Forest or the National
3. Parks?

4. A. Yes sir.

5. Q. That area is not available for development?

6. A. I would say that the area now that exists that's identi-
7. fied as National Parks is not available for private de-
8. velopment.

9. Q. And you have not shown that on any of the exhibits, have
10. you?

11. A. No sir.

12. Q. And does the County have any land in it in excess of fif-
13. teen percent slope?

14. A. Probably a fairly large portion of that land in forest
15. is.

16. Q. Would it be safe to say that most of the land in the
17. County has slopes in excess of fifteen percent?

18. A. I haven't heard those figures.

19. Q. You didn't make any study of that?

20. A. No sir.

21. Q. Does the rest of the County to the east of 81 . . . you
22. put an exhibit up showing considerable problems with
23. sinkholes east of 81, does that continue on out into the
24. County?

1. A. It goes beyond the annexation area.
2. Q. All the way to the mountain?
3. A. In that valley floor area.
4. Q. So when you're trying to give the Court an indication of
5. what's left in the County, you haven't done any computa-
6. tions, I take it, about undevelopable land or land in
7. the National Forest, land in National Parks, and that sort
8. of thing, have you?
9. A. No.
10. Q. About these sinkholes. You will agree that . . . well,
11. you have to have a certain amount of open space no mat-
12. ter how you develop the City, don't you?
13. A. It's desirable.
14. Q. Well, the City doesn't allow you to build on one hundred
15. percent of a lot area, does it?
16. A. No sir, you have to have so many off-street parking spaces,
17. side yard clearance, rear yard clearance.
18. Q. And many of your multiple housing uses, you have to pro-
19. vide so much open space, playgrounds, and such like that?
20. A. That's correct.
21. Q. And we've seen one example, Harris Court I believe it's
22. called, where they developed a sinkhole into an athletic
23. field.
24. A. That's correct.

1. Q. And we've seen I believe another one where it was a ten-
2. nis court. So, there is a use you can make of that land.

3. A. That's right.

4. Q. And you said that this rock outcropping made it difficult
5. to develop. Have you ever looked . . . are you staying
6. at the Sheraton?

7. A. Yes sir.

8. Q. Have you ever looked out the back of the Sheraton where
9. Kawneer was built there?

10. A. Yes, I have. I noticed the rock piles out there and I
11. was trying to determine which were disturbed and which
12. were undisturbed.

13. Q. Would you think it's safe to assume that before they
14. built that plant there behind the Sheraton that they
15. had to level off all those rock outcroppings?

16. A. There's one pile there that appears to be disturbed
17. rock. There's another pile that appears that its strata
18. plain is all the same, and I think that's probably undis-
19. turbed.

20. Q. But it is reasonable to say that that was one of the
21. areas of considerable rock outcroppings.

22. A. Yes sir.

23. Q. And yet the plant is out there. How about Donnelley,
24. are you familiar with that site to the north?

1. A. Yes.
2. Q. Do you recall it before Donnelley was built there?
3. A. No sir, but I know on the road all the way out there
4. there's a significant amount of rock outcroppings out
5. there.
6. Q. Almost everywhere you look around here there's rock out-
7. croppings, isn't it?
8. A. I'm sure it's added to the cost of development of those
9. plants.
10. Q. But that doesn't stop them, does it?
11. A. No.
12. Q. What about the slope business. Did you see that pile of
13. dirt back of Valley Mall?
14. A. Yes sir.
15. Q. Do you know what was at Valley Mall before that was built?
16. A. Where the dirt was before it was built?
17. Q. No, where Valley Mall is right now.
18. A. Yes, I think I testified to the fact that that area had
19. been excavated and stockpiled behind the Mall.
20. Q. They moved the mountain, didn't they?
21. A. Yes sir.
22. Q. And it was feasible, wasn't it?
23. A. It was expensive.
24. Q. It was feasible, it happened. Isn't it significant to

1. you that just about every subdivision that's on that map
2. is indicative that it's built up on a hill, on a steep
3. slope; such as Park View, Fairway Hills, Ashby Heights,
4. Forest Hills.

5. A. That's right.

6. Q. And what's the street in the City where the most fashion-
7. able houses are built, a very steep street?

8. A. Ott Street.

9. Q. Doesn't it appear to you that in this area people have
10. sought out the slopes to build on?

11. A. Yes sir. I didn't say that that was not buildable land,
12. I just said it was some extra necessary preliminary eval-
13. uation that has to be made in building in those kinds of
14. areas.

15. Q. Can we add it back into the vacant land here then? You've
16. taken it out.

17. A. I think it's . . . I just identified it as land that falls
18. within those four constraints.

19. Q. But, Mr. Barnes, the fact of the matter is our own eyes
20. tell us that the land in slopes in excess of fifteen per-
21. cent has been the most desirable land for residential
22. development in this area and commercial development.

23. A. If you can afford the site preparation, yes sir.

24. Q. Well, is it obvious to you that somebody in this area,

1. people have been able to afford the site preparation.
2. A. It's pretty obvious.
3. Q. Yes sir. Is it your proposition that any city must al-
4. ways have a given amount of vacant land?
5. A. I think any city should have a certain amount of vacant
6. land and open space.
7. Q. What happens if it doesn't?
8. A. Well, you know, even Manhattan Island has a nice, beauti-
9. ful park. You have to have a certain amount of open
10. space.
11. Q. You're not counting the park land as vacant land, are
12. you?
13. A. No sir, that's public and semi-public.
14. Q. All right, let's talk about vacant land. Is it your
15. position, the City's position, that a city, this City,
16. must always have a given amount of vacant land?
17. A. I think any city in Virginia should have a certain amount
18. of vacant land.
19. Q. Let's talk about Harrisonburg. Are you saying that of
20. Harrisonburg, that it must always have a given amount of
21. vacant land?
22. A. Yes sir.
23. Q. How much?
24. A. I'd say probably twenty to thirty percent.

1. Q. Twenty to thirty percent?
2. A. Yes sir.
3. Q. What happens if it doesn't have that?
4. A. If it doesn't have that vacant land? What will happen?
5. Q. Yes.
6. A. It has no land for future development.
7. Q. Well, what happens, why does it need it? What happens
8. to the City?
9. A. The growth starts taking place around the City.
10. Q. Well, what happens to the City?
11. A. If it's completely saturated and built up?
12. Q. Yes, if there is no vacant land. It's all built up.
13. A. What happens to the City? I don't know.
14. Q. You have testified that from nineteen . . . I believe the
15. last decade you said, there has been little development
16. in the City. You started to read the Commission's report.
17. A. I think I said that most of the population growth in the
18. City has been correlated with the growth of James Madison
19. University.
20. Q. But didn't you mention the fact that there had been no
21. new industry located in the City in the last decade?
22. A. I mentioned the Amp industry that we passed the other
23. day.
24. Q. Other than Amp, that's been added since, but isn't it your

1. position, the City's position, that in the last decade
2. there has been very little commercial and industrial
3. growth in the City?

4. A. No major new industry.

5. Q. But that's on the one hand, and on the other hand from
6. other witnesses we find out that that hasn't happened for
7. ten or twenty years, whatever it is, but yet the City is
8. in a very sound financial position and condition?

9. MR. COGAR: Is that a question?

10. MR. FITZGERALD: I'm asking him, did he hear
11. that testimony.

12. A. I think I heard something to the effect about the tax
13. rate.

14. Q. Yes sir. You've also heard that if this annexation is
15. granted the City is going to have several alternatives.
16. According to Mr. Wade they might raise the real estate
17. taxes, they may raise the sewer and water rates, and they
18. may raise the trash fees, none of which is planned with-
19. out annexation. You've heard that, haven't you?

20. A. Yes sir.

21. Q. Why in the world do you want to bring this down on the
22. heads of the City then?

23. A. Bring what down?

24. Q. The annexation.

1. A. What do you mean by bring it down on the head of the
2. City?

3. Q. Well, if the City in its present condition with its pre-
4. sent vacant land, with its present commercial areas, with
5. its present residential development and industrial de-
6. velopment, is a very viable, well-off City, doing fine,
7. not going to have to raise taxes, raise fees, raise
8. charges; what in the world do you want to put this burden
9. on the City for? Why is it you want to put it on the
10. City?

11. MR. COGAR: If Your Honor please, one, I don't
12. think . . . let me just make this point. I'm going to
13. object to the question and the very general nature of it.
14. I'll withdraw the objection if he be permitted to review
15. all the evidence that has been offered over five and a
16. half days for the necessity and expediency of this annex-
17. ation.

18. MR. FITZGERALD: In view of that, I withdraw
19. the question.

20. JUDGE MOON: Thank you.

21. Q. Can you just show the Court where in the City these sink-
22. holes that you testified occupied a considerable amount
23. of land are located?

24. A. What I can locate, from what my data was taken from, was

1. the City's comprehensive plan. I made reference to the
2. Beekmantown geological formation, which is an area sub-
3. ject to sinkholes.

4. Q. Yes sir.

5. A. It would be in this area, the Dunham-Bush, Kawneer area,
6. and into this area. (Witness indicates on map). Are
7. you talking about in the City?

8. Q. Yes sir.

9. A. It would be right much of it in this area right here (in-
10. dicating).

11. Q. Right much of it? That's all developed.

12. A. Well, like I said, Mr. Fitzgerald, it falls within the
13. Beekmantown geological formation. That's not to say that
14. it has sinkholes, but it's an area that you should exer-
15. cise caution in developing.

16. Q. Mr. Barnes, you have reduced the available vacant land
17. in the City and said that five percent of it, 190 acres,
18. was in sinkholes.

19. A. No sir, it's an area that's susceptible to sinkholes.
20. It's in the Beekmantown geological formation. I know
21. that exhibit up there probably says sinkholes.

22. Q. Is this your exhibit, Exhibit 11?

23. A. Yes sir.

24. Q. You say five percent of the City is . . . would you mark

1. that area of the City? On any map you want to.
2. A. (Witness marks on exhibit.)
3. Q. Now, the vacant area down here to the south, do you know
4. who owns that?
5. A. James Madison owns it.
6. Q. And that's taken out of the land already, isn't it?
7. A. A good portion of it.
8. Q. That's already removed from the vacant land, isn't it?
9. A. They own this.
10. Q. And isn't it fair to say that where you have delineated
11. this area that it is almost all developed?
12. A. It's developing.
13. Q. And in the area where you say the sinkholes are, it's
14. either developed or developing already.
15. A. The area that's susceptible to sinkholes. .
16. Q. Is developed or being developed.
17. A. Yes sir.
18. Q. Well, that hasn't stopped it, has it?
19. A. No sir.

20. MR. FITZGERALD: That's all.

21. JUDGE MOON: Is that all of this witness?

22. MR. COGAR: Yes sir.

23. (Discussion Regarding Procedure)

24. (End of Day's Proceedings)

RONALD CARRIER,

having been duly sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. State your name, please, sir.

A. Ronald Carrier.

Q. What is your occupation?

A. I am President of James Madison University.

Q. And as such you are the chief executive officer or chief administrative officer of the college, is that correct?

A. Yes sir.

Q. How long have you served as the President of the college?

A. Ten years, January 1st, this year.

Q. During the ten years you have resided over the University, will you tell the Court what growth you have experienced in students and facilities?

A. Well, the past ten years have been exciting years for James Madison, formerly Madison College. When I arrived here in January, 1971, we had a little less than four thousand students. Most of those students were female students. James Madison, or Madison College, had been a single sex institution for much of its history, changing basically in the 1960's. Over the past ten years we have had the good fortune to have good growth and a great deal of interest in our institution. In September, 1980,

1. our census date, we enrolled eight thousand eighty-eight
2. hundred plus students. We had about . . . that's enroll-
3. ed in our campus full-time. We have approximately five
4. hundred students enrolled in all campus programs, in
5. what we call the Valley of Virginia Consortium. So, our
6. total enrollment is somewhere in excess of nine thousand
7. students.

8. Q. Could I interrupt you at that point, Dr. Carrier? At
9. my request have you attempted to ascertain the number of
10. students attending James Madison who reside within the
11. corporate boundaries of the City of Harrisonburg?

12. A. Yes, I asked my staff to try to ascertain the number of
13. students that live within the corporate boundaries of
14. Harrisonburg. Obviously some of them are easy to iden-
15. tify because they live on campus. Others live in various
16. private developments, apartments, homes, rooms, with their
17. families; but it's the estimate of our staff that 7,800
18. to 8,000 of our students reside in Harrisonburg. That
19. is an estimate based on student personnel's best judg-
20. ment of where they live. You obviously could do a cen-
21. sus count, but we have not done that. We have their
22. addresses, but we did not check each address.

23. Q. Would you describe briefly the growth of your physical
24. plant in the ten years since you have been president?

1. A. We have either completed or have under construction or
2. plans to construct, funding, approximately seventy mil-
3. lion dollars in new construction and renovation at James
4. Madison University. We have added new dormitories, new
5. academic building, new athletic facilities, additions to
6. the library, new recreational facilities, in order to ac-
7. commodate those students. Growth has been quite good
8. and we have been very pleased with it.

9. Q. What is the value of the physical facilities presently
10. in place?

11. A. You know, I don't know. I think it's probably eighty or
12. ninety million dollars, the placed value on it. I'm not
13. sure.

14. Q. You pay no tax on those values under state law?

15. A. No. Up until this recent session of the General Assem-
16. bly, we were assessed a service charge based upon a ratio
17. of our assessed value and some calculations, and we paid
18. a service fee to the City for services. In this session
19. of the General Assembly, through no efforts of mine, that
20. was removed. And we no longer will pay that.

21. Q. Over the years have you had occasion to seek City services
22. and City cooperation in assisting growth of your institu-
23. tion?

24. A. I think this has been a very satisfying relationship.

1. You hear oftentimes of the stresses and strains between
2. a city and a college or university, there are always
3. the town-gown problems. And I might say, in all fairness
4. to those gentlemen sitting over there, that we certainly
5. had our pushes and pulls, starts and stops, and points of
6. irritation; but, by and large, if you were to judge, in
7. my opinion, the relationship that we have had with the
8. City of Harrisonburg in terms of solving these problems,
9. in terms of providing the services that we need to grow,
10. it has been an exceptional one. We obviously have had
11. times when our students have parked where they shouldn't
12. have parked, parking that irritated people. And when you
13. bring this many people in, you're going to have some pres-
14. sures. But we have formed committees, we have met with
15. City Council, we have had breakfasts and dinners, we have
16. established it on an informal basis and a formal basis;
17. but I think that by and large the relationship has been
18. a good one. And even during times when we may have had
19. stresses and strains, the relationship between the uni-
20. versity administration and the City's administration was
21. always much better than the emotional charge issue. But
22. during that period of time we have had some things that
23. we needed done. When you think about it, we're a small
24. community, Harrisonburg, and to bring in a doubling of

1. people between the ages of eighteen and twenty-two in
2. ten years, delivering the water, the sewer, the streets,
3. the fire protection, the electricity and all the urban
4. services that we require, it has been an amazing exper-
5. ience and one in which after ten years our relationship
6. is stronger rather than weaker. We have cooperated on
7. the construction of Highway 11, we have cooperated in
8. placing power lines underground, both on Highway 11 and
9. through the campus, we have water now going through the
10. campus to facilities east of 81, we have met our sewer
11. requirements. So, while we have grown, we have never
12. had a time where we couldn't call upon services and they
13. weren't delivered in a quality way. It's essential that
14. we have good fire protection. We have a police force of
15. our own that will handle most of the problems on the
16. campus, and I can't think of any time since I've been
17. president that we've had to call upon the police force to
18. enter our campus. However, there is a backup, obviously,
19. in traffic, there is a backup in a number of problems
20. that cooperation is necessary. In the case of fire pro-
21. tection, it's essential. And we find that the City has
22. been responsive in examining our buildings and providing
23. safety codes and checking locations of fire hydrants,
24. and also buying the equipment necessary to serve at least

1. one of our tall dormitories. So, in summary, the rela-
2. tionship has been a very good one. Quite frankly I don't
3. believe that we could have grown to the extent that we
4. have grown, that we could provide the services to our
5. students, that we could have responded to the overwhelm-
6. ing demand that has been placed on us by the people of the
7. Commonwealth of Virginia and their sons and daughters,
8. had we not been able to develop a relationship with the
9. City of Harrisonburg to deliver those urban services.

10. Q. You are a resident of the annexation area, are you not,
11. Dr. Carrier?

12. A. I live in property owned by the Commonwealth of Virginia
13. in the section called Forest Hills. I think my address
14. is 916 Oak Hill Drive.

15. Q. And that is in the Forest Hills area across 81?

16. A. That is in the County, yes.

17. Q. And to your right, on Exhibit H-8, there is shown by a
18. yellow line the proposed annexation line and the red line
19. outlines the present boundaries of the City. Are you
20. generally familiar with that area?

21. A. I've seen it, I've seen pictures of it in the newspaper.
22. I looked at it while ago and I've seen it in publications.
23. I have not studied it to any great extent, other than
24. there is a section there that is identified in green . . .

1. may I point it out?

2. Q. Yes sir.

3. A. A section here in green (indicating on map), which lies
4. in the proposed annexation area. That area is James
5. Madison University property. It is approximately 150,
6. 160 acres of land in that area. The total campus is
7. about 300 acres. I think there's about 140 acres in the
8. main campus which lies--maybe it's 160 now because we
9. were given some property in the City, which lies in the
10. City. This lies in the County area, it is within the
11. boundary of the proposed annexation. So, I'm familiar
12. with that particular aspect.

13. Q. What facilities do you have there at this time and what
14. do you propose?

15. A. We now have under construction a Convocation Center.
16. We have tennis courts, we have playing fields. That is
17. our expansion area. You asked about our growth. It is
18. anticipated that over the next ten years that there will
19. be twenty-five percent fewer graduates of high schools
20. in this country, and we feel at this time that we will
21. stabilize our growth in terms of numbers of students.
22. We're not sure after 1990 because the birth rate has
23. turned up, and we anticipate that there will be an in-
24. creased number of college-bound students beginning at the

1. end of this decade. But this area here is the area of
2. expansion. It's the only area that we have left, with the
3. exception of a few small parcels of land across Highway
4. 11, west of Highway 11, which we propose ultimately to
5. convert to parking when we complete a fine arts facility
6. on the front of our campus. This area, if any expansion
7. is to come in terms of housing, in terms of new academic
8. buildings, in terms of growth of the university, it will
9. have to come on this 150 acres of land. And we're look-
10. ing in that direction. Now, we have already under con-
11. struction, as I indicated, a Convocation Center and the
12. other facilities. The City is to build a solid waste
13. plant on this particular land.

14. Q. At present how do you reach that land?

15. A. We have an underground tunnel. It's large enough for
16. vehicular traffic, and we do reach it that way, although
17. it is not designed primarily for vehicular traffic. It
18. is primarily for pedestrian traffic, and will be designed
19. that way, although we'll have a backup in case we need
20. to exit or enter that way. We also have a road construct-
21. ed from Port Republic Road. May I point that out?

22. Q. Yes, if you would, please.

23. A. (Witness indicates on map)

24. Q. Now, for purposes of the record, Dr. Carrier, let me

1. point out that the tract of land in the annexation area
2. which you have been referring to on Exhibit H-8, is imme-
3. diately to the east of Interstate 81 in the annexation
4. area at about the mid-point in the City line.

5. A. We have a road here already under construction. The
6. base has been built; we have delayed finishing the road
7. until construction is completed because of the heavy traf-
8. fic. We are in the process, we have an agreement on an
9. option with a landowner; we have agreed to it, the Board
10. of Visitors agreed to it, and it is now in the hands of
11. the State Division of Engineering, to permit us to exer-
12. cise an option which would allow us to construct a road
13. through property owned here (indicating on map) into this
14. area here from Ridge Road. I'm not exactly sure, but
15. somewhere along in here.

16. Q. Has the City indicated that they would assist you with
17. construction of that roadway?

18. A. Yes, they have.

19. Q. Doctor, what is the value of land in that area that you
20. have just described; in the annexation area to the north
21. of your campus property it's on the east side of 81.
22. What are the range of values?

23. A. Appraisals of land in there that I've seen range from
24. ten thousand to twenty-five thousand dollars an acre.

1. We don't have any for sale.

2. Q. Is it your desire as President of James Madison Univer-
3. sity that this area be annexed to the City of Harrison-
4. burg?

5. A. As the manager of James Madison University, as the Presi-
6. dent of this institution, it is my belief that in terms
7. of efficient delivery of services--and I have a responsi-
8. bility to carry that out; I might say, it's a big organi-
9. zation--that it would be to the advantage of the institu-
10. tion to have all of our property under one governmental
11. jurisdiction. And I understand that it is not possible
12. for the County to annex us, am I correct?

13. Q. Well, they already have half of you. You mean the facil-
14. ities within the City?

15. A. Right.

16. Q. No, that's not right.

17. A. We would prefer, I would prefer as the manager, to have
18. the services that we will need to allow this area to
19. grow under one jurisdiction; yes.

20. Q. As a resident of the annexation area, do you desire to
21. be annexed?

22. A. I think that's a matter that I would prefer to leave to
23. the Court to decide. It's difficult for me to separate
24. my answer as a resident and my answer as President of

1. James Madison University, and I would just rather ask the
2. Court to make that decision. And whatever decision they
3. make, I'll go along with that, certainly. I can make a
4. decision relative to our services that we need in this
5. other property.

6. MR. COGAR: I have no other questions.

7.
8. Cross Examination by Mr. Smith:

9. Q. Dr. Carrier, what services would you have with annexa-
10. tion that you don't have now?

11. A. What services do we have that we would not have now?

12. Q. For the University.

13. A. Well, let's just review them. We have our own police
14. department.

15. Q. You've been getting water and sewer from the City.

16. A. Getting water and sewer from the City.

17. Q. Is that going to change?

18. A. I hope not. Of course the County has fire protection.

19. Q. And some of that fire protection is provided by County
20. Hose Company No. 4, which is located in the City?

21. A. Sure, that's right.

22. Q. So, my question is, what of the services you are receiving
23. at the University will you not have if annexation is not
24. granted?

1. A. I don't know that there would be a great difference in
2. the services. I think it's more dealing with one govern-
3. mental body than it is dealing with two, and I don't
4. think that would be a major problem. We've never had
5. any major problems with the City or County.

6. Q. Right.

7. A. So I think it's just a matter of managerial preference
8. more than it is anything else.

9. Q. For the most recent fiscal year you paid a service
10. charge to the City of Harrisonburg. How much is that,
11. sir?

12. A. A hundred and ten thousand dollars, I believe.

13. Q. All right, sir. And during the period of time that you
14. were paying service charges as provided by the former
15. law, you had property in the County, did they ever ask
16. you to pay them a service charge?

17. A. Fortunately they did not.

18. Q. So, really, as far as services are concerned, annexation
19. wouldn't make any difference.

20. A. You know, since we have not had the delivery of services,
21. this land has been rural land, it's been open land, we've
22. not had that kind of in-depth relationship, I would be at
23. a disadvantage of answering that it would be less or bet-
24. ter with the City or with the County.

1. 1.2 million dollars, electricity. Our energy bill is
2. 1.1 million.

3. Q. Who do you pay that to?

4. A. The electric bill?

5. Q. Yes sir.

6. A. The electric bill goes to the Harrisonburg Electric Com-
7. mission. I'm not sure whether we're renting . . . we
8. have some facilities in the County we pay to Shenandoah.

9. Q. But the major part of it . . .

10. A. The bulk of it is to the Harrisonburg Electric Commis-
11. sion.

12. Q. The part of the University on the west side of I-81 is
13. served by the Harrisonburg Electric Commission?

14. A. Right.

15. Q. Does the University own any other property in the County
16. besides the green area you pointed to on the map?

17. A. Yes. We own a farm on the Shenandoah River, down Port
18. Road. I don't know whether it's on here, I could show
19. you.

20. Q. I think it would probably be on that map, Doctor.

21. A. It's about forty acres, a very lovely spot.

22. Q. Is that used in the educational process somehow?

23. A. Yes, I think you could describe it as being educational
24. at times.

1. Q. Do you want to explain that?

2. A. It's used for social activities, related to the develop-
3. ment of the students.

4. Q. Is that a picnic area or something like that?

5. A. Yes, picnics are held there.

6. Q. You're familiar with the University of Virginia in Char-
7. lottesville?

8. A. Let me see, yes, that's the one that Jefferson establish-
9. ed.

10. Q. Is that located in the City of Charlottesville or the
11. County of Albemarle?

12. A. You know, I don't know. I guess it's big enough to be
13. located everywhere.

14. Q. Would it surprise you to know that the vast majority of
15. it is in Albemarle County?

16. A. That wouldn't surprise me, but I didn't have any reason
17. to be surprised.

18. Q. Virginia Tech is in the County of Montgomery, and they
19. seem to continue their growth under County government,
20. do they not?

21. A. They continue to grow. I'm not familiar with how effec-
22. tive their growth is. I'm sure it is.

23. ~~MR. SMITH: Thank you.~~

24. ~~JUDGE MOON: Thank you, Dr. Carrier.~~

JOHN I. COFER,

having been duly sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. Would you state your name, please, sir.

A. John I. Cofer.

Q. What is your occupation, Mr. Cofer?

A. I am a city planner.

Q. By whom are you employed?

A. By Harland Bartholomew and Associates.

Q. Is your educational background and your professional experience indicated on Exhibit Q-3?

A. Yes.

Q. Do you have a copy of that before you?

A. Yes.

Q. I notice you received a degree from the University of Virginia in 1949. What degree was that?

A. Bachelor of Civil Engineering.

Q. Following that, following graduation from the University of Virginia, did you have work experience?

A. Yes.

Q. And where were you employed?

A. I was employed first by the City of Baltimore in the Department of Municipal and Zoning Appeals, where I became Associate Director of Zoning.

1. Q. I notice you also show a law degree from the University
2. of Maryland.

3. A. Yes.

4. Q. For what reason did you take law after having completed
5. a degree in engineering?

6. A. I was following in the footsteps of another gentleman
7. who took engineering at the University of Virginia and law
8. at the University of Maryland. He was a consultant in
9. planning and he introduced me to the field, and actually
10. I took the legal education for the purpose of using it
11. in planning.

12. Q. You have never practiced law?

13. A. Well, that may be subject to some question; but in the
14. sense that you practice law, no.

15. Q. You currently teach at the University of Virginia?

16. A. Yes sir.

17. Q. Aside from the requirements of your job, your employment
18. with Harland Bartholomew and Associates.

19. A. Yes sir.

20. Q. What do you teach at the University of Virginia?

21. A. I teach one course one evening three hours a week in the
22. graduate planning program in the School of Architecture,
23. Legal Aspects of Planning.

24. Q. You did that night before last.

1. A. Yes sir.

2. Q. Going down the first page of your qualification sheet,
3. I note that you have worked in over a hundred communities
4. in twenty-three states. Is that correct?

5. A. Yes sir.

6. Q. Below that there is indicated that your experience in-
7. cludes land use regulations for twenty-nine cities and
8. towns. What is meant by the statement that your exper-
9. ience includes these activities?

10. A. I have worked in these cities in cooperation with local
11. planning staffs and local attorneys to prepare zoning and
12. subdivision ordinances, and other regulations and stand-
13. ards related to the planning of it.

14. Q. Following that we see that you have had experience in
15. historic preservation district studies in a number of
16. different communities.

17. A. That is correct.

18. Q. And that has involved both cities and town and counties?

19. A. Yes.

20. Q. And we next see that you have been involved in comprehen-
21. sive plans for various cities both within and without
22. Virginia. Is that correct?

23. A. Yes sir.

24. Q. And for various towns within and without Virginia.

1. A. Yes sir.
2. Q. You have also participated in the preparation of compre-
3. hensive plans for counties, have you not?
4. A. Correct.
5. Q. You have done land use plans for counties in Virginia.
6. A. Yes sir.
7. Q. You have been involved in transportation, traffic and
8. parking studies.
9. A. Yes sir.
10. Q. And finally you have been responsible for the preparation
11. of special environmental studies.
12. A. Yes sir.
13. Q. And I also note toward the end that you have authored a
14. number of papers and articles on planning and the legal
15. aspects of planning.
16. A. Yes sir.
17. Q. And Harland Bartholomew and Associates prepared the com-
18. prehensive plan which is now before the City Council of
19. Harrisonburg, is that correct?
20. A. Yes sir.
21. Q. And has that plan been approved by the Harrisonburg Plan-
22. ning Commission?
23. A. I understand that it has.
24. Q. What does comprehensive planning involve?

1. A. It involves analysis of data, the development of plan al-
2. ternatives, policy formulation, program development, im-
3. plementation programs. It involves interrelating to var-
4. ious physical, social, environmental, financial, govern-
5. mental and administrative aspects of systems as they ap-
6. ply to a given jurisdiction, as conditions might be pro-
7. jected into the future. It also involves the actual pre-
8. paration of comprehensive plans, including the background,
9. economic and population studies, studies of land use,
10. transportation and community facilities, and various im-
11. plementation programs, such as zoning ordinances, subdi-
12. vision regulations, capital improvements programs and the
13. like, to implement the plan.

14. Q. What has been your prior association with the City of
15. Harrisonburg in the area of planning?

16. A. In 1979 our firm was engaged in certain community devel-
17. opment neighborhood analysis studies. These studies were
18. later expanded to a program to update the comprehensive
19. plan for the City. That work was done from our Richmond
20. office under my general supervision.

21. Q. And that is the plan you say has been completed and ap-
22. proved by the Planning Commission, and is presently be-
23. fore the City Council for final approval?

24. A. That is correct.

1. Q. Can a comprehensive plan have many component parts?

2. A. It usually does have many component parts.

3. Q. What typically would be involved in a comprehensive
4. plan?

5. A. Usually background studies involving economic base, pop-
6. ulation, analysis of physical conditions, topography,
7. soils, geology, water resources and the like. A study
8. or population and a projection of that population, usual-
9. ly based on an analysis of the economic base. Studies
10. of land use, existing land use; development of an inner-
11. related land use and transportation plan, development of
12. a community facilities plan, development of an implemen-
13. tation program. Sometimes the comprehensive plan will
14. include special elements, such as studies of central
15. business districts, special studies of housing and commun-
16. ity development, sometimes an urban design element relat-
17. ed to the appearance aspect of the community.

18. Q. In determining how much of how many of those elements . .
19. who determines how many of those elements will be embrac-
20. ed within a comprehensive plan?

21. A. Usually the city or the county, the client.

22. Q. There has been mentioned more than somewhat the fact that
23. the City of Harrisonburg does not have a comprehensive
24. utilities plan. You've heard that testimony?

1. A. Yes.

2. Q. Do you regard that as unusual?

3. A. A plan for public utilities is usually included as a
4. part of the community facilities plan. Now how much of
5. it is included in the comprehensive plan varies a great
6. deal from community to community. Sometimes it is simply
7. a text description of the facilities and the problems
8. with them and the plans for the future. Other times there
9. are rather elaborate maps showing water systems, sewer
10. systems, and the like. I do not consider it particularly
11. unusual that the utilities element of the proposed Harri-
12. sonburg plan is a fairly simple text description of the
13. systems and their proposals.

14. Q. When was the firm of Harland Bartholomew and Associates,
15. as opposed to yourself, first involved in planning for
16. Harrisonburg?

17. A. In the preparation of a new comprehensive plan in 1963.

18. Q. From your involvement with the comprehensive plan for
19. Harrisonburg are you familiar with the City, the annexa-
20. tion area, and generally what the City seeks in this pro-
21. ceeding?

22. A. Yes, I am.

23. Q. From a planning standpoint, does Harrisonburg have any
24. particular geographic significance?

1. A. Yes. Harrisonburg and its surroundings constitute one of
2. a series of growing industrial communities located along
3. Interstate Route 81 which runs the full length of the
4. Valley of Virginia. To the north we have Winchester,
5. then Harrisonburg, and to the south we have Staunton,
6. Lexington, Roanoke, and on below that Pulaski, Radford,
7. Wytheville and on down to Bristol, Virginia-Tennessee.
8. Now, in Rockingham County quite obviously the principal
9. urban center is Harrisonburg which provides urban ser-
10. vices to a wide area, extending throughout the County
11. and to some neighboring counties. It is a transportation
12. hub, as has been pointed out before. Using this map for
13. reference, it is the location of an intersection of
14. Route 33 and the I-81. East-west is also the Port Re-
15. public Road. North-south in addition to I-81 is U. S.
16. Route 11 and State Route 42. Also two railroads, the
17. Chesapeake and Western and the Southern Railroad, inter-
18. sect, interchange in Harrisonburg. So, it has consider-
19. able geographical significance, both in the County and
20. in the Valley of Virginia, and the state for that matter.
21. Q. What have been the principal influences on Harrisonburg's
22. population growth since 1970?
23. A. The primary population growth has been the growth of the
24. student population at James Madison University. Within

1. the Harrisonburg-Rockingham County community, in addition
2. to that, growth has also been influenced by growth in
3. manufacturing employment and associated employment in
4. retail or wholesale trade. The statistics that we devel-
5. oped for the comprehensive plan indicated that within the
6. last ten years about eighty-five percent of the growth
7. inside the City can be attributed to the growth of stu-
8. dent population of James Madison University.

9. Q. What are the advantages and disadvantages of growth
10. resulting primarily from increased student population?

11. A. Well, the advantages, of course, are that they bring
12. money into the community, they bring employment for
13. people who teach them and to maintain the facilities
14. where they are taught. They bring money from home which
15. they spend in the community. They earn money in the com-
16. munity and spend it, of course, subsequently. It is us-
17. ually from part-time jobs and they spend it for rent and
18. food and clothes and supplies. They do add interest and
19. vitality to the community; activities, cultural and ath-
20. letic. From the standpoint of disadvantages, generally
21. their incomes are less than the incomes of a regular
22. full-time continuing resident of the City who is employ-
23. ed full-time here. They generally do not own property,
24. they do not pay taxes, many do not vote in the community.

1. For those who live off campus, housing is required. To
2. supply this housing sometimes requires the displacement
3. of people from the community who would otherwise live
4. there. And, of course, to some full-time residents, as
5. Dr. Carrier mentioned, they are probably a nuisance in
6. the way they park, in the way they play their stereos,
7. and the wild parties, and all those things that are con-
8. sidered routine for a student. As the college itself
9. grows to accommodate the increasing numbers of students,
10. there is a possibility of additional property being taken
11. off the City tax roles. On the whole certainly I think
12. we can say that the presence of the University in the
13. community is a very definite asset; but it does bring
14. with it problems for the City.

15. Q. Do you see any need for the City of Harrisonburg to re-
16. capture population displaced by the student population?

17. A. Yes, it would be advantageous that those full-time
18. residents displaced by students would be included in the
19. City to assist in its leadership and to share responsibil-
20. ity for the solution of urban problems, both economically
21. and in direct participation.

22. Q. I would like to call your attention at this time to Ex-
23. hibit H-32. It's in the smaller book. You have seen
24. this exhibit before, have you not?

1. A. Yes sir, the rainbow map.

2. Q. And from your own personal experience you are aware of .
3. and your studies, you are aware of businesses from the
4. City?

5. A. Yes. I have heard testimony and to an extent I am aware
6. of it myself.

7. Q. What to you is the significance of this business exodus?

8. A. Well, it means a loss of jobs in the City. It means a
9. loss of real estate tax revenues. It means a loss of
10. sales tax revenues. There's certainly a loss of the
11. general vitality and interest in the City, especially in
12. the downtown area, and it diminishes the ability to cope
13. with urban problems, including the urban problem of the
14. loss of businesses in the City.

15. Q. From your experience why are shopping malls such as the
16. Mall discussed at length in this trial up until now more
17. attractive than downtown locations such as that which
18. surround the Courthouse?

19. A. Generally they provide more parking, easier access to the
20. parking, it's generally free. The Mall itself is some-
21. times more accessible to customers, particularly if the
22. customer is in suburban areas. Sometimes, although this
23. is definitely not always true, the access to the shopping
24. center is by means of streets which are less congested

1. than those in the downtown area. Many stores selling a
2. variety of products are collected in a tight, relatively
3. small area that is within easy walking distance of each
4. other. Often the walk from one store to another may be
5. conducted in a covered area, air conditioned and protect-
6. ed from inclement weather. The structures are new and
7. often more attractive than the older stores in the down-
8. town area, and sometimes the environment of the shopping
9. center itself may be more attractive than the environment
10. of the downtown area. Signs are controlled, rest areas
11. are provided, and there may be indoor and outdoor land-
12. scaping features, fountains and the like.

13. Q. I call your attention now to Exhibit H-6 to your left,
14. and ask you if you are familiar with the industrial de-
15. velopment pattern within the City of Harrisonburg.

16. A. Yes.

17. Q. Would you describe it, please.

18. A. Referring to this Exhibit H-6, we can see the older in-
19. dustrial areas located along the branching rail corridor
20. located generally through the center of the City. Then
21. the new industrial areas inside the City, located . . the
22. two newer ones that were pointed out, Kawneer and Dunham-
23. Bush. Do you want me to show . . .

24. Q. Yes, H-8 is over there.

1. A. Beyond the City limits, the pattern continues to extend
2. along the railroads through the northwest, to a small
3. degree to the north, east, and especially to the south-
4. west . . .

5. Q. Southeast? --

6. A. Southeast along the interstate highway and the Chesapeake
7. and Western Railroad in the vicinity of the Harrisonburg
8. Industrial Park.

9. Q. From your experience, what does modern industry seek to-
10. day? In terms of a site.

11. A. Well, a good deal depends on the requirements of the par-
12. ticular industry. Of course, labor supply and availabil-
13. ity of raw materials of various kinds are essential, and
14. these may vary a great deal according to the industry.
15. For example, the brewery that we discussed may be built
16. needs an ample supply of pure water. Site costs are also
17. a factor. Generally industry will seek sites which has
18. easy access to transportation facilities, highway and
19. often rail, sometimes air transportation. Utilities
20. such as sewer, water supply, and reliable public services
21. such as police and fire protection, waste collection;
22. these are essential. A site of adequate size is usually
23. sought, one which provides room for future growth. The
24. newer sites are generally large because the buildings are

1. expansive, one story. Parking is adjacent and there is
2. ample room for ground level storage of materials and
3. supplies. The topography of the site should be adaptable
4. to plant needs with a minimal expense, minimum grading,
5. minimum foundation and drainage problems. Preferably
6. the site should be located where the adverse impact on
7. surrounding residential areas or other non-industrial
8. areas is minimal. Sometimes visibility of the site from
9. a well-traveled transportation corridor is important for
10. advertising purposes. And, in some cases, more and more
11. important to the new industries today are neat and at-
12. tractive surroundings or some landscaping.

13. Q. Do older industrial sites have disadvantages?

14. A. Yes, they do, at least most of them. They tend to be
15. small, the buildings tend to be old. If they are located
16. in central city areas, their surroundings are tightly
17. built up, very often by residences which sometimes pro-
18. duces conflicts between the industry and the residents.
19. Generally the access is more difficult, parking is more
20. difficult, off-street loading may be a problem.

21. Q. Have you observed those conditions in Harrisonburg?

22. A. Yes, they exist in many instances within the older indus-
23. trial city sites--in the older industrial sites inside
24. the City.

1. Q. From a planning standpoint have you made any analysis of
2. the area sought or proposed to be annexed?

3. A. Yes.

4. Q. What do you anticipate there from the standpoint of resi-
5. dential, commercial and industrial land use in the future?

6. A. Generally we anticipate a continuation of past trends.

7. The pattern in the area sought for annexation has to a
8. considerable extent already been fixed by existing devel-
9. opment. We would expect additional residential develop-
10. ment to the east, to the west, and to the south, where it
11. has been occurring in the past. Most of the higher den-
12. sity development would tend to occur in the vicinity of
13. existing higher density development, although it would be
14. possible to accommodate additional medium density devel-
15. opment at various locations throughout the area. By this
16. I mean it would not all be low density single-family de-
17. tached. Commercial development will probably continue
18. to occur along the existing corridors, primarily out Route
19. 33 East, Route 11 South, and to a degree out Route 42
20. Southwest. In terms of industrial development, once
21. again, generally a continuation of the pattern which I
22. described previously. Some additional industrial develop-
23. ment along the railroads in the northwest, around the in-
24. terchange with Route 33 on the east, southward in the

1. vicinity of the Industrial Park, and some additional along
2. Route 42 Southwest. In addition to the growth in the
3. outlying areas, there would continue to be some infilling
4. inside the City as vacant tracts were available in appro-
5. priate locations for all of these.

6. Q. Is it your belief that there is sufficient vacant land
7. within the boundaries of Harrisonburg to meet its needs
8. for the future?

9. A. I would expect most of that development that I described
10. to occur in the areas outside the City, and for the reason
11. of the inadequacy of sites that I described before, par-
12. ticularly of large commercial and industrial sites.

13. Q. You are familiar, as you have indicated, with the loca-
14. tion of the annexation area?

15. A. Yes.

16. Q. Did you participate in its drawing?

17. A. No.

18. Q. In the location of it.

19. A. No.

20. Q. You have made a study of the land within the area and
21. you know where the annexation line is proposed. From
22. your observations of the area is this annexation line as
23. drawn a desirable line from a planning standpoint?

24. A. Yes, it seems to be. It includes most of the nearby

1. development and developing areas which need now or will
2. need urban services. And at the same time it includes
3. a reserve supply of vacant land into which the City can
4. grow. To the north the line is based primarily, as has
5. been testified, on a drainage basin boundary. This is
6. important for planning utilities. I think, however, that
7. I would have included some additional land, not necessar-
8. ily for the sake of the Donnelley Plant but for the sake
9. of the annexation and to achieve a better balance around
10. the central area of the City for future development. I
11. would have extended this somewhat more to the north.
12. Coming on down to the west, the boundary seems reasonable
13. again including most of the urban development which is
14. in the vicinity of the City and also including a consid-
15. erable amount of vacant land. Coming over to the east,
16. it included this urbanized area and on south to include
17. the Industrial Park. For the sake of compactness and a
18. contiguous area around the City, I think the south line
19. is a reasonable boundary also.

20. Q. Given the background of your experience in county plan-
21. ning, would you tell the Court from the standpoint of
22. county planning, in terms of a plan for the entire county,
23. how you would view the proposed annexation.

24. A. Had I been called on to develop a comprehensive plan for

1. Rockingham County, I think I would probably have used
2. an approach very similar to that which was used. The re-
3. sults would probably have been very much the same. It's
4. my opinion the County plan does and should encourage
5. urban growth to take place in the vicinity of established
6. urban centers where services can be more effectively ren-
7. dered. The major urban service center of Rockingham
8. County is, of course, the City of Harrisonburg. And this
9. proposed annexation is intended to facilitate improved
10. public services and facilities in the vicinity of Harri-
11. sonburg. When Rockingham County began development of its
12. comprehensive plan, somewhere around 1974 I believe, the
13. County planning staff used a sort of a three-stage pro-
14. cess. The first stage involved collection of data. The
15. second stage involved analysis of that data and the study
16. of alternative plans, principally alternative plans for
17. land use arrangement and provision of public services.
18. The third stage involved selection of an alternative and
19. development of a plan. And either as a part of that
20. stage or a fourth stage, the development of implementa-
21. tion programs; capital improvement programs and zoning
22. ordinances designed to guide the development in accord-
23. ance with the selected alternative.

24. Q. You are referring now to the Rockingham County Proposed

1. 1976 Land Use Plan, Volumes 2 and 3--Volumes 1, 2 and 3,
2. filed as City Exhibit 45, are you not?

3. MR. FITZGERALD: No sir, he's referring to the
4. Comprehensive Plan of Rockingham County. He didn't use
5. the word "proposed".

6. A. I was actually referring to the material in Exhibit 12b.

7. Q. I beg your pardon. Let's turn to Exhibit 12b. Do you
8. have 12b before you?

9. A. Yes sir.

10. Q. Do you note the title of that exhibit?

11. A. "Excerpts from 1976 Proposed Rockingham County Land Use
12. Plan".

13. Q. You have previously referred to it as the land use plan,
14. and you're referring now to an exhibit that's entitled
15. "Proposed Rockingham County Land Use Plan".

16. A. That is correct. I'll get around to the land use plan.

17. Q. All right, go ahead.

18. A. Well, in any event, the County in this process selected
19. four alternatives for study, and these were as follows:
20. first was a continuation of past trends of scattered
21. growth; the second was guiding growth into numerous small
22. rural communities; the third was guiding growth in and
23. around the municipalities of the county; and fourth was
24. guiding growth within a planned, unincorporated community

1. in the county. And it was also noted that the ultimate
2. plan as developed could be a combination of one or more
3. of these alternatives. Now, these appear to me to be
4. logical concepts for Rockingham County. I have developed
5. similar planning concepts in county planning work in
6. which I have participated, depending of course on the
7. conditions in those localities. For example, in the work
8. which preceded the adoption of a plan for Kent County,
9. Delaware, that's the major central county surrounding
10. Dover, was similar to this in many ways, similar to the
11. Rockingham County situation in many ways, except the
12. topography was infinitely more flat. And we developed
13. four alternative concepts there, one called ribbon devel-
14. opment, one called the strong corridor concept, one called
15. city centers or multiple centers, and another one called
16. a single strong urban center concept.

17. Q. In what ways was the Kent County area similar to the
18. Rockingham County-Harrisonburg?

19. A. The City of Dover was the predominant urban place in that
20. county, it was located on a major transportation corri-
21. dor, rail and highway, and then around that at various
22. locations in the county were five or six small towns
23. in a configuration not too different from Rockingham.
24. The county was bordered on one side by Delaware Bay,

1. which to a rough degree might be considered the same kind
2. of a barrier to communications that the mountain range
3. would be. Well, back to Rockingham County. After a
4. considerable period of review and public participation
5. during which hundreds of Rockingham County residents were
6. polled, the concept selected by the participants in that
7. program was this concept number three, which recommended
8. guiding growth in and around the municipalities of the
9. county. This is not necessarily the concept which was
10. officially adopted, but the land use plan which was adopt-
11. ed . . .

12. Q. That's Exhibit 12a, is it not?

13. A. Exhibit 12a. There is a strong resemblance to it.

14. Q. Wherein does it resemble that which was proposed by the
15. citizens, excerpts of which is shown in Exhibit 12b?

16. A. The map which accompanied the various planning studies
17. which preceded the proposed studies which I described
18. earlier in which the public participated, included draw-
19. ings showing various configurations of urban development.
20. The one of those drawings which this adopted land use
21. plan most strongly resembles is that concept number three,
22. which shows growth around the existing municipalities.
23. It might be interesting to note that in the Delaware
24. planning process the alternative most similar to this

1. one, the city center concept, was also the one selected
2. by the people. In phase three of the Rockingham County
3. planning program, the Citizens Planning Committee, which
4. was very active in this program, actually the Rockingham
5. Citizens Advisory Planning Committee and the Rockingham
6. County Planning Department, recommended policies to the
7. County Planning Commission and the Board of Supervisors
8. designed to implement that selected alternative, Alterna-
9. tive 3, the municipal centers plan. And with respect
10. to population and urban growth, the policies included
11. the following: 1) Population growth and related urbani-
12. zation within Rockingham County should be accommodated
13. in an orderly manner but should not be promoted. 2) Pop-
14. ulation growth and related urban development should be
15. guided in and around the city and towns. 3) A balance
16. of residential, commercial and employment opportunities
17. should be encouraged in all municipal growth areas. With
18. respect to agriculture, the value of agriculture to the
19. local economy and to the lifestyle of Rockingham County
20. was recognized in the planning efforts, and the policies
21. recommended that agriculture be maintained as the major
22. economic base for Rockingham County, and that productive
23. agricultural land be preserved for agricultural produc-
24. tion. In my opinion, the municipal center plan is prob-

1. ably the best of those studied to accomplish the agricul-
2. tural goals, in addition to providing centers for the
3. processing, marketing and shipping of agricultural pro-
4. ducts. Directing development to compact urban centers
5. also operates to preserve agricultural land. It should be
6. recognized though that when a city is surrounded by agri-
7. cultural land, and if that city is to grow, agricultural
8. land must be lost. It happens that the best agricultural
9. land, being relatively flat, well drained, free of rocks
10. and the like, is also the best land for development. But
11. unless land is somehow directed to areas where there
12. isn't any agricultural land--directed to forests, to
13. mountains, to deserts, to someplace where there simply
14. isn't any agricultural land, there simply isn't any prac-
15. tical alternative to the loss of agricultural land in the
16. vicinity of expanding urban areas. In the long run, how-
17. ever, compact growth around urban service centers, where
18. utilities are provided, save agricultural land over that
19. which would be lost as a result of scattered, low density
20. development. I understand that the County Planning Com-
21. mission and the Board of Supervisors did not actually
22. adopt Alternate 3. The land use plan adopted by the
23. Supervisors on May 9, 1977, which is Exhibit 12a, is
24. nevertheless reflective of its principles, as are the

1. policy objectives which accompany the adopted plan. The
2. words "urban development" have been changed to "community
3. development", but the effect is the same. To me, and I
4. quote, "Community development should be guided in planned
5. community service areas," which is policy two in connec-
6. tion with community development under the adopted plan.

7. Q. You are referring now to Exhibit 12a?

8. A. Exhibit 12a in the wording on the back of it. That's the
9. same as saying, at least in Rockingham County, that pop-
10. ulation growth and related urban development should be
11. guided in and around the city and towns, as contained in
12. the policy objective of the Citizens Committee which were
13. not adopted. The map which accompanied the plan, Exhibit
14. 12a, clearly shows future growth clustered in the vicinity
15. of existing municipalities. The public utilities objec-
16. tive . . .

17. Q. Let me stop you here at this point, and let's have put
18. up Exhibit 12a, if we can.

19. A. Also I might comment that those limits, the limits of
20. both . . .

21. Q. I believe we have an exhibit in the book on that.

22. A. Also I think you ought to refer to Exhibit H-10.

23. Q. Exhibit 12 . . . excuse me, Exhibit . . . there is a cor-
24. responding version of that which is H-10, is that correct,

1. Mr. Cofer?

2. A. Yes sir.

3. Q. And that's in the map book as well. You have said that
4. the map which is shown in Exhibit 12a shows, clearly
5. shows the future growth clustered in the vicinity of
6. existing municipalities. Is that correct?

7. A. Yes.

8. Q. I would like for you to compare for the Court Exhibit
9. 12a with the annexation line and cordon line previously
10. testified to shown on Exhibit 1A and H-10.

11. A. Both in the map book and on Exhibit 1A there are green
12. lines. The green line which includes the entire urban
13. area here, and the solid green line on the reproduced
14. map in the book, that is the line recommended by the
15. Citizens Planning Committee as the urban service area.

16. Q. That's the solid green line?

17. A. The solid green line.

18. Q. How does it compare with the annexation line?

19. A. The correspondence is quite good, as you can see clearly
20. from Exhibit H-10 and from the way the green line follows
21. the yellow area on the map. Actually it's more extensive
22. than the area proposed for annexation in practically
23. every direction. There's another green line that shows
24. the future growth areas as outlined on the adopted land

1. use plan. The effect of that was to actually break this
2. larger area into a series of smaller ones, and to leave
3. out urban development areas to the southwest. We have an
4. urban area around Dayton, another one around the Indus-
5. trial Park, and another one that fairly well coincides
6. with the proposed annexation line around the northern
7. two-thirds or three-quarters of the area of the City
8. and the proposed annexation area.

9. Q. So, the broken green line shown on Exhibit H-10 and H-1A
10. corresponds to the red and pink areas shown in Exhibit
11. 12a.

12. A. That is correct.

13. Q. Which is the land use plan officially adopted by the
14. County.

15. A. That is correct. The public utilities objectives which
16. were adopted, the objectives of the adopted plan, include
17. "Water and sewer service should be extended in planned
18. phases outward from service areas," which to me is the
19. same as saying that they should be extended outward from
20. municipalities. So, in summary, I think the County plan
21. is quite logical in its recommendations for planned
22. growth areas, and that this proposed annexation will fa-
23. cilitate the orderly and efficient extension of public
24. facilities into these growth areas. The County plan is,

1. however, inadequate relative to the details of the land
2. use pattern of these future urban areas. But its general
3. policies on urban growth, I believe, are correct.

4. Q. I believe you have testified earlier that over the years
5. you have drafted zoning ordinances for both cities and
6. counties, is that correct?

7. A. Yes sir.

8. Q. Have you had an opportunity to review the City's zoning
9. ordinances?

10. A. Yes sir.

11. Q. Have you had an opportunity to review the County's zoning
12. ordinances?

13. A. Yes.

14. Q. Would you compare or contrast them, as seems most appro-
15. priate.

16. A. Well, . . .

17. Q. And would you tell the Court which would better serve
18. the future growth in the area, in your opinion.

19. A. All right. The City's zoning ordinance is a fairly typi-
20. cal example of an urban zoning ordinance. As Mr. Sulli-
21. van described it, it has eight zoning districts, three
22. residential, two business, two industrial districts. It
23. also has a planned unit residential district, which can
24. permit a variety of residential types in a single project.

1. We visited at least one of those on the bus tour. A min-
2. imum of twenty-five contiguous acres is required for ap-
3. plication of that district. Agriculture is permitted in
4. the residential districts with limitations that buildings
5. housing farm animals be located at least three hundred
6. feet from dwellings other than farm buildings. Permitted
7. residential densities are urban. The largest minimum
8. lot size which is required is in the R-1 District and is
9. ten thousand square feet. One of the commercial districts
10. is designed for the tightly built up central area. The
11. other one is the general commercial district, which can
12. be applied to the fringes. One of the industrial dis-
13. tricts is what is often called the light industrial dis-
14. trict, and the other one a heavy. Now, the County's zon-
15. ing ordinance is a more unusual one. There are some
16. interesting contradictions in it. What is most strange
17. about the County ordinance is its agricultural district,
18. or its general agricultural district, A-1. This district
19. probably covers about ninety-five percent of the County,
20. I would say, based on parts of the zoning district map
21. that I have seen; but it is designed to accommodate urban
22. development as well as agricultural. I would like to
23. read to you the purpose statement for this district.

24. Q. This is the agricultural district?

1. A. This is the general agricultural district, A-1. Section
2. 17-24. "This district is designed primarily to accommo-
3. date farming and kindred rural activities. While the
4. basic aim is to preserve and promote this utilization
5. of land, the uses permitted are broad enough to allow
6. development of urbanized areas, since it is recognized
7. that certain rural areas logically may be expected to
8. develop in this manner. The district is established for
9. the specific purpose of: 1) Providing for the orderly
10. expansion of urban development into territory surround-
11. ing incorporated areas within or adjacent to the County.
12. 2) Encouraging such development in locations that can
13. feasibly be supplied urban-type facilities. 3) Discour-
14. aging the random scattering of residential, commercial
15. and industrial uses within the area." This is the agri-
16. cultural district. And I suspect that just the opposite
17. of these purposes to be most likely. The expansion will
18. not be orderly, the development is encouraged really in
19. any location, and the uses would be scattered randomly.
20. The A-1 District has a short list of permitted uses,
21. permitted as a right, including single family dwellings
22. on half acre lots and, of course, agriculture without the
23. three hundred foot limitation that is contained in the
24. City's ordinance. Then there is a list of uses which are

1. permitted provided a special use permit is obtained from
2. the Board of Supervisors. Then there is another list of
3. uses prohibited unless a special use permit is obtained
4. from the Board of Supervisors. Now, the first list of
5. special uses contains some fairly conventional ones,
6. such as cemeteries, campgrounds, fire stations, public
7. utilities, schools, parks and so on. But it also in-
8. cludes fruit packing, plants, general stores, and service
9. stations. Now, the list of uses prohibited except by
10. public use permit includes a broad range of commercial
11. and industrial uses, including automobile sales and ser-
12. vice, contractors' offices and storage, public garages,
13. junkyards, machine shops, offices, restaurants, warehouses
14. and some more uses. That to me is most unusual for an
15. agricultural district. There are general standards in
16. the ordinance for granting special use permits with a
17. few specific standards, for example for mobile home parks.
18. For the permitted group of special uses the ordinance
19. states that it is presumed that these standards have been
20. met unless the Board makes a contrary finding. For the
21. prohibited group of special uses it is presumed that the
22. standards have not been met unless the Board makes a
23. positive finding that they have been. Well, what all
24. this means to me is that within this A-1 District it is

1. a sort of anything goes district from the land use stand-
2. point, just so long as you get approval from the Super-
3. visors on a case-by-case basis. Now, it's conceivable
4. that this might work if the zoning ordinance is backed
5. up by a good land use plan. But in this case it is not.
6. An adequate land use plan simply does not exist for
7. references of such a broad--for reference of such a
8. broad range of uses. To me this is the negation of zon-
9. ing, really the antithesis of zoning. I should note that
10. the County ordinance also has residential, commercial
11. and industrial districts intended for urban development.
12. It has eleven districts in all. It's also interesting
13. that the County apartment district permits about one and
14. a half times the density that the City . . . that the
15. most dense apartment district in the City permits. There
16. is an AR-1 District with a minimum lot size of five acres
17. for what's called exclusive residential development, and
18. there is a mobile home park district. The thirty-two
19. units an acre which are permitted in the R-3 District is
20. quite dense for a typical garden apartment development.
21. One project of this type that we viewed, Harris Gardens,
22. along with the sinkhole, is developed at about ten units
23. per acre. The townhouses that we looked at near the
24. interchange of Route 33 and . . . well, they're near one

1. of the interchanges on I-81, they are developed at about
2. sixteen units per acre. I should also note that the
3. County ordinance also has residential planned community
4. districts, it has two of them, similar to those of the
5. City in concept; except that a minimum of a thousand acres
6. is required for one of them, which limits its utility to
7. a very large-scale project, and I think has been applied
8. to one large-scale project. So, that district is some-
9. what limited in application. In summary, I would very
10. much recommend that the City's zoning ordinances are
11. much better ordinances for guiding growth in the area
12. proposed for annexation. And I would also anticipate
13. that the application of this ordinance would be backed
14. up by a detailed land use plan, as it has been in the
15. past.

16. Q. Mr. Cofer, have you examined the City and County subdivis-
17. ion ordinances?

18. A. Yes sir.

19. Q. Which of these, in your opinion, is better suited to guide
20. the growth in the area sought to be annexed?

21. A. The City ordinance. Mainly because it is more specific
22. in construction standards for streets and utilities.

23. Q. From your study of the area, what do you see in the way
24. of community of interest between the area sought and the

1. City of Harrisonburg?

2. A. Well, certainly from the standpoint of land use there is
3. a strong community of interest. The land use patterns
4. of the annexation area is actually an extension of the
5. land use pattern in the City. People who live in the
6. annexed area work in the City, people who live in the
7. City work in the annexation area. I think we heard testi-
8. mony before that some forty percent of the people who re-
9. side in the annexation area work in the City. In Exhibit
10. H-5 . . .

11. Q. That's displayed on the easel.

12. A. We can see that the City contains a variety of facilities
13. which are of benefit not only to the annexation area but
14. to the entire region. The City has within its boundar-
15. ies a variety of local, state and federal offices, re-
16. gional bank headquarters, branches, numerous churches
17. and recreational facilities. It contains the major hos-
18. pital facility which serves more than a hundred thousand
19. people in Harrisonburg, Rockingham County and beyond.
20. The City is clearly the regional center of government
21. activity, legal proceedings, financial transactions,
22. wholesale trade and other social and economic enterprises.
23. The City also has within its boundaries James Madison
24. University, which offers educational, cultural and ath-

1. letic opportunities for residents of the entire region.

2. As described by other witnesses, significant portions

3. of the area proposed for annexation are currently served

4. by City water, sewer and electrical lines, and a signi-

5. ficant number of County residents utilize City recrea-

6. tion facilities and programs. A number of commercial

7. and industrial concerns located in the annexation area

8. have their properties connected to City police and fire

9. facilities by means of electronic burglar and fire alarms.

10. Q. In your opinion is it important for the City to control

11. the main points of entrance to the urban area?

12. A. Yes.

13. Q. Will you tell the Court why?

14. A. In my experience the cities have too often been forced

15. to play a kind of catch-up ball from a planning and land

16. use standpoint as the City boundaries move out, particu-

17. larly along the major thoroughfares, into County areas

18. where land use controls were poorly applied or non-exis-

19. tent; at least non-existent when some of this development

20. took place. This is not true in all cases, and there

21. are sometimes no alternatives to the development pattern

22. which has actually developed. Nevertheless, I have been

23. impressed in a number of instances with how difficult

24. it has been for the City in these cases. The result of

1. lack of control, the City is often required to take over
2. something of a jumble of commercial, industrial and resi-
3. dential uses. A proliferation of signs, poor control of
4. access, and other unsightly and hazardous conditions.
5. I have observed similar conditions in communities where
6. I have worked, in Richmond, Williamsburg, Petersburg,
7. Charlottesville. Once these conditions are allowed to
8. take place, improvements are very difficult and expen-
9. sive and they take a long time. That the City control
10. these access points is not a guarantee that they are
11. going to be orderly or beautiful, by any means; but I
12. think generally the chances of careful management of
13. development are improved if the land is in the City.
14. Control of access routes to the City is particularly
15. important if one of these routes connect to an inter-
16. change with the interstate highway system, because in
17. these locations a substantial amount of future develop-
18. ment is likely. There is such an interchange in the pro-
19. posed annexation area south of the City and some prospect
20. for one at Old Furnace Road in the northeastern section
21. of the area proposed for annexation. These gateways hold
22. particular potential for future development.

23. Q. From a planning standpoint is it preferable for the City
24. to have control or desirable for the City to have control

1. of the area sought to be annexed?

2. A. Yes, I believe it is.

3. Q. Will you state why, please?

4. A. From the standpoint of land use and facilities planning,
5. it would be advantageous to have the urban area, the ur-
6. banizing area, and the urban fringes all under a single
7. jurisdiction. One jurisdiction to prepare rational, com-
8. prehensive plans and also plans for implementation by
9. that same jurisdiction. Also, the implementation of
10. programs by that same jurisdiction. The City with its
11. control of centralized utility systems is better equip-
12. ped to do this. Under a single jurisdiction, utilities
13. could be consolidated, both for operation, for planning,
14. and extension in accord with these plans. The City is
15. urban. It is experienced in providing a full range of
16. urban services, and it can better insure that future ur-
17. ban development will be properly integrated with existing
18. urban development. The entire area should be under a
19. single zoning ordinance and a single subdivision ordinance,
20. both geared to the needs of urban development. Then as
21. sort of an incidental benefit, as I mentioned before, a
22. developer planning to build in the urbanized area would
23. need to deal with only a single jurisdiction. This would
24. simplify development and make the area more attractive for

1. development. The City can better plan its finances if
2. it knows in advance its long-range responsibility with
3. respect to future development. As has been noted by oth-
4. er witnesses, the City will be more capable of dealing
5. with these responsibilities if it has the full leader-
6. ship of the urban community within its boundaries, cap-
7. able of dealing with these responsibilities, and the full
8. resources of the urban tax base. The City has urban
9. problems to cope with which need both these resources;
10. the people resources and the revenue resources. The
11. central City facilities are old, maintenance is there-
12. fore more expensive. Urban density requires a higher
13. level of urban services, and therefore more expensive
14. services. Fire, police, transportation, and the others
15. that we have heard described. To an extent free services
16. are offered to residents of the region in the use of the
17. streets, recreational facilities, and other facilities
18. offered by the City. The elderly and the people of lower
19. income tend to be attracted to the City because the urban
20. facilities exist. And if the City does not acquire both
21. the people resources and the tax revenue resources, his-
22. tory indicates that decline is very likely, that the City
23. will become less and less able to cope with urban prob-
24. lems as time passes. This has been more notable in the

1. larger cities in this country, such as Hartford, Newark,
2. Detroit, Birmingham, St. Louis, and some of the others,
3. than in the smaller cities. But it is true nonetheless
4. in both categories. A major reason cities large and
5. small decline is because they were unable to take advan-
6. tage of the resources of new residents and new develop-
7. ment on the fringes. At the same time the City is given
8. responsibility for these urban problems and the improved
9. resources necessary to cope with them, the County is re-
10. lieved of these problems and can go about the business of
11. providing an improved rural government for rural areas.
12. Devoting its time to the special problems of rural areas
13. and to strengthening its economic base, which at present
14. at least is largely agricultural.

15. Q. From a planning standpoint, how do you view the impact
16. of the proposed annexation on the remainder of the County?

17. A. From a planning standpoint the County will retain slightly
18. over eight hundred and fifty square miles of territory to
19. be planned. And within this very large area I would ex-
20. pect many different uses in the future which will need
21. to be planned for in agricultural, residential, commer-
22. cial, industrial and public use categories. The County
23. would still retain many prime industrial sites. There
24. has been considerable discussion in this proceeding rela-

1. tive to future industry in the Elkton area. In addition
2. there is the U. S. Route 11, Interstate 81 corridor,
3. both north and south of the proposed annexed area.
4. While the County would lose some excellent commercial
5. sites, many still remain. Interchange 65 north of Harri-
6. sonburg would be one of these, and Interchange 61 at Mt.
7. Crawford is another, having considerable potential for
8. future commercial and conceivably industrial development.
9. Most of the agricultural area in the County would remain
10. in the County. Its preservation and use for agricultural
11. purposes would be enhanced by the concentration of urban
12. growth and development in Harrisonburg. Almost an infi-
13. nite variety of housing sites will remain in the County,
14. and I believe that careful study in the way to minimize
15. conflicts between housing in the countryside and agricul-
16. ture will be a difficult task for the County and will re-
17. quire a considerable portion of the County's planning
18. capabilities in the future, but that it can be accomplish-
19. ed.

20. MR. COGAR: You may examine.

21. JUDGE MOON: Let's take a recess.

22. (Recess)
23.
24.

Cross Examination by Mr. Fitzgerald:

Q. Mr. Cofer, how long have you been with Harland Bartholomew and Associates?

A. Twenty-seven years.

Q. Twenty-seven years. I assume you know Mr. Harland Bartholomew very well.

A. I haven't seen him very much recently, but at one time I knew him very well.

Q. Just as a matter of interest, is he still active in the firm?

A. No, he isn't.

Q. You're familiar with his experience though in annexation cases, aren't you?

A. I know of a couple of cases that he has been in, yes.

Q. Do you recall your firm's work in an annexation case with the City of Falls Church against the County of Fairfax?

A. No sir.

Q. You were not with the firm at that time?

A. I don't know when that case took place.

Q. Suppose I tell you about 1959.

A. I was with the firm at that time, in their St. Louis office.

Q. Are you telling the Court that a city has to keep on expanding its boundaries, getting larger?

1. A. If the City is a part of an urban area which is growing
2. and getting larger, yes, that's my recommendation.

3. Q. The City must keep on absorbing the urban, the growth
4. around it.

5. A. In a City the size of Harrisonburg, I think this is defi-
6. nitely a must.

7. Q. Well, is it particularly the size of the city?

8. A. There is a range of cities where I think it is advisable,
9. and there is probably a range, I don't have a definite
10. size for it, where some of the economies of scale might
11. be lost. So, a very large metropolitan area might oper-
12. ate effectively under more than one government. But I
13. think for cities of the general scale and proportions of
14. Harrisonburg and some of these others I mentioned down
15. the Valley, that it is advisable for the city boundaries
16. to move outwards, not only with but in advance of urban
17. development.

18. Q. Well, would it be possible for one member of your firm
19. to take one position with regard to that and you take
20. another position?

21. A. It would be possible, yes.

22. Q. So, the theory isn't hard fast, you could vary even with-
23. in your firm.

24. A. Yes.

1. Q. And, as a matter of fact, you know that Mr. Harland Bar-
2. tholomew testified for the County of Fairfax and testified
3. that it was not necessary or expedient for the City of
4. Falls Church, a city of twelve thousand persons, to ex-
5. pand its boundaries in 1959.

6. MR. COGAR: I object to the question and move
7. that it be stricken. The witness has testified that he
8. was working in St. Louis and he was not familiar with
9. the case.

10. MR. FITZGERALD: That doesn't make any differ-
11. ence. He has been with the firm for twenty-seven years.

12. MR. COGAR: He said he knew nothing about the
13. case.

14. JUDGE MOON: He's not responsible for every-
15. thing the firm did. As a witness he's responsible for
16. his opinion. I think he has admitted that other experts
17. might vary in opinion; but I don't think you necessarily
18. have to go into individual experts who might disagree
19. with him. He said other people disagree with him.

20. MR. FITZGERALD: Your Honor, this witness
21. covered a fairly wide, and I might say deep, range of
22. topics. He went to, I think, Birmingham, Delaware, all
23. over the country, and I'm asking him about one little
24. city in the State of Virginia.

1. JUDGE MOON: But he said he didn't know any-
2. thing about it.

3. Q. You know nothing about the City of Falls Church?

4. A. I know a little about the City of Falls Church, but I
5. know nothing about this case that you have referred to.

6. Q. All right, so let's see what you do know, if I may.
7. Do you know that the City of Falls Church was denied
8. annexation and has not expanded its boundaries since
9. 1959?

10. A. I am generally aware that the City of Falls Church has
11. not expanded its boundaries, and that it is located in
12. Northern Virginia and that it is heavily urbanized.
13. Beyond that I know very little.

14. Q. And virtually one hundred percent developed?

15. A. I don't know that. It may be.

16. Q. Are you familiar with the City of Alexandria in the
17. State of Virginia?

18. A. Yes.

19. Q. Have you ever lived there?

20. A. No.

21. Q. Have you ever done any studies there?

22. A. No.

23. Q. Have you ever done any studies for counties adjacent to
24. Alexandria?

1. A. Not with the county as a client.
2. Q. Have you done any studies at all for anybody as a client
3. in areas around Alexandria? Or in Alexandria.
4. A. I have done some studies that related to Fairfax County
5. and some that related to Prince William County.
6. Q. Are you familiar enough with the City of Alexandria to
7. know what has happened to the downtown area or what is
8. called Old Town Alexandria in the last ten years?
9. A. I have been there and I have heard various presentations
10. made relative to its historic preservation.
11. Q. And do you know from observations and from those visits
12. that the central business district, as it was called,
13. and the now called Old Town Alexandria, in the last ten
14. years has gone through a tremendous rebuilding?
15. A. It probably has.
16. Q. And revitalization.
17. A. It has.
18. Q. And you also know that the City of Alexandria about ten
19. years ago was prevented and denied annexation, don't you?
20. A. I cannot really say that I was aware of that.
21. Q. So it is possible for a City to exist and thrive without
22. continually increasing the size of its acreage.
23. A. Oh, yes.
24. Q. I believe you said that the County would have to continue

1. its planning process to plan for the future of the County
2. even if this annexation were granted.

3. A. Yes.

4. Q. I believe you said that the County could provide for the
5. development of some eight hundred and fifty square miles.
6. Is that what you said?

7. A. I hope so, yes.

8. Q. You're not familiar with the fact that a considerable
9. portion of that area is in National Park and National
10. Forest?

11. A. I am familiar with that fact.

12. Q. Do you think the County has any way of planning develop-
13. ment of those areas?

14. A. There would be very little input into the planning for
15. those areas.

16. Q. Very little meaning zero?

17. A. I wouldn't say zero. Normally the federal agencies tend
18. to cooperate in some measure with local agencies.

19. Q. I believe you told the Court that this area, urbanized
20. area as you called it, if it were annexed to the City,
21. the County could then devote its efforts to the planning
22. for purely rural development.

23. A. Not purely rural development, but primarily.

24. Q. Primarily. And I believe you said agricultural land,

1. development of agricultural land.

2. A. I hope so, since that is a strong element of its economic
3. base.

4. Q. There's no way to create anymore land in the County,
5. that's impossible, isn't it?

6. A. Yes.

7. Q. You can't create any. What do you mean by planning for
8. agricultural development? What can the County do to
9. plan for agricultural development?

10. A. Well, there's a question of competition for land between
11. agriculture and other development, commercial, industrial
12. and residential, particularly residential. Residential
13. developments tend to be the largest consumer of agricul-
14. tural land. And to plan properly for the location of
15. residential, commercial, and industrial development in
16. order to preserve this agricultural base and to insure
17. harmony between the agricultural base and the other uses
18. is what I mean by planning for agriculture.

19. Q. Are you aware, Mr. Cofer, that this proposed annexation
20. would take away from the County approximately half of
21. its commercial and industrial land development?

22. A. I couldn't vouch for that statistical aspect, but I real-
23. ize that it is substantial.

24. Q. But you say the County can set about, if this annexation

1. is granted, developing other areas for industrial and
2. commercial use to build back its economic base.

3. A. I think that would happen, yes.

4. Q. Well, can you tell the Court how the County is going to
5. devote all its efforts that you say it should devote to
6. the rural interests and agricultural base of the County,
7. at the same time it's devoting the same effort to build-
8. ing back its commercial and industrial base.

9. A. Well, I don't know that the County has particularly de-
10. voted a great deal of its resources to development of
11. the commercial and industrial base that it has, in the
12. sense that it has been thereby deprived of the ability
13. to cope with agricultural land and agricultural problems
14. in the past.

15. Q. Maybe I misunderstood you, but I understood you to say
16. that if this annexation were granted the County could
17. then devote its--forget the urban development, forget
18. that development, and devote its energies to planning
19. for the rural and agricultural development of the County.
20. Now, how can it do that, on the one hand, and somehow or
21. other devote some other energy to trying to build back
22. its commercial and industrial base that you agree would
23. be taken by this annexation?

24. A. Well, I would hope that the energies that the County would--

1. the efforts that the County could be relieved of, would
2. be the development of the commercial and industrial base
3. in the area proposed for annexation. That part. There
4. would be, in my view, a rather considerable amount of
5. commercial and industrial and residential development at
6. other locations in the County.

7. Q. At other locations. Well, will not the County have to
8. devote its efforts to that if that's going to happen?

9. A. You mean you anticipate that the County will devote its
10. efforts in the future to economic development in order to
11. replace this economic base?

12. Q. I don't know, you're the witness that testified that the
13. County could devote its efforts to planning for the
14. rural areas, particularly rural development of the County.
15. Then, on the other hand, you came right back five minutes
16. or ten minutes later and said the County will be able to
17. regain, or words to this effect, its commercial and in-
18. dustrial areas that would be taken by this annexation
19. because these things would grow in other parts of the
20. County.

21. A. I believe that's true.

22. Q. You mentioned that you didn't think the County had devoted
23. any effort to encouraging the growth of the commercial
24. and industrial base. Is that what you said?

1. A. Not any of it, but I seem to hear in your question that
2. they might be required to devote so much effort to that
3. kind of thing in the future that they might neglect their
4. agricultural base responsibility.
5. Q. Do you think that the County's effort to encourage and
6. plan for the commercial development and industrial devel-
7. opment in the remaining part of the County is assisted
8. by this annexation or hurt by it?
9. A. Well, I would hope that to a degree that the County could
10. leave the urban problems of this particular area to the
11. City of Harrisonburg, that it would be freed up of those
12. responsibilities, and could devote those energies to
13. other areas.
14. Q. Well, Mr. Cofer, this area already contains about fifty
15. percent of the County's existing commercial and indus-
16. trial development.
17. A. I realize that.
18. Q. And it's going to help them to take that away from them?
19. A. To the extent that I have discussed before, yes.
20. Q. You mentioned the . . . I think you were somewhat criti-
21. cal of the County's planning. Whatever has been develop-
22. ed in the area sought for annexation has developed there
23. under County planning, hasn't it?
24. A. Yes sir.

1. Q. You don't agree that the Valley Mall should have been
2. developed where it is?
3. A. I didn't say that.
4. Q. You say it's okay then? Is it bad or good?
5. A. I'd say it's good.
6. Q. Donnelley, you don't think that should have been put
7. there? That's not in the area, but . . .
8. A. That's somewhat more questionable, in terms of location
9. with respect to transportation facilities and the like.
10. Q. Not being on a railroad?
11. A. Or a major highway in the sense that other industries
12. are. It's not dead wrong, but . . .
13. Q. You don't know that it is on a railroad?
14. A. It's near a railroad. It probably has a railroad spur.
15. Q. And it is on a major highway?
16. A. Kratzer Road.
17. Q. Do you agree with the industrial development that's
18. taken place in the area sought for annexation along the
19. railroad?
20. A. Yes sir.
21. Q. Along Route 81?
22. A. Yes sir.
23. Q. You like that.
24. A. Yes sir.

1. Q. But you think it ought to be inside the City?

2. A. Yes sir.

3. Q. Putting it inside the City is not going to change it one
4. iota, is it?

5. A. No sir.

6. Q. The only difference is that the City will get the bene-
7. fit of the taxes out of it.

8. A. That's one definite difference, yes.

9. Q. You had a map here showing the existing land uses in the
10. City. Can we have that up, please, along with the exist-
11. ing land uses in the annexation area which is over there.
12. Now, Mr. Cofer, you as I recall admitted what you said
13. was the fact that the City . . . that the area that was
14. sought to be annexed, the growth, the industrial growth
15. and commercial growth had been occurring out in that area
16. rather than in the City.

17. A. Yes sir.

18. Q. Well, if you look at your Exhibit H-6, and look at the
19. purple inside the City, and look over to H-8 and look at
20. the purple in the area, would you say there's more than
21. twice the percent of the total area of the City in purple
22. than it is of the purple area in the area?

23. A. No, I couldn't say that without making a computation.
24. It's not apparent from the maps.

1. Q. You talked about the commercial areas, the growth, the
2. lack of it, and are you familiar with City Exhibit 10
3. and 12?

4. A. Yes.

5. Q. Looking at 10, would you agree with my addition that
6. 8.3% of the City is zoned--not zoned, but in industrial
7. use, light and heavy?

8. A. That's right.

9. Q. Is that correct?

10. A. That's right.

11. Q. And in looking at the commercial, 6.8% is in commercial
12. use?

13. A. That's right.

14. Q. And if I flip over to 12, I find that in the area sought
15. for annexation only 3.5% of the area is in industrial
16. use.

17. MR. COGAR: Your Honor, I object to that
18. question. That was an apples and oranges question. He
19. takes a percentage of one area, and a percentage then of
20. a larger area, and if he wants to compare acreage to
21. acreage I think we can get what he's driving at.

22. JUDGE MOON: I think he can ask the question.

23. Q. Before we were interrupted I was asking you wasn't it
24. true that the percent of industrial land in the area

1. sought to be annexed is 3.5%.
2. A. That's right.
3. Q. And the commercial percentages is 2.6%.
4. A. That's right.
5. Q. Now, for Mr. Cogar's benefit, and he can ask me whatever
6. other questions he wants, the acreage is about the same.
7. Out of the fourteen square miles the City seeks to annex,
8. the industrial acreage is about the same as in the pre-
9. sent City of six square miles.
10. A. Well, I would have to add them up, but it looks about the
11. same.
12. Q. Is it your statement that counties generally should not
13. be in the utility service business or providing utilit-
14. ies?
15. A. No, not that statement generally.
16. Q. If a county can do it, it's just as well as a city do-
17. ing it, isn't it?
18. A. No, not for an urban area such as the Harrisonburg urban
19. area where I think it would be better if the utilities'
20. services were performed by a single jurisdiction.
21. Q. Well, Mr. Cofer, Harrisonburg or no other city can ever
22. be not adjacent to some other jurisdiction, can they?
23. A. That is correct.
24. Q. It's got to be adjacent to some other jurisdiction.

1. A. That's right.
2. Q. Somewhere. And the larger that boundary gets, the more
3. area it has adjacent to another jurisdiction, doesn't it?
4. A. That's true.
5. Q. And if your theory is correct, the larger it gets the
6. more problems it has around its perimeter.
7. A. Not necessarily.
8. Q. Utilities aren't usually provided to rural areas, are
9. they? The utilities of sewer and water.
10. A. Not usually.
11. Q. So it's the urban, or as you called it, or developed,
12. the more densely developed areas, that the utilities of
13. water and sewer are provided to.
14. A. That is correct.
15. Q. And there may be some areas not adjacent to the City of
16. Harrisonburg or not really near the City of Harrisonburg
17. that require and will require water and sewer, isn't that
18. true, sir?
19. A. Very likely.
20. Q. And you don't propose that the City of Harrisonburg jump
21. five or ten miles out into the County and provide water
22. and sewer, do you?
23. A. No.
24. Q. So you would agree that the County is going to have to

1. still be, remain, in the water and sewer business, to some
2. degree.
3. A. In some degree, yes.
4. Q. And would you also agree that the feasibility of provid-
5. ing water and sewer in any location depends on having an
6. adequate need or customer base?
7. A. Usually it does, yes sir.
8. Q. That's where the revenue comes from to pay for it,
9. doesn't it?
10. A. That's right.
11. Q. And if you don't have the customer base sufficient to
12. pay for it to make it feasible, you can't solve the prob-
13. lem, can you?
14. A. Well, you may be able to finance it from other sources,
15. and customarily it is in your interest to do so.
16. Q. But customarily and preferably the water and sewer util-
17. ities are set up on a self-sustaining basis, are they
18. not?
19. A. That's correct.
20. Q. Where the customer-consumer, the user, pays for the ser-
21. vice.
22. A. That's usually the objective of it.
23. Q. The City does it here?
24. A. I think so.

1. Q. And the County does it here.

2. A. I think so.

3. Q. Does it make any difference as to who could serve the
4. area more easily cost-wise?

5. A. Well, I'm not prepared to testify to the engineering
6. economics of it. It would seem to me that an orderly
7. extension of the central system which exists, in other
8. words that exists in the City of Harrisonburg, would be
9. more economical than building some sort of a fringe
10. system operated by another jurisdiction.

11. Q. Well, the Regional Authority's sewerage treatment plant
12. is not in the City, the center of the City, is it?

13. A. No, it isn't.

14. Q. And sewage, generally speaking, flows downhill, doesn't
15. it?

16. A. Generally speaking.

17. Q. With some pumping at times. And it's no more reasonable
18. to say that the City has to transport the sewage down to
19. the treatment plant than it is to say that the County
20. could run a line to an interceptor line of the Authority
21. and get it to the treatment plant that way, is it?

22. A. That's true.

23. Q. And if it's true that the County's sewer rate is less
24. than the sewer rate within the existing City, it may be

1. better for the County to do it for the County residents,
2. wouldn't it?
3. A. It might be more effective to some people if the County
4. did it.
5. Q. You were talking about again the inadequacy of the
6. County's planning, and how it's better to develop it
7. under the City government. Are you familiar with the
8. Cloverleaf Shopping Center?
9. A. I think I know generally where it is.
10. Q. Are you staying at the Sheraton Inn?
11. A. Yes sir.
12. Q. Do you go by the Cloverleaf every day twice?
13. A. I suspect I may have seen you in it yesterday.
14. Q. Yes sir, that's how I knew you'd been there. Do you
15. know whether that was developed under County or City
16. planning?
17. A. No, I don't.
18. Q. Do you think that's good planning or bad planning?
19. A. It's a rather typical location for a shopping center.
20. Q. Well, would you say it's good or bad planning?
21. A. Neither especially good nor especially bad.
22. Q. Well, what was wrong with the County's development that
23. you criticized?
24. A. I have not criticized the County's development. In fact,

1. you asked me a while ago about the shopping center. I
2. think the principles put forth in the County's planning
3. are good and correct. It's just that the implementation
4. tools that they have, the zoning ordinances, I think are
5. less well suited for application around this urban area
6. than the City of Harrisonburg's zoning ordinances. I
7. didn't criticize the County's planning as being inade-
8. quate. I think its principles and policies are adequate.

9. Q. Didn't you tell the Court that this area could be better
10. developed under City planning and City zoning?

11. A. Yes.

12. Q. That you would prevent a proliferation of signs, I be-
13. lieve you said, and things of that sort?

14. A. Well, not necessarily that, but I think the area would
15. have a better chance of developing in an organized way,
16. this urban area, if it were under the jurisdiction of
17. the City.

18. Q. Well, all those words sound very good, but for me I'd
19. like to understand what you really mean. You must have
20. something in your mind that's developed out in the area
21. that wasn't developed properly and something that's devel-
22. oped in the City that was developed properly.

23. A. Well, I think I qualified my answer in that sometimes
24. even though development patterns are unfortunate there

1. may have been no alternative to them. And you can't neces-
2. sarily ascribe these results to poor planning on the part
3. of the County; but the commercial strips that are moving
4. out particularly Route 11 and the commercial strip that
5. is likely to move out more on Route 33, I think these
6. are somewhat unfortunate aspects of these areas being in
7. the County when they were developed rather than in the
8. City. I think that with better planning, admittedly at
9. times which is not too often applied, that perhaps some
10. of this commercial growth would have been better consoli-
11. dated than it has been.

12. Q. Well, is the Cloverleaf Shopping Center one of the ex-
13. amples? It could have been better planned and located
14. someplace else?

15. A. I don't know that I can answer that one way or the other.
16. I think it is in an appropriate location.

17. Q. Can you point out one example of where a development has
18. occurred in the City that supports what you're talking
19. about as different than what has developed in the County?

20. A. No, I don't know that I can pick out a specific example.

21. Q. Not one single example.

22. A. No.

23. Q. You were talking about Route 11 South, the strip develop-
24. ment?

1. A. Yes.

2. Q. That's in the City, isn't it, Mr. Cofer?

3. A. Well, a good bit of that development occurred, as I un-
4. derstand it, prior to the 1962 annexation; that that
5. commercial strip character had already been established
6. at the time of the 1962 annexation.

7. Q. So the City was powerless to change it, is that correct?

8. A. When a major thoroughfare is developed with a sprinkling
9. of commercial uses, so much of the land, so much of the
10. frontage is impacted that it is indeed very difficult to
11. change that trend.

12. Q. You talked about having the, I believe you called it the
13. main points of entrance to the City?

14. A. The main points of access.

15. Q. Access?

16. A. Yes.

17. Q. Under City control.

18. A. Yes.

19. Q. Is what you're talking about, the main points of access,
20. wherever the City can reach out and get a cloverleaf of
21. 81, an interchange with Route 81, they should get all
22. four quadrants?

23. A. Those access points are particularly important, yes.

24. Q. And they're important because they are likely to be po-

1. tentential commercial or industrial development?
2. A. Partly for that reason, yes.
3. Q. And really the only reason it's important to control
4. those accesses is to get the commercial and industrial
5. revenues out of them.
6. A. That is one major reason, yes sir.
7. Q. I believe you said that the development around the City
8. that extended out from the City was, I believe you call-
9. ed it, an extension of the development within the City?
10. A. Generally.
11. Q. Therefore it's compatible with the City development,
12. isn't it?
13. A. More or less.
14. Q. Your comparisons of the City's subdivision ordinances
15. and zoning ordinances with the County's, I believe I
16. understood you to say that the County's zoning ordinance
17. took into account agricultural uses as well as develop-
18. ment uses.
19. A. Yes, it does.
20. Q. Well, would you agree that the City's zoning ordinance
21. takes into account only urban uses?
22. A. Not only urban uses. Agriculture is permitted in the
23. City limits.
24. Q. But the City's ordinance is really not designed for a

1. rural area.

2. A. It can accommodate a rural area; but, you are correct, it
3. is more designed for urban development.

4. Q. And you have to read the City's zoning ordinances with
5. its other regulatory prohibitions of use.

6. A. All the regulatory prohibitions apply, I'm sure.

7. Q. Yes sir. Have you looked at those regulations to see
8. whether or not they are compatible with farm use?

9. A. Not all of them.

10. Q. Do you find that some of the City's regulations are not
11. compatible with farm operations?

12. A. I have not examined the City's regulations other than
13. the zoning and subdivision ordinances.

14. Q. Were you here earlier in the case when I read some of
15. the City's regulations to a witness?

16. A. Relative to hog farms, for example?

17. Q. Yes sir. The parking of the poultry trucks and things
18. like that.

19. A. Yes, I was here.

20. Q. As a planner would you say that that is not compatible
21. to agricultural use?

22. A. That the ordinance is not compatible with agricultural
23. use?

24. Q. Yes sir.

1. A. Well, I think in terms of the parking of the vehicles,
2. that's more related to industrial use than it is really
3. to agricultural use. And the hog farm, prohibition
4. thereof, would certainly not be compatible with that par-
5. ticularly intense agricultural use.

6. Q. Did you make any studies to find out just how many active
7. farms were in this area that the City seeks to annex?

8. A. No sir.

9. Q. That didn't make any difference in your judgment as to
10. the desirability of annexing the area?

11. A. Well, certainly I was well aware that there were a num-
12. ber of farms, many farms, many good farms in this annex-
13. ation area.

14. Q. Well, wouldn't it be better if those, as much as possible,
15. those farms were left out of the City so that the County
16. could concentrate on the rural areas, the farm areas,
17. could concentrate on them too?

18. A. Well, except that the City needs land for future growth,
19. yes.

20. Q. Needs land for future growth. That's if it has to get
21. bigger.

22. A. And for control, yes.

23. Q. You mentioned that the County, that this annexation
24. would assist it in meeting its agricultural goals.

1. A. Yes sir.

2. Q. Are you telling the Court that the agricultural goals of
3. the County can be met without commercial and industrial
4. growth within the County?

5. A. No, I think that additional commercial and industrial
6. growth in the County can be anticipated.

7. Q. And it's essential, is it not, that the agricultural
8. goals of being able to hold down taxes on agricultural
9. land so that it can be maintained and retained in agricul-
10. tural pursuit; it's essential, isn't it?

11. A. It is essential to hold down taxes on agricultural land
12. as much as can be done.

13. Q. And commercial and industrial development in the County
14. is the only way that can be held down.

15. A. It's one way.

16. Q. Do you know of any other way?

17. A. There are certainly other taxes than real estate taxes
18. and sales taxes, although they are the main ones.

19. Q. Well, it's either tax commercial endeavors, such as the
20. sales tax and the merchant's capital tax and all of that,
21. or tax the land, isn't it?

22. A. What was that question again?

23. Q. Isn't the major source of the County's revenue, other
24. than taxes on the land, which is the agricultural land,

1. other than that, such things as sales tax from commercial
2. transactions?

3. A. And real estate tax on commercial and industrial land.

4. Q. Yes sir.

5. A. That's true.

6. Q. Well, can you think of any other way the County can hold
7. down the tax load on agricultural land?

8. A. No, but there are other ways to further agriculture than
9. simply holding down the taxes on agricultural land, al-
10. though I would be the first to admit that that is a very
11. important one.

12. Q. So much so that the County has adopted a land use tax
13. plan to assist in holding those taxes down on agricultur-
14. al land.

15. A. They have a plan.

16. Q. And, you did a study to find out how much of that land
17. is in the area sought to be annexed?

18. A. No sir.

19. Q. Mr. Cogar asked you about the City's lack of a public
20. utilities comprehensive plan or that part of a comprehen-
21. sive plan, and you said it wasn't necessary. Did you say
22. that?

23. A. I would prefer that they have one, of course. I also
24. stated, I think, that they occur in different forms, and

1. the one that we have assisted with is a very simple writ-
2. ten description, not accompanied by complex maps.
3. Q. When were you employed to assist in that?
4. A. I think I said 1979.
5. Q. Would that be about two years ago?
6. A. Yes sir.
7. Q. And it's a very simple plan?
8. A. That element of it is very simple.
9. Q. When did you submit it to the City Council?
10. A. The Planning Commission submitted it to the City Council
11. about two weeks ago I think.
12. Q. When did you submit it to the Planning Commission?
13. A. I would have to check with Mr. Sullivan on that, but it
14. was a matter of quite some months ago, probably four to
15. six months ago.
16. Q. Do you know of any reason why the City hasn't adopted it
17. by now?
18. A. The main reason I know of was a problem that they had
19. with the utilities element, particularly the utilities
20. element with respect to the Electric Commission.
21. Q. Their own Electric Commission?
22. A. Yes.
23. Q. Didn't agree with the plan, or didn't want a plan. Which?
24. A. I think it was closer to that.

1. Q. Didn't want a plan.
2. A. Or at least there was a debate on how that should be han-
3. dled as an element of the comprehensive plan.
4. Q. Yes sir. There is also lacking a public facilities plan.
5. That's different than a public utilities plan, isn't it?
6. A. Yes sir.
7. Q. Have you recommended a public facilities plan?
8. A. Yes.
9. Q. And when did you recommend that, at the same time?
10. A. We submitted a series of preliminary reports on these
11. items over the two year period that we were at work.
12. I don't know the dates of each one of these preliminary
13. reports, but this was a part of one of the later ones.
14. Q. Has that been acted on by the Planning Commission?
15. A. No, it has the same status as the others, still under
16. study.
17. Q. I note that you say "these others". There is more than
18. just the public utilities plan and public facilities plan
19. that has not been adopted.
20. A. That is correct.
21. Q. Now, let's find out what others have not been adopted.
22. A. Well, in terms of the elements that we have submitted,
23. none of them have been adopted.
24. Q. Sir?

1. A. None of these in our update. Not any of these. They
2. include a land use plan, they include background stud-
3. ies of the economic base, population, physical conditions,
4. land use, transportation, community facilities of which
5. utilities is part, community development, and implemen-
6. tation studies.

7. Q. And none of those components of the comprehensive plan
8. have been adopted by the City?

9. A. Not any of these in this proposed update have been adopt-
10. ed, but there are in effect now some of those elements,
11. as Mr. Sullivan said.

12. Q. Which of those have never been adopted by the City?

13. A. Is the question has the City ever adopted a community
14. facilities plan? Is that what you mean?

15. Q. Yes.

16. A. They presently do not have an officially adopted public
17. facilities plan except for a couple of elements of it,
18. as I recall. Schools, parks and recreation, there are
19. adopted plans for those. But the other plan elements
20. that we have discussed in the update as public facilit-
21. ies, sewer and water, so far as I know they do not have
22. and I have no knowledge that they ever have adopted those
23. elements as a part of their comprehensive plan.

24. Q. You talked about the condition of the central business

1. district and the effect that the building of the commer-
2. cial areas outside the City have had on it.

3. A. Yes sir.

4. Q. Would you agree that if this area is annexed it's not
5. going to change the condition of the central business
6. district one iota?

7. A. It will change the resource base for the City to cope
8. with the problem in the central business district, that
9. will change.

10. Q. Will it help the business or the merchants? Will they
11. know that that boundary line has been moved out in the
12. amount of business that's done there and the amount of
13. business that's done out where the Valley Mall is?

14. A. If the City is able to improve its services and facilit-
15. ies in the central area by virtue of the improvements in
16. its resources, then I think that merchant would be inter-
17. ested.

18. Q. What could the City do to improve the central business
19. district?

20. A. Improved appearance, assist in the provision of addition-
21. al housing in the central business district.

22. Q. Put housing where businesses already are?

23. A. Improve traffic and parking conditions; generally to
24. beautify the whole area. There's quite an extensive

1. array of approaches that a City can undertake to improve
2. the utility and attractiveness of the central area.

3. Q. The City would assist in actually rebuilding the fronts
4. of the stores and things like that?

5. A. I'm not a specialist in the various community develop-
6. ment programs that are available, but in some cases
7. there is an opportunity for the City to do things such
8. as that.

9. Q. Would they build more parking garages?

10. A. If it could be determined that they would be needed, yes.

11. Q. Don't you know that according to the City's exhibits
12. there the parking garages are sort of empty?

13. A. Yes, they are now, but perhaps these programs would turn
14. that around.

15. Q. Will more parking garages help the already empty garages?

16. A. No.

17. Q. Will eliminating parking meters help?

18. A. It probably would.

19. Q. Are you familiar with this report?

20. A. (Document handed to witness) I have seen it, but I'm
21. not really familiar with the contents.

22. Q. Well, is it made by your firm?

23. A. Yes.

24. MR. COGAR: Could I see what you're referring

1. to, Mr. Fitzgerald?

2. MR. FITZGERALD: As soon as he does, I'll be
3. glad to.

4. A. The date of it is June 17, 1980.

5. Q. 1980?

6. A. Yes.

7. MR. COGAR: Could I see it?

8. MR. FITZGERALD: (Document handed to counsel)

9. MR. COGAR: I understand we gave you this.

10. MR. FITZGERALD: It must be all right then.

11. Q. Do you know Alan R. Siff?

12. A. Yes, indeed.

13. Q. He's a member of the firm of Harland Bartholomew and
14. Associates?

15. A. Yes sir.

16. Q. I am reading from this report dated June 17, 1980, by
17. Harland Bartholomew and Associates, addressed to Mr.
18. Jim Deskins, Director of New Programs, Harrisonburg Re-
19. development and Housing Authority. It states that,
20. "Though some businesses moved from downtown a core of
21. popular stores remain as a stabilizing influence in the
22. central business district." Do you agree or disagree
23. with that?

24. A. I agree with that.

1. Q. In the next paragraph it says, "The available space
2. should meet area growth needs during the foreseeable
3. future, therefore retail development cannot be recommend-
4. ed on the subject property in the current market environ-
5. ment." Do you know what property they're talking about?

6. A. No, I'm afraid I do not.

7. JUDGE MOON: Could you read that again?

8. Q. This, I believe, you will agree is a report to the Re-
9. development Authority concerning the development of a
10. site for redevelopment.

11. A. Yes.

12. Q. And the paragraph of this, "A survey of retail vacancies
13. revealed approximately 42,000 square feet of available
14. retail space downtown compared with about 40,000 square
15. feet in the Mall area."

16. A. Yes sir.

17. Q. So there's about the same amount of vacant space.

18. A. Roughly.

19. Q. "The available space should meet area growth needs during
20. the foreseeable future, therefore retail development can-
21. not be recommended on the subject property in the current
22. market environment." Do you . . .

23. A. That apparently is a market analysis for a proposed de-
24. velopment on a particular piece of property. You would

1. not think that an office as small as ours could be com-
2.partmentalized to the extent where I wouldn't be familiar
3. with the community development activities of the office,
4. but I'm afraid that's the case.

5. Q. You referred, I believe, to the rainbow exhibit, H-32.
6. To complete the analogy would you say that the City is
7. sort of looking at the pot of gold at the end of that
8. rainbow?

9. A. That would be your analogy, not mine; although I hope
10. that the City can recapture some of the resources that
11. it has lost at the end of that rainbow.

12. Q. But that's the resources you were talking about as tax
13. resources, to development.

14. A. Yes sir.

15. Q. Not vacant land.

16. A. In this case it's taxes.

17. Q. Do you think that the County is entitled to have any of
18. this commercial and industrial base retained by it?

19. A. I think the County is entitled to a substantial commer-
20. cial and industrial base, but I believe that it is the
21. objective of the County that the urban areas be a sound
22. economic unit, and I believe that in order for that to be
23. assured that virtually all of the commercial and indus-
24. trial base in this particular urban area should be inside

1. the City limits of Harrisonburg.

2. Q. No matter how much of the County's commercial or indus-
3. trial growth is consumed.

4. A. No matter how much in this case.

5. Q. I believe you agreed that James Madison University was
6. all and all an asset to the City.

7. A. Yes sir.

8. Q. When you said that all of this ought to be under . . .
9. the developed area ought to be under one government,
10. and you said that the County in your opinion will con-
11. tinue to grow outside the area, true?

12. A. Yes sir.

13. Q. Is it your proposition that as soon as that area outside
14. the area grows and develops, that all of that will be
15. taken into the City too?

16. A. Well, I would hope that so far as this particular urban
17. area is concerned, that most of the growth, virtually
18. all of it, in the vicinity of this urban area would be
19. inside the boundaries of this annexation area. And that
20. the City would not be forever and ever to play the catch-
21. up ballgame that I mentioned in moving its boundaries
22. outward after an area has developed. It would be my re-
23. commendation that the boundaries stay ahead of that.

24. Q. Mr. Cofer, you talked about the County catching up, you

1. said that the County would develop, I believe you said,
2. south on Route 11, did you not?
3. A. I mentioned some locations. I did mention some locations
4. beyond the annexation area.
5. Q. And on out Route 33 beyond the annexation area.
6. A. Well, not necessarily immediately beyond. Not adjacent.
7. Q. Do you want a scattered development out there?
8. A. No. But there is a substantial area of the County re-
9. maining beyond the annexation area, in the towns for
10. example.
11. Q. I understand about the towns. We talked about around the
12. City of Harrisonburg, and you mentioned, I thought you
13. said, that the County had potential development, possibil-
14. ities, of various development south on Route 11 and east
15. on Route 33.
16. A. I was speaking of inside the annexation area.
17. Q. Well, that's not any longer going to be in the County if
18. the annexation is granted, is it?
19. A. No sir.
20. Q. So, are you saying then that the County does not have the
21. possibility of growing back some of its commercial and
22. industrial uses south on 11 and east on 33?
23. A. There may be, but I hope that this would not occur imme-
24. diately outside the future City boundaries.

1. Q. You don't want it to develop around the City then?

2. A. I would like for it to develop with the City.

3. Q. Well, suppose somebody comes and wants to locate outside
4. the City, like some others have? Should the County
5. develop further on out and try to get back its commer-
6. cial and industrial base; or say no, we don't want it.

7. A. If the County is serious about its planning policies,
8. to encourage orderly compact growth in and around urban
9. areas, then it would seem to me that in fact, yes, the
10. County would turn down this particular commercial devel-
11. opment and encourage it to locate contiguous to the com-
12. pact urban center, which would be inside the City limits.

13. Q. Well, Mr. Cofer, I'm just a little confused as to what
14. you're saying. On the one hand you say that the County
15. has the possibility and probability, as I understood you,
16. to get back its commercial development outside the City.
17. It's not going to do the County any good to have it go
18. inside the City.

19. A. No sir.

20. Q. Outside the City on the one hand, but you say that if it
21. came to be that somebody came to locate a commercial en-
22. terprise or industrial enterprise and it was outside the
23. City, the County ought to tell them to go inside the
24. City.

1. A. If it were to be a part of the Harrisonburg urban area
2. it ought to be inside the City. I have said previously
3. that there are many areas outside the City, completely
4. off the area shown on that map, for example, where there
5. will be substantial commercial and industrial development
6. in the future. We talked yesterday about a major indus-
7. trial prospect that's way off that map.

8. Q. Oh, yes.

9. A. It's not near any of the existing urban area. And there
10. will be others like this.

11. Q. Getting back to your testimony earlier, you talked about
12. south on Route 11 and east on 33, and you weren't talking
13. about the Coors brewery when you talked about that, were
14. you?

15. A. And if I gave you the impression that I was talking about
16. development in the County immediately adjacent to the an-
17. nexation area, I'm sorry I gave you that impression, be-
18. cause I was talking about future development in what is
19. now the County but is inside the annexation area.

20. Q. Oh, I see. You told the Court that you agreed with the
21. County's plan that development should occur in and around
22. the municipality.

23. A. Yes.

24. Q. Well, you agree with it now before annexation, but after

1. annexation you don't agree with that plan?

2. A. Well, I think you can further the goals of that plan by
3. means of this annexation.

4. Q. Well, is that your statement now, that after annexation
5. you would not agree that the County development, commer-
6. cial and industrial development, should not occur around
7. the City of Harrisonburg?

8. A. I would prefer that the commercial and industrial devel-
9. opment which occurs in the Harrisonburg urban area, that
10. it be inside the City limits.

11. Q. And the County get no benefit from any development
12. around the City.

13. A. Well, there somehow is an impression in these annexation
14. proceedings that the County does not benefit from the
15. City of Harrisonburg. The County benefits a great deal
16. in many ways from the City of Harrisonburg. Not directly
17. in terms of tax base, but in many other ways. And to
18. encourage a strong, major--strong economically, major
19. urban center in this County, I believe, is very definite-
20. ly to the benefit of the County.

21. Q. Mr. Cofer, we're talking about your testimony where you
22. said the County could develop back or get back, develop
23. commercial and industrial uses in the County. And I
24. understood that to mean to be outside the annexation area.

1. A. That is correct.

2. Q. All right, and that's where the County directly benefits,
3. from the tax dollar, isn't it?

4. A. That is correct.

5. MR. FITZGERALD: That's all.

6.

7. Re-Direct Examination by Mr. Cogar:

8. Q. Mr. Fitzgerald handed you a copy of a letter from a
9. member of your firm, I believe this is the letter he
10. handed you?

11. A. Yes.

12. Q. You were not shown the entire report. Will you tell the
13. Court what that report is that you were questioned on?

14. A. It is titled, "A Revised Economic and Market Analysis
15. Study for C.B.D. Revitalization in Harrisonburg, Virgin-
16. ia", June, 1980.

17. Q. That focuses upon the market conditions and economic
18. feasibility of developing one block or redeveloping one
19. block of land in Harrisonburg, is that correct?

20. A. I believe it does.

21. Q. Now, he read to you or read to the Court one or two
22. paragraphs of that. Would you read the summary findings
23. and conclusions as it relates to the development or re-
24. development of that one block.

1. A. "Summary Findings and Conclusions. The subject property,
2. located one block north of the Courthouse Square in Harri-
3. sonburg, is best suited for commercial/office use under
4. a joint public/private approach which will provide accep-
5. table development and financing cost level. Valley Mall
6. and other retail development outside of the City has
7. changed shopping patterns in the Harrisonburg trading
8. area. Popularity of the new facilities significantly
9. exceed that of downtown. There is a substantial excess
10. of retail space available in the Harrisonburg area rela-
11. tive to future demand. Therefore, retail development of
12. the subject property cannot be recommended. Current mar-
13. ket and financial conditions preclude development of a
14. speculative office building. A pre-leased office build-
15. ing constructed on the site utilizing favorable financing
16. appears to represent the best immediate alternative use
17. for the subject property. Construction of a motel/hotel
18. cannot be recommended for the study site. The relative
19. merits of the location, room demand, and financial market
20. conditions are not favorable for development. There is
21. an unfulfilled demand for housing in Harrisonburg, al-
22. though planning considerations may preclude this type of
23. development on the subject site. The Authority should
24. continue its property acquisition program and assume an

1. owner/operator role regarding subsequent interim uses."

2. Q. Were you present, Mr. Cofer, when Mr. Deskins testified
3. that the request for federal funding of that project had
4. been denied?

5. A. Yes.

6. Q. Were you aware of that independently?

7. A. No.

8. MR. COGAR: I have no further questions.

9.

10. Re-Cross Examination by Mr. Fitzgerald:

11. Q. Annexation won't change those conclusions one iota, will
12. it, sir?

13. A. Except to the degree it will reinforce the City's abil-
14. ity to cope with problems such as this.

15. Q. Will it reinforce the County's ability to cope with
16. problems such as that in the County?

17. A. No.

18. ~~MR. FITZGERALD: That's all.~~

19.

20. JUDGE TRABUE: Mr. Cofer, have you read the
21. report of the Commission on Local Government?

22. A. Yes sir.

23. JUDGE TRABUE: Are you familiar with its re-
24. commendations concerning the Study Area No. 3, which is

1. the southwest portion of the proposed annexed area?

2. A. Yes sir.

3. JUDGE TRABUE: Do you agree or disagree with
4. their recommendation; and if you either agree or disagree,
5. can you state your reasons why. The recommendation that
6. Study Area No. 3 be eliminated from the annexed area.

7. A. Well, it has been my experience in working with cities
8. in this general size category, that it is very difficult
9. for me to conceive of a city, an urban area of this
10. type, that had within it so much vacant land that it was
11. a handicap; whether or not it was farming area, particu-
12. larly if it were a good development area, as a good deal
13. of this is. Now, I recognize that it's greatly non-
14. urban; it's most of it farms, it's very attractive, roll-
15. ing countryside. But in view of the City's needs for
16. vacant land and in view of the urban corridors which are
17. gradually developing down both sides of it, my recommen-
18. dation would be that that whole area be included within
19. the future City and not excluded as the Commission re-
20. commended.

21. JUDGE TRABUE: If it were not included, do
22. you have an opinion as to where the line should be pro-
23. perly drawn with regard to Route 11 and Route 81, given
24. the industry that exists there now and given the fact

1. that the County is apparently furnishing water for a con-
2. siderable distance north of the yellow line along Route
3. 11?

4. A. Well, of course I would recommend from the standpoint of
5. the City that all of this urban development in this area
6. generally down Route 11 be included in the City. I would
7. also for the sake of control of both sides of the road
8. recommend that the line be drawn substantially back from
9. the west side of Route 11.

10. JUDGE TRABUE: You realize that the Commission
11. recommended the line . . . you really can't tell from
12. looking at the map, but it's apparently right at Inter-
13. state 81 rather than Route 11.

14. A. Here?

15. JUDGE TRABUE: Yes. No, south of the clover-
16. leaf, right there and then cut over and parallel down
17. with 81.

18. A. Here?

19. JUDGE TRABUE: That's where the report indi-
20. cates the line, the study line goes.

21. A. Well, from the standpoint of what I said earlier, from
22. the access standpoint, my recommendation is to include
23. both sides of Route 11 in addition to the interstate.

24. JUDGE TRABUE: Thank you.

1. JUDGE MOON: What would it do to the Town of
2. Dayton as a future center of development for the County
3. if the City were to obtain that area northeast of it?
4. A. That's a matter that would require further consideration
5. on my part. I am not familiar enough with the future
6. needs of Dayton to know how their future expansion to
7. the northeast . . . how important that might be to them
8. that their future expansion to the northeast might be
9. cut off by this annexation.

10. JUDGE MOON: Thank you.

11.
12. MR. COGAR: Your Honor please, that concludes
13. the City's evidence.

14.
15. MR. FITZGERALD: Your Honors, if that con-
16. cludes the City's case, I am mindful of the Supreme
17. Court of Virginia's admonition concerning annexation
18. cases being stricken on a motion to strike, but I am com-
19. pelled to make a motion. I have sat through the days
20. listening to the testimony and have heard the profound
21. statements from witness after witness saying the City
22. needs to be larger, the City needs more vacant land, the
23. City needs more; but I have yet to hear why the City needs
24. anything. You have had described to you, in my judgment,

1. this witness. But I think we accommodate him in every
2. way throughout, and I think . . .

3. JUDGE MOON: Well, Mr. Fitzgerald, to the
4. extent that you can, will you accommodate them by . . .

5. MR. FITZGERALD: From now on we can do it.
6. We couldn't today, and we told him so.

7. JUDGE MOON: All right, thank you. Who is
8. the witness?

9. MR. FITZGERALD: Mr. Osborne.

10.
11.
12. WILEY J. OSBORNE,
13. having been duly sworn, testified as follows:

14. Direct Examination by Mr. Fitzgerald:

15. Q. State your name.

16. A. I'm Wiley J. Osborne.

17. Q. And where do you live?

18. A. 119 Belmont Drive, Harrisonburg.

19. Q. What is your occupation?

20. A. Highway engineer with the Virginia Department of Highways
21. and Transportation.

22. Q. And what residency?

23. A. Harrisonburg residency.

24. Q. And does the County of Rockingham come under your juris-

1. diction?

2. A. Yes sir.

3. Q. Does the road construction and maintenance in Rockingham
4. County come within your supervision?

5. A. Yes sir.

6. Q. And are you familiar with the budget, the funds that are
7. budgeted and allowed to maintain and construct roads in
8. Rockingham County?

9. A. Very much so.

10. Q. Mr. Osborne, I believe it was Mr. John Driver for the
11. City testified and made a comparison of the funds avail-
12. able to maintain the roads and streets in Rockingham
13. County as compared to the City. Are you apprised of
14. that testimony?

15. A. I saw what was in the newspaper, that's all.

16. Q. Did you find that to be correct?

17. A. No sir.

18. Q. Would you tell the Court what is correct?

19. A. So far as maintenance is concerned, we really have two
20. categories of maintenance. Maintenance and maintenance
21. replacement. By system, for the secondary highway sys-
22. tem we have a total of two million sixty-two thousand
23. plus dollars allocated in the current year.

24. Q. And that compares to what figure that Mr. Driver gave?

1. A. What was in the paper was something like nine hundred and
2. some thousand dollars; I can't give you the exact figure.

3. Q. All right, sir. And what other funds are available for
4. the maintenance?

5. A. The primary highway system, a million three hundred and
6. seventy-three thousand dollars. The interstate system,
7. four hundred and three thousand dollars. Plus an addi-
8. tional seven hundred and sixteen thousand dollars that
9. was used for resurfacing.

10. MR. COGAR: What was the last number?

11. A. For the interstate system?

12. MR. COGAR: No, the one following that.

13. A. The primary system was a million three hundred and seven-
14. ty-three thousand plus. The interstate system was four
15. hundred and three thousand dollars plus. And in addition
16. to that an allocation for interstate maintenance that
17. was federally funded of seven hundred and sixteen thou-
18. sand dollars. This was for maintenance alone and does
19. not include construction.

20. Q. And give us the figure for maintenance and replacement
21. for the secondary system?

22. A. Two million sixty-two thousand dollars. Two million
23. sixty-two thousand six hundred and nineteen, to be exact.

24. Q. There are also funds for primary extensions?

1. A. This would be maintenance payments to the City of Harri-
2. sonburg.
3. Q. That is what was paid to the City of Harrisonburg?
4. A. Yes sir.
5. Q. Do you have an analysis of the payment for the improve-
6. ments on South Main Street?
7. A. Yes sir.
8. Q. What was the total cost of the project in the City?
9. A. It was broken down, as far as we're concerned, into
10. two projects; between Grattan Street and Monument Avenue,
11. a total cost of a million eight hundred and seventeen
12. thousand dollars.
13. Q. How much of that did the state pay?
14. A. Eighty-eight percent, or a million six hundred and four-
15. teen thousand dollars.
16. Q. And what was the other project?
17. A. The other was from Monument Avenue to the south corpor-
18. ate limits. It was two million six hundred and eighty-
19. six thousand dollars.
20. Q. Total?
21. A. Total.
22. Q. How much of that did the state pay?
23. A. Eighty-three point one percent.
24. Q. Did you make a computation of the funds attributable to

1. the area sought for annexation?

2. A. A rough figure based on scale distances and Mr. Driver's
3. testimony.

4. Q. And how much of the funds would be lost as a result of
5. this annexation for road maintenance in the County?

6. MR. COGAR: For what period are we speaking
7. of, Mr. Fitzgerald?

8. MR. FITZGERALD: In the current budget.

9. A. The figures I'm talking about is a yearly thing. The
10. loss would be a little bit . . . I have not determined
11. the loss, but the state would pay the City an additional
12. two hundred and thirty-nine thousand seven hundred dol-
13. lars.

14. Q. That would go to the City?

15. A. Would go to the City.

16. Q. That's got to come from some funds, is that correct?

17. A. It all comes from highway funds.

18. JUDGE MOON: Was that figure different from
19. Mr. Driver's figure?

20. A. The one for the maintenance payments to the City?

21. JUDGE MOON: Yes.

22. A. I don't know of any figure that he quoted.

23. Q. There was a statement made here in the City's case con-
24. cerning snow removal. Does the State Highway Department

1. provide snow removal for this area?

2. A. For all the County, yes sir.

3. Q. Would you state how many vehicles you have available to
4. provide the snow removal for the County of Rockingham?

5. A. Approximately sixty to sixty-five, depending on how you
6. figure it. We have thirty-two trucks of our own, approx-
7. imately twenty hired trucks, nine motor graders, six
8. front end loaders, and a lot of other hired equipment
9. that we can get available if we need it.

10. Q. Does this also include the snow removal from subdivision
11. streets?

12. A. Yes sir.

13. Q. A statement was made by a witness who complained that
14. it was several days before the Highway Department got
15. around to removing snow from his street.

16. A. It's been years since we have not completed snow removal
17. operations within twenty-four hours after it has quit
18. snowing.

19. Q. Does your division have quite a reputation for its expe-
20. ditious snow removal?

21. A. Yes sir.

22. MR. FITZGERALD: That is all.

23.

24.

1. Cross Examination by Mr. Cogar:

2. Q. Where do you live, Mr. Osborne?

3. A. 119 Belmont Drive. That is in the County.

4. Q. That is in the County?

5. A. Belmont Estates.

6. Q. Do you know Mr. Barnes, seated right here?

7. A. I met him recently and have known him vaguely for years,
8. I think. He at one time worked with the Highway Depart-
9. ment, I believe.

10. Q. He visited you this past summer, did he not, to get
11. some information?

12. A. Yes sir.

13. Q. Is that correct?

14. A. Yes sir.

15. Q. On the occasion of that visit you knew he was concerned
16. with the annexation, did you not?

17. A. Yes sir.

18. Q. And on the occasion of that visit you told him you would
19. like to be annexed to the City of Harrisonburg, did you
20. not?

21. A. If all the annexed area is taken as proposed.

22. Q. Did you make that qualification?

23. A. Yes sir.

24. Q. Now, on these funds that you have referred to, I'm some-

1. what confused in the figures. I have a figure here first
2. of two million sixty-two thousand. That is in your cur-
3. rent budget, is that correct?

4. A. Yes sir, that's for maintenance of the secondary highway
5. system.

6. Q. Have you been publicly quoted as using a figure of nine
7. hundred and fifty-one thousand dollars for the secondary
8. system?

9. A. For construction on the secondary system.

10. Q. For construction. All right, sir, now, I don't recall
11. you in the numbers that you gave to the Court mentioning
12. the figure nine hundred and fifty-one thousand.

13. A. No sir, I was not asked about construction.

14. Q. Well, I'm asking you at this time.

15. A. That is the proposed or the anticipated budget for fiscal
16. year 1981-82, based on a decrease of approximately forty
17. percent from the current year, which will take place in
18. both secondary and urban highway funds if we do not get
19. additional revenue.

20. Q. So, that will be spent from June of this coming year to
21. June of the following year for construction throughout
22. the County?

23. A. Throughout the County, yes sir.

24. Q. Do you know where it's going to be spent?

1. A. Most of it, yes sir.
2. Q. And where is most of it going to be spent?
3. A. A major portion will be mainly to pay for deficits that
4. we have at the current time.
5. Q. Will be for what?
6. A. Paying deficits off on projects that we currently have
7. underway.
8. Q. Well, that does not build any roads.
9. A. No sir. A major allocation can be, I've not got it
10. finalized yet, can be on Route 763 in Park View.
11. Q. Well, I don't understand what you mean, "can be".
12. A. The budget is not final yet.
13. Q. All right, sir. Well, you've got nine hundred and fifty-
14. one thousand dollars for construction, which is going to
15. be used for debt retirement?
16. A. Right.
17. Q. Is that right? And you don't have any other money at
18. this time for construction in the next fiscal year.
19. A. Not on the secondary system.
20. Q. And how many miles of secondary system are there in the
21. County?
22. A. Roughly nine hundred and five miles.
23. Q. Does any of that need to be replaced?
24. A. About sixty percent.

1. Q. Is any of it unpaved?

2. A. About two hundred and sixty miles.

3. Q. How much do you propose to spend for construction in the
4. annexation area--well, you're not spending any, excuse
5. me. How much do you propose to spend for maintenance
6. of the nine hundred and five miles in the coming year?

7. A. It would be, on the secondary system, if Mr. Driver's
8. figures are correct, it would be roughly thirty times
9. about twelve hundred dollars, or approximately thirty-
10. six thousand dollars. That's a rough figure.

11. Q. Thirty-six thousand dollars for maintenance of all roads
12. in the County?

13. A. No sir. The proposed annexed area.

14. Q. Oh, in the proposed annexed area.

15. A. I think that was your question.

16. Q. Oh, I beg your pardon. Now, is that a particular pro-
17. ject?

18. A. No sir, that is for maintenance. This is for ditch
19. cleaning, paving, resurfacing, replacing pipe, . .

20. Q. Potholes?

21. A. Potholes. We try not to have too many of those, but
22. they do occur once in awhile.

23. Q. Will you spend any of that thirty-six thousand dollars
24. on any unpaved roads in the annexation area?

1. A. I think there's probably only about one unpaved road in
2. the proposed annexation area, if I recall.
3. Q. Can you answer my question now?
4. A. Repeat your question again, please.
5. Q. Will you spend any of the thirty-six thousand dollars . .
6. A. Oh, yes sir.
7. Q. All right, how much?
8. A. It will be probably one mile, if I recall, maybe a thou-
9. sand dollars.
10. Q. But we're not talking about a lot of money, your thirty-
11. six thousand dollars. Have you got a breakdown of how
12. that's going to be allocated?
13. A. That will be to all the different maintenance activities
14. that we incur for maintenance.
15. Q. So, you really don't know how that's going to be spent.
16. A. No sir. It's not pinpointed at this time.
17. Q. Will you spend it all on one thing over there?
18. A. No sir.
19. Q. You might?
20. A. It will be snow removal, it will be resurfacing, it will
21. be whatever is needed in the area. For example, we have
22. scheduled resurfacing with a slurry seal practically all
23. of Park View.
24. Q. And when was the last time you did that?

1. A. It's been several years ago, probably eight.
2. Q. And how many miles of streets do you have in Park View?
3. A. I don't have the figure right on top of my head, but
4. about twelve to eighteen.
5. Q. Well, you're not going to resurface Park View out of
6. this thirty-six thousand, are you?
7. A. Well, that was a rough figure that I gave you just off
8. the top of my head. You talk about resurfacing Park View,
9. you're adding probably that much more.
10. Q. Well, do you have the figures? I assumed . . .
11. A. Not figures like you're talking about, no sir.
12. Q. How many miles of primary do you have in the annexation
13. area?
14. A. We have an estimated 28.32 lane miles. This is one
15. lane times the length of the road. Thirty-three east,
16. for example, would be four times the regular length.
17. Q. I see. And how much do you propose to spend in the next
18. fiscal year on the primary system within the County?
19. A. We've not got that budget worked up yet.
20. Q. Are you going to spend anything?
21. A. Yes sir. We have not gotten the figures from Richmond
22. on what the budget will be.
23. Q. Well, when did you get the figures on the maintenance,
24. the two million sixty-two?

1. A. That is the current budget we're operating in now.
2. Q. I see. Well, what is your current budget for primaries?
3. A. A million three hundred seventy-three thousand.
4. Q. I see. And for what purpose is that being allocated?
5. A. It's for all maintenance, snow removal, resurfacing, the
6. whole ball of wax of highway maintenance.
7. Q. That's on the 28.32 lane miles. Is that correct?
8. A. No sir. The figure that I gave you was for the mainten-
9. ance in Rockingham County.
10. Q. All right, let me back up, I'm afraid I don't understand
11. you. You mentioned the figure a million three hundred
12. and seventy-three thousand dollars.
13. A. Yes sir.
14. Q. And that's for primary roads, the current year, is that
15. correct?
16. A. In Rockingham County.
17. Q. In Rockingham County. And how many miles of primary
18. roads are there in Rockingham County?
19. A. A hundred and sixty-seven.
20. Q. Is that lane miles?
21. A. No sir, that's miles.
22. Q. So, what's the 28.32 lane miles?
23. A. That is the approximate amount that is in the proposed
24. annexed area.

1. Q. How much of the million three seventy-three is going to
2. be spent on the 28.32 lane miles in the annexation area?

3. A. The million three seventy-three is what is in this
4. year's budget, and it's almost practically spent at this
5. time.

6. Q. Well, how much has been spent in the annexation
7. area?

8. A. I don't have that figure.

9. Q. Has anything been spent?

10. A. Oh, yes sir.

11. Q. All right, sir, for what?

12. A. For snow removal, for resurfacing, for ditch cleanout,
13. pipe replacement, everything that you do on maintenance.

14. Q. All right, have you constructed any roads in there out
15. of this money in this year?

16. A. We never construct any roads from maintenance funds.

17. Q. All right, sir. Can you give me any approximation of
18. how much of the million three seventy-three has been
19. expended in the annexation area?

20. A. (Witness uses calculator) Probably in the range of
21. ninety thousand dollars.

22. Q. All right, what percentage of the . . . since you have
23. the calculator there, what percentage of the total roads
24. are in the annexation area?

1. A. Of which system?
2. Q. Of the primary.
3. A. Less than seven percent.
4. Q. And how did you arrive without the benefit of figures
5. at the amount spent in the annexation area?
6. A. That was times the lane miles, which it's an average
7. expenditure..
8. Q. You just took an average, you don't really know.
9. A. I don't have an exact figure, no.
10. Q. All right, sir. You were asked about what the City
11. would get in the event of this annexation and you said
12. two hundred and thirty-nine thousand dollars, is that
13. correct?
14. A. Additional, yes sir.
15. Q. Additional funds from the Department of Highways?
16. A. Yes.
17. Q. And that would be for what purpose?
18. A. For maintaining City streets.
19. Q. And I think you testified that you were not saying that
20. that would be lost to the County.
21. A. It would be lost to the County, not in a direct one-to-one
22. ratio, because we don't get the amount of maintenance
23. funds for County roads as do City streets get.
24. Q. Well, you don't know what the County will get next year.

1. A. I don't have an exact figure.
2. Q. Do you have any figure?
3. A. Approximately twenty-two percent more, twenty to twenty-
4. two percent more than what we got this year.
5. Q. So, they are actually going to get more money this coming
6. year than they've had . . .
7. A. For maintenance.
8. Q. All right.
9. A. Of course, once the annexation takes place, the funds
10. will be adjusted accordingly.
11. Q. Right. Well, do you know of your own knowledge how they
12. are adjusted?
13. A. No.
14. Q. By whom are they adjusted?
15. A. The maintenance funds are adjusted by our maintenance
16. division in Richmond based on the needs in each County
17. for maintenance. And once the mileage decreases, so does
18. the need for maintenance decrease.
19. Q. So, to the extent that the County is relieved of the
20. maintenance of a certain percentage of its roads, its
21. revenues will be proportionately reduced. Is that cor-
22. rect?
23. A. That's correct.
24. Q. And they will, in essence, have available to them the

1. same amount of money for maintenance and construction per
2. lane mile as they had before annexation.
3. A. Essentially, yes sir.
4. Q. Within the annexation area, what streets receive the
5. benefit of snow removal?
6. A. All state maintained roads.
7. Q. Well, how about in the subdivisions over there?
8. A. All the state maintained subdivisions, yes sir.
9. Q. You go into Forest Hills and scrape all those roads?
10. A. Yes sir.
11. Q. Do you scrape all twenty-eight point three two miles of
12. streets in the annexation area in the event of snowfall?
13. A. In the case of less than a three inch snowfall with no
14. buildup, we may not plow it at that particular time.
15. Q. When do you do all of them?
16. A. We service them all at each snow removal as to what is
17. needed.
18. Q. There as well as all over the County?
19. A. Yes sir.
20. Q. How about in the towns?
21. A. Some of the towns have their own pieces of equipment and
22. help us out on it; but we see that it is done.
23. Q. And this is how many miles total for which you provide
24. snow removal within the County?

1. A. A little over eleven hundred.
2. Q. You scrape eleven hundred miles. And what is the size of
3. your work force for that?
4. A. We have of our own employees approximately 140, plus we
5. have hired trucks available, hired equipment available,
6. as needed.
7. Q. That's 140 employees in Rockingham County?
8. A. Approximately.
9. Q. And how many of them actually perform snow removal work?
10. A. Practically everybody performs some function during snow
11. removal.
12. Q. How many pieces of snow removal equipment do you have to
13. cover this eleven hundred miles of roads?
14. A. We have available . . .
15. Q. How many do you have? .
16. A. We have of our own approximately thirty-two trucks, nine
17. motor graders, six front end loaders and three dozers.
18. Q. Mr. Osborne, do you tell this Court that in the event of
19. a three to five to eight inch snow storm that you scrape
20. all eleven hundred miles of highways in Rockingham County?
21. A. Yes sir.
22. Q. In what period of time?
23. A. Within twenty-four hours after it stops snowing.
24. Q. So, if it snows for three days, you'll be through within

1. four?
2. A. Yes sir.
3. Q. Is that correct?
4. A. Yes sir.
5. Q. You are to be complimented.
6. A. Thank you, sir.
7. Q. Are you familiar with Route 710 or Ridge Road? Do you
8. know where that is?
9. A. Yes sir.
10. Q. Where is it located?
11. A. It's . . . I think it's Ridgeville, or I can't think of
12. the extension of . . . Reservoir Street. I think that's
13. the extension in the City.
14. Q. Can we get a map here?
15. JUDGE MOON: How many vehicles did you say
16. you have that actually scrapes streets?
17. A. We have forty of our own that actually do plowing, plus
18. we have twenty hired trucks, plus we have dozers as
19. needed.
20. JUDGE MOON: So, you have sixty that could be
21. plowing snow at one time?
22. A. Yes sir. We may start out with just our own trucks, and
23. as things get worse we increase our operations accord-
24. ingly.

1. Q. Will you step over to the map and point out to the Court
2. where Ridge Road is situated?
3. A. This is Ridge Road (indicating on map). From Port Road,
4. 659, into Interstate 81, and to Reservoir Street.
5. Q. Do you know the location of the Convocation Center that's
6. being built at James Madison?
7. A. Yes sir.
8. Q. Would you point that out to the Court?
9. A. That is being built in this area here (indicating on
10. map).
11. Q. Were you here earlier today when Dr. Carrier testified
12. about his intention with City assistance to build a road
13. from there to Ridge Road?
14. A. I don't believe it was with City assistance, I believe
15. it was with state assistance.
16. Q. Well, I will represent to you that he vouched that the
17. City had offered to assist him in the construction of
18. that road.
19. A. Well, we're actually doing survey work for him.
20. Q. You know of the intention to build a road from there to
21. Ridge Road?
22. A. Yes sir, I had a meeting with the college yesterday about
23. it.
24. Q. That will handle the traffic that will come into the

1. Convocation Center?
2. A. Yes sir.
3. Q. Which will flow onto Ridge Road?
4. A. Yes sir.
5. Q. And what is the condition of Ridge Road?
6. A. Very poor.
7. Q. Has it ever been brought up to highway standards?
8. A. If it was any standards it was a long time ago.
9. Q. You have through the years sat down with the members of
10. the Board of Supervisors and established with them prior-
11. ities for the construction of roads in Rockingham County,
12. have you not?
13. A. Yes sir.
14. Q. And back a year or so ago you had a priority list of some
15. thirty-three projects that you discussed with the Board
16. of Supervisors? In 1979?
17. A. Yes sir.
18. Q. And do they determine after consultation with you the
19. order of priority?
20. A. It's a joint venture between me and the Board of Super-
21. visors.
22. Q. Well, who has the final say?
23. A. We've never reached that point, where we had to have a
24. final say as such.

1. Q. It's just a matter of agreement?

2. A. We've agreed. I think the law says that the Resident
3. Engineer will, but we've never reached an impasse to
4. where we had to go to who has final say on it.

5. Q. Well, in November of 1979 you met with them and discussed
6. a list of thirty-three projects, is that correct?

7. A. Yes sir.

8. Q. And following that meeting you predicted that only about
9. a third will be completed before 1984. Is that correct?

10. A. Yes.

11. Q. Which was the last year of the then plan.

12. A. Yes sir.

13. Q. Now, at that time did you have a priority for Ridge Road?

14. A. Yes sir, I don't recall exactly what it was, but it was
15. certainly behind Route 763 at Park View and Route 726
16. between 33 and 42 that are also in the annexation area.

17. Q. Well, let me see if this refreshes your recollection.

18. I'm reading to you from a newspaper account dated Novem-
19. ber 29, 1979. It says, "The only project which the
20. supervisors assigned a lower priority than Osborne had
21. suggested was Ridge Road from the Harrisonburg City lim-
22. its to Port Road. Osborne listed that project eleven,
23. but the Supervisors who fear the area may be annexed next
24. summer shoved the project to seventeen." Does that re-

1. fresh your recollection?

2. A. I think we agreed on, as I recall now, and I don't have
3. the plan before me; but I think at the present time it's
4. twelfth. If you do, I would appreciate your looking at
5. the project.

6. Q. Well, do you have any idea when it's going to be done?

7. A. With the revenue projections the way it is now, it's very
8. doubtful when.

9. Q. Well, that's been the history of road construction here
10. in Rockingham County, it's been getting further and fur-
11. ther behind every year. Isn't that true?

12. A. I think that's true throughout the country.

13. Q. Is it accurate when you were quoted in March 15, 1979,
14. as saying, "We just keep getting further and further
15. behind, Osborne told the Supervisors, it looks like our
16. six year highway plan is more like a twelve year plan at
17. the rate the state is now funding improvements."

18. A. Like I said, that's true here, it's true everywhere, it's
19. also true in the City.

20. Q. Let me ask you this, Mr. Osborne. You were reported as
21. saying in 1977 that, "It would take about one hundred
22. and twenty-five million to make all the improvements need-
23. ed to Rockingham County's secondary roads. The State
24. Highway Department only has about 2.5 million a year for

1. the job." Is that correct?

2. A. That sounds correct.

3. Q. And this article goes on to indicate that 272 miles of
4. road in Rockingham County are dirt roads. Is that cor-
5. rect?

6. A. That sounds like what it was at that time. I think I
7. mentioned before approximately 260 and it's been a few
8. years since then, so we have some paved.

9. Q. Are you familiar with road construction and maintenance
10. in other communities comparable in size and population
11. to Harrisonburg?

12. A. Probably not too well, but I have a general idea what's
13. going on.

14. Q. Do you know of any City in the State of Virginia that
15. has a better curb and gutter program than Harrisonburg?

16. A. They do a fair job on curb and gutter.

17. Q. What do you mean by fair?

18. A. I mean we can do as good or better.

19. Q. Well, where do you do better on your nine hundred miles
20. of road?

21. A. Secondary streets or secondary roads have very few curbs
22. and gutters on them.

23. Q. Do you have any idea what the percentage of curb and gut-
24. ter is in Harrisonburg?

1. A. It's high.
2. Q. It's quite high compared to other cities, is it not?
3. A. It's a compact city.
4. Q. Well, is the answer to my question yes? It's quite high?
5. A. It's high.
6. Q. Do you believe that overall Harrisonburg does an excel-
7. lent job of maintaining its highways? Streets and high-
8. ways?
9. A. Good.
10. Q. Good compared to what?
11. A. Well, how can I say excellent?
12. Q. Well, just say it.
13. A. I won't say excellent, I'll say good.
14. Q. Where would you say excellent?
15. A. If there were no potholes, if the snow removal was good . . .
16. Q. Well, if you'd give me an example . . .
17. MR. FITZGERALD: Let him answer the question,
18. Mr. Cogar, whether you like it or not.
19. MR. COGAR: Go right ahead.
20. A. Harrisonburg has some good strengths, particularly their
21. curb and gutter. They have some weaknesses so far as
22. commercial entrances are concerned.
23. JUDGE MOON: Commercial what?
24. A. Commercial entrances.

1. Q. Well, perhaps you could tell us what you have in mind.
2. A. I'm talking about particularly Route 42 just in the north
3. corporate limits, I'm talking about the Waterman Drive .
4. Q. What's the problem there?
5. A. No control of traffic going in and out of commercial
6. properties.
7. Q. What sort of control would you think should be there?
8. A. I would recommend a maximum of fifty foot entrances with
9. it paved, the total entrance paved.
10. Q. Have you ever brought that recommendation to the atten-
11. tion of anybody in Harrisonburg?
12. A. Yes.
13. Q. Who?
14. A. Or my assistant has.
15. Q. Well, how long has this condition obtained, how long has
16. it been present, how long has it been needed?
17. A. It's been needed for at least the twelve years that I've
18. been here.
19. Q. All right, sir, and in the twelve years you've never said
20. anything to anybody about it.
21. A. Yes sir, I've talked to my assistant, to mention it to
22. the City during our annual street inspections, and he
23. has.
24. Q. And it needs what?

1. A. It needs control of entrances, rather than just a wide
2. open space from one side of the property to the other.
3. Q. How many miles of streets and highways are there in the
4. City of Harrisonburg?
5. A. I don't know.
6. Q. Do you have any other significant examples of areas that
7. need improvement?
8. A. I think that is the major one. Their snow removal does
9. not stand up to ours.
10. Q. In what respect?
11. A. In that it often gets ahead of them in the early stages
12. of the snow.
13. Q. From where you live to get to work, do you have to come
14. through the City?
15. A. Slightly.
16. Q. Have you ever had any problems?
17. A. I've never wrecked.
18. Q. I didn't ask you that.
19. A. I've never had . . . I've driven on very slippery streets.
20. Often people from my office who do come through the City
21. have had problems.
22. Q. It's not uncommon to drive on slippery streets, is it,
23. in a snow storm? Or after a snow.
24. A. No, but what I said was, that we are ahead of them about

1. ninety-five percent of the time so far as snow removal is
2. concerned.

3. Q. What was the problem--tell me this one more time, I
4. don't want to belabor the point--but what is the problem
5. with the entrance at this place?

6. A. Many locations, a lack of control of traffic. The
7. street merges right on into the commercial property.

8. Q. And what does it need?

9. A. It needs control, curbs around . . . curbs, islands, and
10. so forth.

11. Q. Why is that?

12. A. To keep traffic from coming out in all sorts of crazy
13. manners. It's a safety factor.

14. Q. Do you have that at the entrance to the Highway Office?

15. A. We have it controlled.

16. Q. No, do you have what you just said?

17. A. We have it controlled.

18. Q. Well, how do you have it controlled?

19. A. We have not paved it, but it is restricted to a fifty
20. foot entrance.

21. Q. It isn't even paved?

22. A. A portion of the lot is not; the major entrance is.

23. Q. You're in the highway business and you don't have the
24. entrance to the Highway Department Office paved?

1. A. We're saving a little bit of money.

2. Q. You must be. How much does the County contribute from
3. local funds to the maintenance of highways?

4. A. None.

5. Q. What?

6. A. None.

7. Q. Well, there's nothing that prohibits them from doing so,
8. is there?

9. A. They can contribute under revenue sharing, yes sir.

10. Q. But they don't?

11. A. No sir.

12. MR. COGAR: All right, sir, I have no more
13. questions.

14. JUDGE TRABUE: Mr. Osborne, in the annexed
15. area now, the proposed annexation area, who is responsi-
16. ble for the snow removal? The State or the County?

17. A. The State.

18. JUDGE TRABUE: Who does the maintenance, the
19. State or the County?

20. A. The State.

21. JUDGE TRABUE: The County doesn't do either?

22. A. No sir.

23. JUDGE TRABUE: If that area were to be annex-
24. ed, who would do the snow removal?

1. A. The City.

2. JUDGE TRABUE: And who would do the mainten-
3. ance?

4. A. The City.

5. JUDGE TRABUE: Would that adversely affect
6. your budget?

7. A. It would be cut proportionately.

8. JUDGE TRABUE: How much?

9. A. The mileage, based on what was taken, what was transfer-
10. red to the City. I don't have an exact figure.

11. JUDGE TRABUE: Would it be substantial?

12. A. We would probably be cut back enough to lose one or two
13. employee positions.

14. JUDGE TRABUE: How much money? What's your
15. best estimate?

16. A. I don't have a real guess on it. Anything I gave you
17. would be pulled off the top of my head.

18. JUDGE TRABUE: Thank you.

19. JUDGE ARTHUR: Your budget would be cut be-
20. cause you would have less work to do, isn't that right?

21. A. Yes sir, that would be the reason for having one or two
22. less employees. I don't have an exact figure on that.

23. JUDGE MOON: It wouldn't cut your salary
24. though, would it?

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME V

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 16th 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 18th day of May, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

1. DANIEL A. ROBINSON,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Fitzgerald:

4. Q. State your name, please, sir.

5. A. Daniel A. Robinson.

6. Q. Place of residence?

7. A. Albemarle County, Virginia.

8. Q. What is your occupation?

9. A. Certified Public Accountant and Municipal Consultant.

10. Q. What is your firm affiliation?

11. A. I'm Chairman of the Board of Robinson, Farmer, Cox
12. Associates, Certified Public Accountants, a professional
13. corporation.

14. Q. Your qualifications and experience have been prefiled
15. as Exhibit 106?

16. A. Yes sir.

17. Q. Does that correctly state your professional qualifica-
18. tions?

19. A. Yes sir.

20. Q. I just would like for you to point out several matters
21. in that exhibit. On page one it is reflected that you
22. have had experience as a local government administrator.
23. Would you tell the Court where you had that experience?

24. A. For five years, from 1948 to 1953, I was County Executive

1. of the County of Albemarle, and as such I was the chief
2. administrative officer, the Director of Finance, Assessing
3. Officer, Budget Officer, the Purchasing Agent and ex-offi-
4. cio member of the County Planning Commission.

5. Q. Was it part of your duties as the chief administrative
6. officer of Albemarle County to prepare and submit to
7. the Board of Supervisors a budget?

8. A. Yes sir.

9. Q. Was it also your duty to see that that budget was proper-
10. ly administered?

11. A. Yes sir.

12. Q. I note also that you have audited counties, cities and
13. towns, the financial records of counties, cities and
14. towns, is that correct?

15. A. That is correct.

16. Q. Over what period of time have you conducted audits?

17. A. A forty year period.

18. Q. Forty?

19. A. Yes sir.

20. Q. And, in numbers, how many jurisdictions or how many
21. audits have you done?

22. A. Something over five hundred.

23. Q. I notice also that you have served as a budget consult-
24. ant to various counties. What was the nature of the ser-

1. vice you performed for those counties?

2. A. I have acted from general consultant to the preparation
3. of the detailed budgets for a number of counties.

4. Q. You have also acted as a fiscal consultant for various
5. public entities.

6. A. That is correct.

7. Q. Have you heretofore conducted studies concerning the
8. financial aspects and impact of proposed annexations
9. for testimony in annexation cases?

10. A. Yes, I have.

11. Q. Approximately how many cases have you conducted studies
12. in and testified in?

13. A. Somewhere between fifty and sixty cases over the past
14. thirty-five years.

15. Q. Were you engaged by the County of Rockingham to conduct
16. studies and to prepare the data to show the financial
17. impact upon Rockingham County of the proposed annexation
18. case before the Court now?

19. A. Yes sir, I was.

20. Q. In order to assess the financial aspects of the case,
21. was it necessary to collect and organize certain perti-
22. nent data?

23. A. Yes sir.

24. Q. I refer you to County Exhibit 107, in the County book

1. entitled "Financial Exhibits". I don't want you to read
2. all of this, but I would ask you to go through this
3. exhibit and point out certain comparisons and statistics
4. that will have a considerable effect on the exhibits
5. that follow. First of all I'd like to ask you to tell
6. the Court whether or not this exhibit has been updated
7. from the exhibit that you prepared for the hearing before
8. the Commission on Local Government.

9. A. Yes sir, it has.

10. Q. What have you added to it?

11. A. We have updated it for current population, we have up-
12. dated it for current estimated assessables of the County,
13. we've updated it for current and expected school member-
14. ship, ADM, for the upcoming year that the County is now
15. approaching. And we have also used current budget data
16. that the County has furnished us as to their newly ap-
17. proved budget for fiscal year 1981-82.

18. Q. The County has adopted its 1981-82 budget?

19. A. Yes, it was.

20. Q. Now, would you point out the statistics that you feel
21. play an important part in the determination of the finan-
22. cial impact upon Rockingham County if this proposed an-
23. nexation should be granted.

24. A. I think we first have to look at the area that's proposed

1. to be annexed and consider what is in that area compared
2. with the balance of the County, as to its population, as
3. to its assessables, as to the school children, and as
4. to the items of revenue produced within this area propos-
5. ed to be annexed. We have also considered the County's
6. obligations, long-term obligations, long-term debt; and
7. compared other fiscal data throughout these eight pages
8. of pertinent data.

9. Q. Can you just show us some comparison that in your opinion
10. indicates the effect upon the County?

11. A. Well, let me say this. In considering the taxables here,
12. the general ad valorem tax, we have looked at it from
13. the standpoint of the taxable values as distinguished
14. between the true values; because the taxable values are
15. the values that the County is receiving current revenues
16. on. That is the land use value when you look at the real
17. estate rather than the true value of the real estate.

18. Q. In ~~other words~~, you have reflected the fact that the
19. County does have land use taxation?

20. A. Yes sir, we have.

21. Q. Those same figures have been used by the City, I believe.

22. A. That is correct. I might say this, some of the County's
23. revenues received from the state are not computed on that
24. basis. For instance the basic appropriation for schools,

1. the state in the formula uses a higher figure. That is
2. the true value rather than taxable value; they make a
3. distinction between them. The taxable value is now refer-
4. red to as the land use value rather than the true value.
5. So, the County, even though it doesn't collect the taxes
6. on the true value, it is penalized when it comes to re-
7. ceiving basic appropriations for education.

8. Q. Referring to the 1981 figures, what do you say is the per-
9. cent of the County of Rockingham's population in the area
10. proposed to be annexed?

11. A. We've updated this from the 1980 census. The 1981 census,
12. we estimate that within this area proposed to be annexed
13. it's 5,367 people as against 5,165 in the year 1980, the
14. 1980 census.

15. Q. Just give me the percentage.

16. A. The percentage, we have to look at the percentage from
17. two standpoints also. One, from the standpoint of the
18. County as a whole; and one from the standpoint of the
19. County not including towns. Because the towns draw off
20. certain revenues from the County. So, we have shown here
21. the percentage of the County's estimated 1980 population,
22. including the towns it's 9.08%, it's 11.05% excluding the
23. towns. Next I would turn to the school age children.
24. The estimated 1981 ADM, or first let's take item nine,

1. the 1979-80 ADM for the County is 10,375. In the area
2. proposed to be annexed there's 520. In 1980-81 it's 493
3. or 4.88% of the County as a whole. Going to the ADM for
4. 1980-81, it's 525 or 5.6%. And schools, the estimate
5. for 1981-82, it's down to 483 or 4.90%. That's item fif-
6. teen. Turning to the 1981-82, item seventeen, 1981-82
7. estimated school ADM in the area proposed to be annexed,
8. it's 5.13%. Then turning over to the assessables of the
9. County in the area proposed to be annexed, you'll see
10. under twenty and twenty-one a comparison. You'll also
11. see the 1980 levy. And then turning further on over
12. you'll see the levy produced from the area proposed to
13. be annexed. And while it's 14.15% of the values, it's
14. 15.34% of the actual levy. So, when you consider it as
15. a composite as far as a tax levy, the levy is greater than
16. the percentage of the values.

17. Q. Mr. Robinson, would you just state what percent of the
18. County's merchant capital values are in the area sought
19. for annexation?

20. A. Twenty-two is the 1980. In twenty-two, merchants capital
21. of the area proposed to be annexed is 43.83%.

22. Q. And does that remain substantially the same in 1981?

23. A. In 1981, it's the same; very little change. It doesn't
24. change it by one hundredth of one percent based on the

1. Commissioner's estimates for 1981.

2. Q. How about machinery and tools? What percent of the
3. County's machinery and tools assessables are in the
4. area sought for annexation?

5. A. Thirty point twenty-seven percent. The total levy
6. would be 15.58% as against 14.29% of the assessables.

7. Q. Mr. Robinson, will you tell the Court whether or not
8. these comparative statistics as you have given them, the
9. difference in the percent of school children, in ADM,
10. population, as compared with the values in the area
11. sought to be annexed, the percent of the County's values,
12. and especially the commercial and industrial values, in-
13. dicates a substantial detrimental effect on the County.

14. A. It's a very imbalanced situation as far as costs compared
15. with the revenues of the area.

16. Q. Would you turn to County Exhibit 108 and tell the Court
17. what is shown on this exhibit.

18. A. County Exhibit 108 reflects the assessables, tax values,
19. tax rates and assessment ratios that are available for
20. the period from 1975 through 1981. You will note at the
21. bottom there that the assessment ratios as determined
22. by the State Department of Taxation on real estate is
23. only available through 1978.

24. Q. Mr. Robinson, if you look at the year 1977 and the year

1. 1978 at the top of the page, there is a very substantial
2. increase in the assessed real estate values.

3. A. That is true. The County attempted to go on a one hun-
4. dred percent assessment ratio.

5. Q. And if you look down at the bottom of the page, that is
6. also reflected in the ratios.

7. A. That is correct. It increased, according to the State
8. Department of Taxation, it was increased from 12.9% to
9. 84.3%.

10. Q. And will that large variance because of going to the hun-
11. dred percent ratio be reflected in other exhibits?

12. A. Yes, it will.

13. Q. Would you refer to Exhibit 109 and tell the Court what
14. this exhibit purports to show.

15. A. We have prepared the same general data for the City of
16. Harrisonburg here as to taxable values, tax rates and
17. assessment ratios.

18. Q. Does this exhibit reflect a change in the assessment
19. ratio by going or attempting to go to one hundred percent?

20. A. That is true.

21. Q. What year did that occur?

22. A. In the City it occurred in the tax year 1979 and in the
23. County it occurred in the tax year 1978.

24. Q. So, there is a year's difference in it. The City went

1. to one hundred percent assessment ratio a year later than
2. the County.

3. A. That is correct.

4. Q. Will that also be reflected in certain exhibits?

5. A. Yes sir.

6. Q. Refer to Exhibit 110 and tell the Court what that pur-
7. ports to show.

8. A. County Exhibit 110 reflects the County of Rockingham's
9. long-term indebtedness projected to December 31, 1981.
10. It includes not only all of the permanent debt that the
11. County has, but also the temporary notes that the County
12. now has on improvements underway at the Massanutten
13. Vocational-Technical School. The loans have been ap-
14. proved, authorized, and you'll see the last two items
15. here under B.7. and B.8., the County has a loan approved,
16. a state literary loan of \$622,500.00 and one for
17. \$83,000.00. Our last information is that all but about
18. sixty-five thousand of that has been drawn down on these
19. loans. And the terms of these loans will be established
20. when they are converted into permanent notes.

21. Q. Mr. Robinson, will this be the County's long-term indebt-
22. edness as of December 31, 1981?

23. A. Yes sir, reflecting all payments maturing between now
24. and December 31, 1981.

1. Q. Now, am I correct that the City did not show any debt or
2. subtracted a debt that the County has incurred for the
3. Massanutten Vocational-Technical School?

4. A. Both as to item B.7. and 8, as well as a portion of one
5. of the County's earlier bond issues back, I believe,
6. about 1971.

7. Q. Now, I believe the justification the City gave was be-
8. cause the County and City had a contract that provided
9. for the initial capital contributions of the two jurisdic-
10. tions. Have you reviewed that contract to see if there
11. is anything in it regarding the effect of annexation?

12. A. Yes, I have, and I find nothing that would affect these
13. notes as far as the contract.

14. Q. Would you tell the Court whether or not this annexation
15. will affect the County's ability to discharge its obli-
16. gation of those debts in the same manner it would affect
17. the County's ability to discharge its obligations for all
18. the other debts?

19. A. It will.

20. Q. Speaking of that, your note at the bottom of the page,
21. have you stated the manner in which the City should as-
22. sume a proportion of that debt?

23. A. Yes, we have.

24. Q. Tell the Court whether or not the manner which you have

1. stated here is the same method that the City has used
2. and the same method that has been used or adopted by the
3. courts in the past?

4. A. That is correct.

5. Q. Now, will you tell us whether or not in your judgment
6. such a determination of a just proportion of debt is
7. just in this case?

8. A. I don't--while we have been consistent in projecting
9. this, I don't think this reflects the true ability of
10. the County to discharge its obligation. If you'll look
11. at some of the exhibits that we'll have later on here,
12. we'll find that it's not fourteen percent of the County's
13. loss of local revenues, but it will amount to ~~twenty-four~~
14. percent of the County's loss of local revenues, including
15. its current tax levy.

16. Q. Are you saying the proposed annexation will diminish the
17. County's local revenues totally by twenty-four percent?

18. A. That is correct.

19. Q. Are all of these revenues available to the County to
20. discharge its obligations on its debts?

21. A. Yes, it is.

22. Q. So, while it diminishes the County's taxables or the
23. assessables that are taxed by the levy by fourteen per-
24. cent plus, it diminishes the overall County's ability

1. by twenty-four percent. Is that right?

2. A. That is correct.

3. Q. In your judgment would that be a more just proportion
4. of the County's debt to assume?

5. A. Yes, it would be.

6. Q. Referring you to County Exhibit 111, would you state what
7. this purports to show?

8. A. Yes. I think we should back up for just a moment. We
9. are going into a series of exhibits here that reflect
10. not only the County's budget but also its operations. We
11. have attempted to make a full disclosure of the County's
12. total operations for the past five years plus the current
13. budget it's operating under now, plus its 1981-82 budget
14. to reflect the effect that this annexation will have on
15. each and every operation of the County.

16. Q. In your judgment, Mr. Robinson, is it necessary to do
17. that to fully inform the Court as to the financial effect
18. upon the County if the annexation is granted?

19. A. I believe it is.

20. Q. And what have you purported to do here?

21. A. Well, starting with County Exhibit 111, I would like to
22. go back for just a moment and say this. I think the
23. Court should understand the ordinary budget process, and
24. that is, number one, the County determines, as any gov-

1. ernmental agency does, it determines the service and the
2. level of service it proposes to furnish its citizens.
3. Secondly, it determines the revenues that will be avail-
4. able to it by providing those services, whether it be
5. local revenues coming in from one source or another,
6. whether it be state or whether it be federal revenues.
7. And, thirdly, it then determines what the local tax rates
8. will be to provide the additional revenues to furnish
9. those services. So, what we have done here is first
10. give you the actual experience of the County for five
11. years plus the two budgets, and then going in . . . and,
12. incidentally, when we get to Exhibit 112 we have eliminat-
13. ed everything except the bare bones of operations; that
14. is your recurring expenses and debt service. No capital
15. items are in here, no transfers, interfund transfers or
16. other recurring expenses, such as expenses, if you will
17. turn to 112 you will see that we have eliminated all
18. interfund transfers, all capital outlays, from opera-
19. tions other than the one fund, and that's the V.P.A. or
20. Virginia Public Assistance Fund. And the reason for
21. that, the small amount of capital outlay in there, that
22. is revenue related, so this had to be left in there. It
23. runs from five hundred dollars to five or ten thousand
24. dollars should they purchase an automobile. But those

1. revenues are reflected in there. So, the capital outlay
2. from the Virginia Public Assistance Fund has not been
3. eliminated. But annexation costs, you'll see here, capi-
4. tal expenditures from capital construction funds, all of
5. this has been eliminated to get down to the bare bones
6. of operations and debt service. These are the only two
7. items that we have considered in determining the effect
8. on the County's operations from the standpoint of loss
9. of net tax revenue.

10. Q. Mr. Robinson, is it your position, I believe you stated,
11. that the last thing that any local government does or
12. any government for that matter, is to establish the levy
13. on the assessables that are in the County.

14. A. That is correct.

15. Q. Or in this case, after annexation, the assessables that
16. are left in the County.

17. A. Yes.

18. Q. After it is determined what other revenues will be avail-
19. able?

20. A. That's correct.

21. Q. In this case what other revenues will be available after
22. annexation?

23. A. Yes.

24. Q. And what other from any source, is that correct?

1. A. That is correct.
2. Q. That's after having decided what its needs are.
3. A. That is correct.
4. Q. And you have eliminated everything, you say, in the way
5. of capital outlay except what you mentioned.
6. A. That is correct. If you will turn to County Exhibit 112
7. and come down to Item II.(g), you will see the deductions
8. that have been taken out of it. For instance, in 1976
9. with a twenty million dollar operation, all the County's
10. cost, we have eliminated out of there six million dol-
11. lars. And coming on over to 1980, out of a thirty-six
12. million dollar budget or operation, we have eliminated
13. fifteen million dollars.
14. Q. Is the reason you eliminated those that you tried to de-
15. termine the effect of annexation on the Court's opera-
16. tions?
17. A. That is correct.
18. Q. For instance, the annexation would not have any effect
19. on non-recurring items such as annexation expenses, is
20. that correct?
21. A. That is correct.
22. Q. It would not have any effect on certain capital outlays
23. or all capital outlays.
24. A. That is correct.

1. Q. So, what you have done is to eliminate everything from
2. the budget that annexation would not effect.

3. A. That is correct.

4. Q. Do you have anymore comments on what you have shown?
5. If you would go back to 111, and this 111 deals with
6. expenses, is that correct?

7. A. That is correct. And I might say one other thing here
8. as far as expenses are concerned. It has been necessary
9. for us to recast some of the prior years operations be-
10. cause the counties and the cities, all counties and cit-
11. ies as of July 1, 1980, went under a new system of ac-
12. counting, a uniform system of accounting for both count-
13. ies and cities. And this operation here for 1976 through
14. 1980 reflects that new system that has now been put into
15. effect. This is why you may see vacant lines one place
16. and other places you will see a considerable figure, but
17. that is because of the reclassification of expenditures
18. to conform to the new system that the state has adopted
19. for counties and cities.

20. Q. For instance, Mr. Robinson, looking at page one of 111,
21. there are certain dashes in the years 1976, 1977, 1978,
22. 1979 and 1980. Would some of those items, like item 20
23. for data processing, it shows no item, that item comes
24. into effect in 1978, is that correct?

1. A. That is correct.

2. Q. Is it true then that although the figures are in one
3. place and not the other place, they all are there for
4. these items?

5. A. Yes sir.

6. Q. Now, would you tell the Court what you have done with
7. respect to the . . . in this exhibit to show what effect
8. the proposed annexation would have on the County's ex-
9. penses?

10. A. Yes, for each department or function of County govern-
11. ment, we have shown here in the last three columns a 1982
12. budget without any annexation and the reduction as a re-
13. sult of the proposed annexation should it be granted.

14. Q. Are these, in your judgment, reductions that could be
15. affected on costs or expenses if the proposed annexation
16. is granted?

17. A. Yes, they are.

18. Q. You have used the 1982 budget. Would you state whether
19. that's because the earliest time annexation could become
20. effective would be in the middle of that budget?

21. A. That is correct.

22. Q. In reducing and showing the effects on the expenses of
23. the proposed annexation, would you tell us whether or not
24. you have used various methods of estimating those effects.

1. A. Yes, we have. We have considered population and we have
2. considered other factors, we have considered school child-
3. ren, we have considered the County's contractual obliga-
4. tions for services, outside services, and this type of
5. thing, which is telephone, contractual services for main-
6. tenance of equipment and these sorts of things, as well
7. as reductions in the personnel of each department.

8. Q. In your judgment does this properly reflect what expenses
9. could be reduced by if the proposed annexation were grant-
10. ed, in the operating expenses.

11. A. Yes, it does. And leaving the County in the same rela-
12. tive position it is in now to provide those services.

13. Q. If you will turn to page four of 111, could you state
14. what the total amount of expenses of the County's opera-
15. ting budget could be reduced if this proposed annexation
16. is granted?

17. A. I anticipate the County could reduce its total operating
18. expenses by \$991,000.00.

19. Q. You have already explained Exhibit 112.

20. A. That is correct.

21. Q. Would you now refer to Exhibit 113, eight pages.

22. A. This is a detailed statement of each and every item of
23. the County's revenue other than current taxes. Again
24. you will see here numerous dashes in the years 1976 through

1. 1980. On the first page here you'll note we have put
2. all taxes, delinquent taxes, on the first line there,
3. and it's bracketed on down through almost the end of that
4. page. For instance, in 1976 there was \$183,000.00 worth
5. of delinquent taxes. If you come over to 1981 and 1982
6. you will see those spread from the top of the page almost
7. to the bottom of the page. And that is a result of the
8. new uniform system of reporting for counties and cities.
9. I'd like to just take you over for a moment to County
10. Exhibit 114. We have done the same thing here to elimi-
11. nate all interfund transfers, capital expenditures items
12. from construction funds and this type of thing, and non-
13. recurring revenues, as well as the County's anticipated
14. surplus. And brought in here only the recurring items
15. of revenue.

16. Q. Is the purpose of that to show or to eliminate items of
17. revenue that would not be affected by the annexation?

18. A. That is correct.

19. Q. Go back then to the first page of 113.

20. A. Here, as I said before, we have entered here each and
21. every item of the County's revenues for the past five
22. years, for 1976 to 1980, plus the 1981 budget, plus the
23. 1982 budget. So that the Court can see where the County
24. has come from and where it is now, and what can be ex-

pected of the County as far as revenues if this annexation were granted.

Q. Have you also at the same time, as you reduced the County's expenditures if the proposed annexation were granted, have you shown in this exhibit the reduction in revenues that the County will lose if the annexation is granted?

A. Yes, we have.

Q. Is that shown similarly in the last three columns?

A. Yes, it is.

Q. On the first page you show that the item of hotel and motel room taxes . . .

A. It's not on page one.

Q. Page two, I'm sorry.

MR. COGAR: What exhibit are we on?

A. One thirteen, page 1 . . .

Q. Page two of 113.

A. I would like to back up on page one now, if I might.

I think the major item here on page one is at the bottom of the page that the County will lose. In 1982, using the same ratio as in 1981, the figures have heretofore been reported to the Court of something on the order of \$881,000.00, I believe, in loss of sales tax. Using that same ratio of sixty-five percent--we believe that to be extremely low at this point--but it will now be one mil-

1. lion and forty-seven thousand dollars.
2. Q. Excuse me, is this the County's local sales tax?
3. A. Yes sir.
4. Q. And that's shown at the bottom, the last line?
5. A. Page one, yes sir, that's correct.
6. Q. All right, now go to page two.
7. A. I think the first significant item here is in the utili-
8. ty tax of the County, and we have shown what effect it
9. would have on that tax that's generated through the var-
10. ious utility companies within the County and the area
11. proposed to be annexed. You will see that I believe
12. there are four different utilities that are affected
13. there. Shenandoah Valley Electric, Continental Telephone,
14. Virginia Electric and Power Company, and also Harrisonburg
15. Electric Company that now collects that utility tax on
16. behalf of the County. Going to the next major item you
17. will see the motor vehicle tax, then going down to the
18. hotel and motel room tax.
19. Q. Before you get down there, let me just ask you a ques-
20. tion. You show that the budgeted revenue for bank fran-
21. chise tax is eighty-five hundred dollars.
22. A. That is correct.
23. Q. And the County will lose \$8,463.00 of that.
24. A. All but thirty-seven dollars.

1. Q. Does that indicate that all the banks, most of the banks
2. in the County are in this area?

3. A. All except one minor branch. I don't have that at my
4. fingertips at the moment, but I think I can locate it.

5. Q. And then down to the hotel and motel room taxes. The
6. County revenues in 1980 are eighty-three thousand dol-
7. lars?

8. A. Yes sir.

9. Q. And the County is going to lose \$73,111.00.

10. A. Eighty-eight percent of it.

11. Q. All right. Refer to page four of Exhibit 113. Water
12. and sewer charges, what percent of the County's water
13. and sewer charges will be lost?

14. A. Something on the order of seventy-five percent. But in
15. Park View approximately ninety-eight percent, ninety-
16. seven percent.

17. Q. Page 5 of 113, at the bottom of the page, the next to
18. the last column. Does this show the loss from all local
19. sources of revenues?

20. A. Yes, it does.

21. Q. What is that amount?

22. A. A million seven hundred and fifteen thousand dollars
23. out of four million eight hundred and twenty-six thousand
24. dollars.

1. Q. What percent is that?

2. A. I have not computed it, but I will. Approximately thirty-
3. five percent.

4. Q. Referring to the last page of Exhibit 113, . . . well,
5. before we go there, the last figure you gave of a million
6. seven hundred and some thousand dollars from local
7. sources, have you also reflected on the loss of other
8. revenues to the County?

9. A. Yes, we have. Those that the County now receives from
10. the Commonwealth for general government purposes as well
11. as school purposes, and also federal revenues that the
12. County receives for general government purposes and for
13. schools.

14. Q. Will the County lose, for instance, a portion of its
15. state sales tax distribution?

16. A. Yes, it will.

17. Q. How is that amount determined by the state, what formu-
18. la?

19. A. One percent of the four percent sales tax collected is
20. apportioned back to the County on the basis of the school
21. age population. That is five through nineteen plus two,
22. three, four, twenty and twenty-one handicapped.

23. Q. Do the towns get any of the County's state sales tax
24. distribution?

1. A. Not the state sales tax, but rather local sales tax.

2. Q. What proportion of the County's sales tax do the towns
3. siphon off?

4. A. The towns share is one-half of the County based on the
5. school age population. In other words, if the town had
6. five percent of the school age population within its
7. corporate boundaries, it would receive two and a half
8. percent of the County's sales tax.

9. Q. Would you tell the Court, what is the amount of the A.B.C.
10. profits the County will lose as a result of this annexa-
11. tion?

12. A. Eighteen thousand two hundred and sixty-six dollars.

13. Q. And that is shown on page six?

14. A. Yes, it is. And I would say here, that was one of the
15. reasons that we made a breakdown between the population
16. of the County with and without the towns, because the
17. County does not receive any A B C profits from or based
18. on the population within the towns. The towns receive
19. the same amount per capita-wise that the County receives
20. on its population outside the corporate limits.

21. JUDGE TRABUE: What's the big difference be-
22. tween the two hundred and ninety-six thousand in 1980
23. and your operating budget of a hundred and sixty thousand;
24. a hundred and thirty thousand dollars difference in A.B.C.

1. profits?

2. A. There was a windfall in that, Your Honor. The state started
3. ed distributing it on a quarterly or semiannual basis,
4. and that's why you see that. And that's why you see it
5. has fallen back here where it is now. Of course, if it
6. were two hundred and ninety-six thousand in 1982 instead
7. of a hundred and sixty-five, the loss would be even
8. greater.

9. Q. The windfall was occasioned by the state stepping up
10. the distribution for a period of time, is that correct?

11. A. That is correct.

12. Q. Turning to page seven of that exhibit. Do you show what
13. the County's loss would be of the state sales tax?

14. A. Yes, we do. The first item on page seven, the County
15. anticipates \$2,352,000.00 in the state one percent sales
16. tax, and the County would lose if this annexation were
17. granted \$153,350.00.

18. Q. Does the state provide estimates of sales tax to cities
19. and counties?

20. A. Yes, it does. Under the statute the State Tax Commis-
21. sioner is now required to furnish the localities esti-
22. mates that it can use to assist the localities in prepar-
23. ing their budgets on the sales tax, the wine tax, the
24. A.B.C. profits and other items that the County receives

1. from the state. Not only the state sales tax, but also
2. the local sales tax.

3. Q. Would you give the Court the total revenue the County will
4. lose from all sources if this annexation is granted.

5. A. Other than from the current levy, the County could expect
6. to lose \$2,273,602.00. out of a budget year of \$20,105,894.

7. Q. Now, Mr. Robinson, you have told us what the County, how
8. the County would be able and to what extent the County
9. would be able to reduce its operating expenditures if
10. this annexation were granted, and you have told us what
11. the County will lose in revenue other than from the levy
12. on its assessables if this annexation is granted. Cor-
13. rect?

14. A. That is correct.

15. Q. Now would you tell us how you have used that in your
16. method of determining what the loss of net tax revenue
17. is.

18. A. If you will turn to Exhibit 116, we have given the Court
19. here again a complete summarized operations of the County
20. for the five years, 1976 through 1980, plus the 1981 and
21. the 1982 budget. We have also shown in here the amount
22. of current tax revenues required. If you'll turn to
23. item III at the bottom of that page you will see that
24. after considering the operations, including debt service,

1. less any and all revenues available to the County, the
2. County will then have to produce the additional revenues
3. based on its assessables to balance its budget and pro-
4. vide the services. And you will see in item III here,
5. in 1976 the County needed \$1,947,000.00 in local tax
6. revenue. Then coming on over from a million nine to
7. two million four to three million three, three million
8. one, three million four, seven million and fifteen thou-
9. sand, seven million seven hundred and eighty-seven thou-
10. sand in the proposed budget. At the bottom of that page
11. you will see the assessables that the County has had and
12. anticipates in its upcoming budget. If you will go back
13. to item III.B., you will see what the tax revenue, a
14. compositetax rate, rather, was required throughout this
15. period. Again, going from something less than a hundred
16. percent assessment ratio, you will see the effective
17. tax rate that was required in 1976 of \$1.28, \$1.51,
18. \$1.90. Then when they went on the hundred percent ratio,
19. it went to \$.34 to \$.36 to \$.69 and now to \$.74. And it
20. can be expected that the County's tax rate, with every-
21. thing else being equal, would go to \$.99 or a \$.25 in-
22. crease in the tax rate in the County.

23. Q. Is that in order to produce from the levy the needed
24. funds to balance the budget with the loss of the revenues

1. less the expenditures?

2. A. That is correct.

3. Q. You are applying then a rate to the assessables that are
4. left as a result of the annexing of assessables of the
5. County.

6. MR. COGAR: Objection. Mr. Fitzgerald has
7. been leading the witness rather considerably up until
8. now, but as we get into these figures which are the
9. witness' figures, I prefer that the witness describe
10. to the Court what he has done here and not merely say
11. yes from here on out. This is very complicated and I
12. insist that he not lead him.

13. MR. FITZGERALD: I didn't know the rules of
14. proceeding had changed. I'm merely trying to expedite
15. it. I can't change his figures one iota.

16. MR. COGAR: I object to the leading.

17. JUDGE MOON: All right, I'll sustain the ob-
18. jection to the leading of the witness.

19. A. Your Honors, . .

20. Q. Just a minute, let me ask a question. Tell the Court
21. to what did you apply the tax rate of seventy-four cents.

22. A. First let me go to this chart over here. I think I
23. can . . .

24. Q. Well, I'm going to go to that in just a minute.

1. A. Okay, excuse me. What we have done here, as you look
2. under the last three columns of this exhibit at the bot-
3. tom of the page, you will see in 1982 the County Commis-
4. sioner of Revenue has projected assessed values of local-
5. ly taxable property of one billion forty-eight million
6. nine hundred and fifty-four nine hundred and twenty-one
7. dollars. Now, if you'll look up at item III.A., this
8. upcoming budget will require tax revenues of seven mil-
9. lion seven hundred and eighty-seven thousand eight hun-
10. dred and ninety-two dollars. In order to get that seven
11. million dollars, the County will have to apply a unit
12. rate of seventy-four cents on all the assessables in the
13. County to produce the seven million seven hundred and
14. eighty thousand dollars. Now, if the annexation is
15. granted, we have taken what would be left in the County.
16. As you can see from these arrows here.

17. Q. Now you can come over to the board area and point it out.

18. A. As you can see, the County in its current 1981-82 budget
19. anticipates one billion forty-eight million nine hundred
20. and fifty-four thousand dollars in assessables. Its
21. budget will require for operations and debt service less
22. the other revenues available, it will require in cur-
23. rent tax revenues seven million seven hundred and eighty-
24. seven thousand eight hundred and ninety-two dollars. In

1. order to receive that, the County will have to lay a levy
2. of seventy-four cents on the assessables. That's seventy-
3. four cents to produce the seven million seven hundred
4. thousand dollars. Simply taking reductions in all items,
5. revenues and expenditures and assessables, if this annex-
6. ation were granted, and applying the same rate of taxes
7. on the assessables that would be left, it would produce
8. six million six hundred and seventy-four thousand six
9. hundred and fifty dollars. Now, the County . . .

10. Q. Let me ask a question right there. Is that the result
11. of the annexing of taxable assessables?

12. A. Of taking away one hundred and forty-nine million nine
13. hundred and forty-three thousand and ninety dollars.
14. And applying the same rate to what's left, it would only
15. produce six million six hundred and seventy-four thousand
16. seven hundred and fifty dollars as against with the cur-
17. rent assessables and the seventy-four cents, seven mil-
18. lion seven hundred and eighty-seven thousand eight hun-
19. dred and ninety-two dollars.

20. Q. Now, what is the difference between those two figures?
21. What it produces without annexation and what the tax rate
22. produces with annexation.

23. A. That is correct.

24. Q. What is the difference?

1. A. What is the difference?

2. Q. In dollars.

3. A. One million one hundred and sixteen thousand eight hun-
4. dred and sixty-eight dollars.

5. Q. All right, sir. Then will you tell us from there what
6. is the loss of net tax revenue you calculate from the
7. result of the annexing of taxable values of the County?

8. A. The loss to the County, the net loss to the County, con-
9. sidering all items of revenue, expenditures and the
10. assessables left, the County will be unable to produce
11. the revenue required by two million two hundred and
12. thirty thousand one hundred and ten dollars.

13. Q. Is that shown as this item on the chart?

14. A. Yes, it is.

15. Q. All right, sir, and that is calculated on the budget
16. that would be in effect at this annexation's earliest
17. time, December 31, 1981. Is that correct?

18. A. That is correct, sir.

19. Q. I am referring you to Exhibit 117. Why don't you come
20. up to the easel.

21. A. This exhibit gives you a comparison of certain County of
22. Rockingham fiscal data for the years shown here, showing
23. the yearly increases and the rates of average annual
24. increase throughout the period of 1976 actual through

1. 1980, with the operations in the current budget plus
2. those of the upcoming budget of 1982. And first we have
3. shown here again so the Court can see exactly what has
4. been taking place, or what has taken place in the County
5. from 1976. We have shown percentage increase one year
6. over the next all through here. We have also shown the
7. rate of average annual increase, picking up at the begin-
8. ning, the first two years, the first three years, four
9. years, five years, and on through the period. So the
10. Court can see the relative consistency or inconsistencies
11. as they may occur because of other factors entering into
12. it. First we've got the necessary expenses, which again
13. is only those items of recurring expenses and debt ser-
14. vice. We have also shown here what revenues were avail-
15. able to the County throughout this period and the antici-
16. pated in the two budgets. It's shown again here what
17. has taken place from year to year, what has taken place
18. in the rate of average annual increase, cumulative on
19. through here. There is also shown in here the current
20. tax revenue required. You can see here a million and
21. nine hundred thousand, two million four, three million
22. three, three million one, three million four, seven mil-
23. lion fifteen, seven million seven hundred eighty-seven
24. thousand. Again, a question was asked about the item of

1. A.B.C. profits in one year. While that's a small amount,
2. you can see in just one item what effect it might have
3. on it. There are other items that are in the process of
4. the County's operations that will be affected from time
5. to time also. Now, the current tax levy, you can see
6. what the County has been producing throughout this per-
7. iod. Also the increases from year to year as well as
8. the cumulative increase. We have also shown down here
9. the assessables. You will see the increases year by
10. year. What we did here was to give you the rate of av-
11. erage annual increase for this period, and the reason
12. that is broken the way it is is because you can see the
13. next year it went from an eight percent increase to a
14. four hundred percent increase due to the increase in the
15. ratio of assessed value. You'll see where it fell back
16. to . . . when you compare the hundred percent assessment
17. ratio from one year to the next. And then we have shown
18. over here the rate of average annual increase during the
19. period that the County has had a hundred percent assess-
20. ables. We have also come down here and taken these fig-
21. ures here for the period of 1976 through 1978, and the
22. period of 1979 to 1982, and computed a mean of 1976-78
23. and 1979-82 so the Court can see or can put this in pro-
24. per perspective over the period from 1976 to 1982 and

1. see what you have here in the way of a mean rate of aver-
2. age annual increase. Then we come down and show what the
3. effective tax rate that was required to meet these neces-
4. sary expenses was on the assessables that the County had;
5. \$1.27, \$1.51, \$1.90, and when they went onto hundred per-
6. cent assessment ratio it dropped to \$.34, \$.36, \$.69,
7. and \$.74.

8. Q. Would you state for the record what was the rate of aver-
9. age annual increase of County expenditures over that
10. period of time?

11. A. Going back to the . . .

12. Q. From 1976 to 1982.

13. A. Twelve point thirty-nine percent.

14. Q. What was the rate of average annual increase in tax rev-
15. enues other than the current tax levy.

16. A. The revenues available was 9.14%.

17. Q. And the current tax revenue required to meet necessary
18. expenses?

19. A. An average rate of annual increase of 10.74%.

20. Q. Item III.

21. A. Oh, 25.99%.

22. Q. And what was the average annual increase in the tax
23. levy?

24. A. Ten point seventy-four percent.

1. Q. And you've already given the average of those. Would
2. you tell us first of all, Mr. Robinson, in your testi-
3. mony concerning the computation of the loss of net tax
4. revenue, does that comply with the definition of loss
5. of net tax revenues that you have used consistently
6. throughout the years?

7. A. Yes, it does.

8. Q. That's shown on page 115.

9. A. One fifteen is correct.

10. Q. Or Exhibit 115. What was the purpose then in developing
11. Exhibit 117?

12. A. The purpose of developing 117 was to show the methodology
13. that has been employed and the need for that methodology.

14. Q. To determine what?

15. A. The loss of net tax revenue. .

16. Q. The loss of net tax revenue?

17. A. Right.

18. Q. For when?

19. A. If this annexation were granted.

20. Q. Were you concerned with what the perspective loss would
21. be over the next five years?

22. A. Yes, we were.

23. Q. Does this Exhibit 117 have anything to do with that?

24. A. Yes, it does.

1. Q. And what does it have to do with that?
2. A. It shows what has been taking place through the history
3. of the County in these past five years of actual opera-
4. tions, plus the two budget years that we have here.
5. Q. And what was the purpose of wanting to know that?
6. A. In order to see where the County is going from here and
7. what can be expected. If there is no annexation what
8. can be expected; if this annexation is granted.
9. Q. Were you trying to determine what the prospective loss
10. of net tax revenue was?
11. A. Yes sir.
12. Q. Over the next five year period?
13. A. Yes sir.
14. Q. Then you can go ahead and proceed to Exhibit 118.
15. A. What you saw on the previous exhibit was the rate of
16. average annual increase in the County's operations dur-
17. ing this period of 1976 to 1981. We have projected this
18. as if the County had no annexation, what could be expect-
19. ed as far as costs in the County for the period from
20. 1982 through 1986. We have put 1987 on here because
21. there will only be four and a half years left if this
22. annexation should become effective December 31, 1981,
23. and that's why the year 1987 is over here. But this is
24. five years, four and a half years in here. What we have

1. done next is to show the rate of increase in the revenues
2. available to the County other than current taxes, using
3. what you saw on a previous exhibit here as the rate of
4. increase in the County's expenditures, its revenues and
5. the need for current tax revenues. While you see in the
6. 1982 budget a need for \$7,787,892.00 or a tax rate of
7. \$.74, we have projected an increase in assessables based
8. on the County's experience during the past seven years
9. and projected that on out, as if no annexation were
10. granted. Next we come down and reflect the effect of
11. the proposed annexation as you saw on a previous exhibit,
12. and continue these items of expenditures on up after an-
13. nextion, showing first a decrease of twenty-seven mil-
14. lion, twenty-six million, during this year that we're
15. coming up on. And if annexation is granted, the same
16. thing takes place after the annexation that has taken
17. place in the County during the past seven years, five
18. years of operations and two budgets, and projected out
19. the effect of the proposed annexation into the future.
20. As you saw from the previous exhibit, the County will be
21. unable to meet its obligations if this annexation is
22. granted based on the 1981-82 budget by two million two
23. hundred and thirty thousand a hundred and ten dollars.
24. That deficit can be expected to increase from two million

1. two, two million five, two million eight, three million
2. two, three million six. And that is based on the assess-
3. ables continuing after annexation at the same rate of
4. average annual increase, mean increase, 1976-78, 1979-82,
5. of five percent. That has been projected on the tax rate.
6. We will expect everything else projected into the future
7. would immediately go to ninety-nine cents, \$1.11, \$1.25,
8. \$1.39, \$1.55.

9. Q. Mr. Robinson, if you had projected assessables growing at
10. some greater rate than has been the experience, would you
11. also have to project the expenditures to grow at a great-
12. er rate?

13. A. That is true.

14. Q. But you have used in this exhibit the actual experience
15. of the County.

16. A. Yes.

17. Q. Now, this line, and I'm pointing to line five, does this
18. show in your opinion what the prospective loss of net
19. tax revenue would be based on the County's experience?

20. A. That is correct. And that would amount to, through 1986,
21. \$14,517,168.00.

22. Q. Now, according to this exhibit the expenditures, the
23. assessables and the current taxes and the other revenues
24. have all grown at different rates in the past.

1. A. That is right.

2. Q. Now, I believe it was Mr. Milam that testified that he
3. felt expenditures and revenues grow at the same rate.

4. A. That is correct, I believe.

5. Q. Have I requested you to make an exhibit to show what
6. happens to the loss of net tax revenue, the prospective
7. loss if they did grow at the same rate?

8. A. Yes sir.

9. Q. And you only considered the expenditures and revenues?

10. A. That is correct.

11. MR. FITZGERALD: I would like for this to be
12. marked as County Exhibit 118a.

13. Q. In this mathematical exhibit here would you just explain
14. briefly what it shows?

15. A. We have shown here a revenue the first year of twenty-
16. four million five hundred that you'll notice from the
17. exhibit that the County has here, these are round fig-
18. ures, which show revenues available, expenditures with
19. the loss of net tax revenue and we have projected these
20. up with a twelve percent increase from year to year. And
21. you can see here, I'll just go . . . two million two,
22. two million four, two million seven, three million four,
23. total of thirteen million nine hundred odd thousand dol-
24. lars.

1. Q. So, even if you use the same rate of revenue growth and
2. expenditure growth, it's bound to increase.

3. A. That is correct.

4. Q. Have you done further studies to corroborate what you
5. are testifying to?

6. A. Yes sir, I have. County Exhibit 119, I believe we have
7. a large exhibit of that also. What I've done here is to
8. take the County's actual operations from 1970 through
9. 1979. These are actual operations of the County. We
10. have cut it off here for the period from 1970 to 1974,
11. to determine the rate of average annual increase. That
12. rate during the period 1970 to 1974 was 12.39%. I then
13. projected--ignored the actual operation and projected
14. expenditures based on the period from 1970 to 1974 to
15. see how that relates to actual operations. You will see
16. projecting that expenditure is two million dollars less
17. than what actually happened during that period, or a
18. 2.76% variance. Doing the same thing on the revenues
19. other than current taxes for period of 1970 to 1974,
20. and that rate of average annual increase is 13.62%.
21. I then projected operations from 1975 through 1979, bas-
22. ed on actual operations to see what the variance would
23. be there.

24. Q. So, this top line right here is the actual operation?

1. A. That's the actual operations.

2. Q. This is what it would be if you had projected it back
3. in 1975?

4. A. Right, for the period 1970 through 1974, based on actual
5. operations.

6. Q. If you had been projecting ahead for 1974 on.

7. A. That's right.

8. Q. All right.

9. A. Now, there the revenues was off by 3.13%. If you take
10. the net difference, the expenditures projection, the rev-
11. enue project, and you come down with a hundred and one
12. thousand dollars. If you want to look at that from the
13. standpoint of difference in expenditures, it's thirteen
14. one-hundredths of one percent. If you look at it from
15. the standpoint of revenues, it's fifteen one-hundredths
16. of one percent. Which, to me, shows the validity of the
17. methodology employed in determining what this loss can
18. be expected to be.

19. Q. Have you made any other studies to verify your projection
20. that both expenditures and revenues are going up and will
21. go up?

22. A. Yes, I have.

23. Q. Is this it?

24. A. No, this is the actual operation of the County, total

1. operations for period from 1969 through 1979.
2. Q. What does it show?
3. MR. COGAR: What exhibit is this?
4. Q. This exhibit, I don't believe, has been numbered. Is
5. there a small exhibit showing this?
6. A. Yes.
7. Q. In the book?
8. A. No.
9. Q. Do you have it?
10. A. Yes, I believe I have some of those.
11. Q. Has it been handed out?
12. A. I don't believe so.
13. Q. While we're waiting for that, let's move on to something
14. else.
15. A. All right.
16. Q. Have you shown graphically what you have testified to here
17. by chart?
18. A. Yes sir.
19. Q. Referring you to the easel and County Exhibit 93, tell
20. the Court what that exhibit shows?
21. A. This chart reflects the assessables, a chart of the
22. assessables of the County for the period 1976 on through
23. to 1982, and what can be expected if this annexation is
24. granted. The assessables have gone from in 1976, as seen

1. from some of these other exhibits, of a hundred and
2. fifty-two million, and when it went on a hundred per-
3. cent up here to something over nine hundred million.
4. And projections now out, based on the latest infor-
5. mation we have for 1982, to one billion and forty-eight
6. million. It also shows a loss if annexation were
7. granted . . .

8. Q. Is that this vertical drop here?

9. A. Yes sir. And what would happen if the County was able
10. to continue on based on its mean rate of average annual
11. increase here, 1976-78 and 1979-82. This is where you
12. could expect it to continue if no annexation; this is
13. what you could expect if annexation were granted. Over
14. here in the year of annexation the County would be los-
15. ing a hundred and forty-nine million, and five years
16. hence that loss, everything else being equal, would be
17. then a hundred and eighty-six million.

18. Q. Is this the projected difference in assessables in five
19. years?

20. A. Yes sir.

21. Q. As a result of annexation?

22. A. Yes sir.

23. Q. Referring you to chart 94.

24. A. This chart shows the actual expenditures again, necessary

1. expenditures meaning only recurring expenditures plus
2. debt service. For 1976 the County's operations was
3. thirteen million and up here to the current budget it's
4. now twenty-seven million. What it could expect to reduce
5. that by if annexation were granted, what it can expect
6. this to continue if there is no annexation in the next
7. five years, and what can be expected if annexation is
8. granted.

9. Q. Again this vertical drop depicts graphically the reduc-
10. tion in necessary expenditures?

11. A. Yes sir.

12. Q. Chart 95?

13. A. This chart shows the revenues that have been available
14. to the County other than current taxes without annexa-
15. tion and what they could expect it to be if annexation
16. were not granted and if annexation were granted.

17. Q. Again the vertical line shows or reflects graphically
18. the loss of the available revenues other than current
19. taxes?

20. A. The 1982 budget would be two million two hundred and
21. seventy-three thousand. Five years from now that loss
22. will be three million two hundred thousand.

23. Q. Exhibit 96?

24. A. This exhibit shows the net loss to the County if annexa-

1. tion were granted. What the revenues would be if there
2. is no annexation, what it would be if annexation were
3. granted. You will notice the imbalance in here, that
4. the need would actually increase because of the various
5. other items of revenue lost to the County.

6. Q. What is the . . .

7. A. The loss in the first year would be the two million two
8. hundred and thirty thousand a hundred and ten dollars.
9. In five years it would increase to three million six hun-
10. dred and sixty-three thousand seven hundred and ninety-
11. nine dollars.

12. Q. What does this graph show?

13. A. This shows the effective tax rate of the County during
14. this period from 1976 of \$1.28 going up here to approxi-
15. mately \$1.93, and with the reassessment going back down
16. to the thirty-four cents.

17. Q. This was the change of the assessment ratio from twelve
18. percent up to eighty-four percent.

19. A. That is correct. And this is what has taken place during
20. the past three years, this is what can be expected if
21. annexation is granted, going from a seventy-four cent
22. tax to ninety-nine cents and continuing on up, everything
23. else being equal.

24. Q. Tell us what Chart 98 shows.

1. A. Chart 98 goes back to 1960. We go here to 1967, this
2. is the Consumer Price Index of the United States. Using
3. the one hundred factor here in 1967, you can see what
4. that was back in 1960, but we'll begin with 1967. That
5. has gone from one hundred on up, as you can see what has
6. happened here. The latest information I have, I believe
7. published just a few days ago, will now show as of March,
8. or February rather, that this figure . . . January was
9. 260.5, the February index was 263.2, and it continues to
10. go up.
11. Q. I refer you to Exhibit--I'm not sure what number it
12. will be. All right, Exhibit 121.
13. A. The data on this Exhibit 121, summary of financial in-
14. formation for the County of Rockingham, for the fiscal
15. years as indicated here from 1969 to 1979. All this data
16. was taken from published reports of the Auditor of Public
17. Accounts for comparative costs on the counties of Virgin-
18. ia. This one applies to the County of Rockingham. There
19. is another exhibit later in here that shows the same data
20. for the City of Harrisonburg. There are two things that
21. I think I would like to indicate here. The rate of grow-
22. th in the County over this past period of eleven years,
23. the County's total operations have increased here to the
24. rate of 11.55%. I could give you the rate of increase

1. in capital outlay for the County here as being 14%. Debt
2. service has increased at the rate of 18%; interest and
3. other debt service. Redemption of debt has increased
4. here at the rate of 12%. Total expenditures of 12.07%.
5. The net County debt has increased at the rate of 12.47%.
6. We have the same data for the City of Harrisonburg on
7. the next exhibit.

8. MR. FITZGERALD: We would like this to be
9. Exhibit 122. Do you have a copy?

10. MR. COGAR: We haven't seen that before.

11. A. Excuse me, I'm sorry, I'm ahead of myself. This one is
12. for all counties.

13. MR. FITZGERALD: I've just handed it up.
14. This is all counties. You didn't get this last . . .

15. MR. WADE: We got the counties, I thought he
16. said Harrisonburg.

17. MR. FITZGERALD: This is for all counties.

18. A. We do have one for Harrisonburg.

19. Q. This is for all counties?

20. A. Yes. Do you want me to go on through with this one?

21. MR. COGAR: What is the number of this ex-
22. hibit?

23. MR. FITZGERALD: 122.

24. A. This exhibit is taken from the same source as the pre-

1. vious exhibit, except that it was compiled for the per-
2. iod from 1934 through 1969 by the late Honorable Joseph
3. James, Auditor of Public Accounts for the Commonwealth
4. of Virginia. We have added to that the year 1974 and
5. 1979. This is to give the Court some idea of what has
6. taken place in county government from 1934 to 1979. I
7. might mention one thing here, during that period, even
8. though you see the increases here that appear, there are
9. five counties no longer in the 1979 data that were in the
10. 1934 data. But you will see what has taken place as far
11. as values, you'll see what has taken place on the income,
12. and you'll also see what's taken place as far as expen-
13. ditures. You'll see it not only from the standpoint of
14. increase in dollars, you'll also see it from the stand-
15. point of the per capita increase during that period. .
16. It also shows here what has taken place as far as capi-
17. tal needs, what has been actually spent, from seventy-nine
18. cents in 1934 to ninety-six dollars per capita in the
19. counties to the left up here. You'll also see here the
20. debt service, going from ten dollars per capita to six
21. hundred and sixty-eight dollars. And net debt of the
22. county per capita-wise has increased from fourteen dol-
23. lars to four hundred dollars during that period of time.
24. Q. Go ahead and have a seat, Mr. Robinson. You also looked,

1. did you say, at the City of Harrisonburg's growth of
2. expenditures and revenues and such?

3. A. Yes sir.

4. Q. Did all of this confirm in your opinion your projections
5. as to the increase in expenditures, revenues and assess-
6. ables over the next five years?

7. A. Yes sir.

8. MR. COGAR: Are there some figures available
9. for the City of Harrisonburg?

10. MR. FITZGERALD: If I can find them. You
11. didn't get them?

12. MR. COGAR: No, I did not get them.

13. MR. FITZGERALD: Yes sir, I do have them.
14. I would ask this be marked Exhibit 123.

15. Q. Exhibit 123, that shows the same information for the
16. City of Harrisonburg?

17. A. Yes, and that's taken from the same source, the compara-
18. tive cost data published by the Auditor of Public Ac-
19. counts of the Commonwealth of Virginia.

20. Q. Mr. Robinson, have you made certain other analyses that
21. would indicate to you the effect of this annexation on
22. the County of Rockingham?

23. A. Yes sir.

24. Q. Have you also reflected on the comparative needs of the

1. City and the County with regard to tax resources?

2. A. Yes sir.

3. Q. Referring you to County Exhibit 120 in the book, what
4. do you show here?

5. A. County Exhibit 120 is a comparison of certain other per-
6. tinent data, current pertinent data based on the esti-
7. mated wealth per child in ADM with and without annexa-
8. tion for the City of Harrisonburg and the County of Rock-
9. ingham, with a percent of difference here. First you
10. will see item 1.A., without annexation the City of Har-
11. risonburg has a hundred and twenty-four thousand dollars
12. of wealth as against ninety-nine thousand, or the City
13. is 125% above that of the County. If the proposed annex-
14. ation area is granted, the City's would increase to a
15. hundred and fifty thousand and the County would drop
16. further to eighty-nine thousand, or the City would be
17. 168% greater than the County. Item 2 reflects an esti-
18. mated wealth per child in ADM. Currently, without annex-
19. ation, the City has a hundred and fifty-five thousand as
20. against the County's hundred and ten, or the City is
21. 140% of the County. With annexation the City would
22. have a hundred and seventy-seven thousand and the County
23. would drop to a hundred and one thousand, and the dispar-
24. ity between the two then would be . . . the City would

1. be 175% greater than the County. Or, 175% of the County.

2. Q. Mr. Robinson, with respect to the City's wealth per cap-
3. ita on Exhibit 122, in 1979 that is shown as six thousand
4. six hundred and forty-two dollars taxable values per
5. capita.

6. A. That is correct.

7. Q. Was that before the City went to the one hundred per-
8. cent?

9. A. Yes sir.

10. Q. Can you tell us what the present City's 1981 per capita
11. wealth is?

12. A. Using the 1980 . . .

13. Q. Can you tell us what the present, the 1981, is.

14. A. Yes. Per capita wealth, using the 1981 real estate with
15. the 1980 other values of public service, tangible person-
16. al property, machinery and tools, the City's per capita
17. wealth would be nineteen thousand six hundred and sixty
18. dollars.

19. Q. That's as of 1981?

20. A. Right.

21. Q. With regard to assessables, the City owns through the
22. Electric Commission its electric utilities.

23. A. That is correct.

24. Q. You've heard that.

1. A. Yes sir.

2. Q. What effect does that have on the City's assessables?

3. A. Well, they do not have in its public service values what
4. a normal city would have where it is not operating an
5. electric utility.

6. Q. Is the value of the electric utility included in the City's
7. assessables?

8. A. No, it is not.

9. Q. Does the City receive something in lieu of that?

10. A. Yes.

11. Q. What is that?

12. A. According to the testimony here, the City has a profit
13. from its utility of approximately seven hundred thousand
14. dollars.

15. JUDGE MOON: Do you have any idea how that
16. would compare if that was just a . . . if they collected
17. tax on the assessed value, if it were a private owner.

18. A. Yes, we could compute that for you.

19. JUDGE MOON: No, do you have any just general
20. idea. If you haven't done it, it's all right.

21. A. Well, let's say this. Its ratio of public utilities
22. now to the total assessed values, I've computed it out
23. to be about 4.2%, I believe, and the County's is about
24. 4.8%. So, the values or the revenue received from its

1. utility would far exceed the loss due to not having those
2. in public utility values. You may recall that for a
3. number of years the City of Bedford advertised as the
4. city without taxes, and at one time they received all
5. their revenue from its electric utility. And this is
6. not uncommon where a city operates utilities, that it
7. receives a substantial amount of tax revenue from its
8. utility. This is true in Salem, for example.

9. Q. Mr. Robinson, in answering the Judge's question did I
10. understand you to say that in your opinion the City re-
11. ceives more revenue as it is than it would if it were
12. taxed as an assessable?

13. A. Yes.

14. Q. It's been mentioned here by witnesses for the City that
15. the City is losing its sales tax revenues. Have you
16. made a study as to what the true picture is of the City's
17. sales tax revenues over the years?

18. A. Yes sir.

19. Q. Do you find that the City is losing sales tax revenues?

20. A. No sir.

21. MR. COGAR: Your Honors please, the testimony
22. has not been that we were losing sales tax revenues in
23. total dollar amounts, it has been that the percentage
24. of sales tax revenues has been declining in contrast with

1. the County. And I object to the question on the basis
2. that it has got a false premise.

3. MR. FITZGERALD: I agree, the premise is
4. false.

5. Q. What do you find, Mr. Robinson, in your study of the ac-
6. tual growth of the sales tax revenues in the City?

7. A. The latest estimate published by the State Department of
8. Taxation shows the City of Harrisonburg to be a million
9. nine hundred thousand dollars for the upcoming year on
10. accrual basis, the cash flow basis a million eight hun-
11. dred and ninety-one thousand dollars. I don't have that
12. figure for 1981, but we do have that figure from 1980
13. and 1979, as shown in the audit reports, and I've got
14. that here someplace, if I can find it. It seems to have
15. gotten away from me, but . . . in the year 1980--well,
16. let me first go back to the year 1979. In 1979 the
17. City's actual was a million five hundred and forty-five
18. thousand. In 1980 it's a million six hundred and forty-
19. nine thousand. I don't have the figure before me for
20. the estimated 1981, but the 1982 that I just gave you
21. was a million eight hundred and ninety-one thousand.

22. Q. Do you have a list of the various annual amounts that
23. the City has gotten over the years of sales tax, of lo-
24. cal sales tax?

1. A. Yes.

2. Q. Let me see if you've got the same one I've got. (Coun-
3. sel compares documents) You have before you now a list
4. of the local sales tax revenues for the City of Harrison-
5. burg for various years?

6. A. From the beginning of the sales tax in 1967, the City
7. received three hundred and twenty-three thousand, four
8. sixty-seven, five twenty-five, six o six, six sixty-seven
9. thousand, seven hundred and fifty-three thousand, eight
10. hundred and twenty-nine thousand, nine hundred and . . .

11. MR. COGAR: Hold on.

12. Q. Mr. Robinson, just hold on a minute. Without reading
13. all those figures, would you tell the Court whether or
14. not the sales tax revenues to the City have increased
15. every year from its inception?

16. A. Yes sir, these are the figures I was giving the Court
17. then. And they've gone from three hundred and twenty-
18. three thousand to an estimate, according to the State,
19. of a million nine hundred thousand for the upcoming year,
20. fiscal year.

21. Q. In 1967 what was the County's sales tax revenues?

22. A. A hundred and eighty-three thousand.

23. Q. With the growth in the County, Mr. Robinson, and the
24. low beginning of the County of sales tax revenues, is

1. it any wonder to you that the County has been growing
2. at a greater rate than the City?
3. A. No, it is not.
4. Q. We have heard testimony, I believe, that businesses have
5. been moving out of the City, that the City is losing its
6. retail merchants and such to the County. Did you look
7. to see what the record of the number of retail merchants
8. are? Did you do that?
9. A. Yes.
10. Q. Would you tell us what the number of retail merchants
11. were in the City in 1979?
12. A. In 1979 there was ~~619~~ dealers, as reported by the State
13. Department of Taxation.
14. Q. How many are there in 1980?
15. A. Six hundred and twenty-two.
16. Q. That information is not available for 1981?
17. A. No sir. This is in the annual report of sales tax, sales
18. and use tax collections, as put out by the State Depart-
19. ment of Taxation for the calendar year 1980 and 1979.
20. Q. Did you look at these numbers in the year 1975 to 1980?
21. A. Yes sir.
22. Q. Was there a year when the number of merchants, retail
23. merchants in the City, dropped?
24. A. Yes sir.

1. Q. From what number to what number?

2. A. In 1978 it was 598 dealers, in 1979 . . . or, excuse me,
3. I'm sorry. In 1977, 615; 1978, 598. So, a drop of
4. seventeen in that period, 1977 to 1978.

5. Q. By the next year had the City grown back in the number
6. of merchants?

7. A. Yes sir.

8. Q. Beyond what it had dropped?

9. A. Yes sir. At the same time it dropped, the sales tax
10. increased from a hundred and twenty-three million in tax-
11. able sales to a hundred and thirty-six million, as re-
12. ported by the Department of Taxation.

13. MR. COGAR: For what period of time?

14. A. That's for 1977 to 1978.

15. MR. COGAR: What were those numbers again?

16. A. 1977 to 1978, this is the reported taxable sales in the
17. calendar year report of the Department of Taxation. Now,
18. these are taxable sales, this will not be the sales tax
19. as reported on a fiscal year basis but rather taxable
20. sales. This is where this information came from. The
21. comparative data for the dealers and the taxable sales
22. as reported in that document. For 1977 the . . . calen-
23. dar 1977, the number of dealers was 615, as against re-
24. ported taxable sales of a hundred and twenty-three million.

1. In the next year, 1978, they dropped in the number of
2. dealers from 615 to 598, but the taxable sales increased
3. from a hundred and twenty-three million to a hundred and
4. thirty-six million. And then in 1979 with the 619 deal-
5. ers, to a hundred and fifty-three million dollars in
6. sales--a hundred and fifty-one million dollars.

7. JUDGE TRABUE: Mr. Fitzgerald, is this going
8. to be introduced as an exhibit or should we be writing
9. this down in order to remember it?

10. MR. FITZGERALD: Judge, we can furnish the
11. Court this exhibit, yes sir.

12. Q. Did you examine the City's budget . . .

13. A. Yes sir.

14. Q. . . . to determine . . .

15. A. The audit reports.

16. Q. The audit reports?

17. A. Yes sir.

18. Q. To determine how the City had been estimating its sales
19. tax revenues?

20. A. Yes sir.

21. Q. What did you find?

22. A. The year 1980, fiscal year 1980, the City anticipated
23. in its budget a million five hundred and seven thousand
24. dollars in local sales tax. It actually received a mil-

1. lion six hundred and forty-nine thousand two hundred and
2. fifty-two dollars, or an underestimate of what they ac-
3. tually collected by 9.4%. In 1979 the City estimated
4. a million four hundred thousand dollars in local sales
5. tax. It actually received a million five hundred and
6. forty-five thousand dollars, or an underestimate in that
7. year of 10.6%.

8. Q. Mr. Robinson, Mr. Wade agreed in his testimony that he
9. did not, in determining his computations of loss of net
10. tax revenues, include a number of revenues that would be
11. affected by the annexation, would be decreased to the
12. County in the event of annexation. Have you made a
13. separate study of those revenues that would be affected
14. by annexation that Mr. Wade did not include?

15. A. Yes sir, I have. While they are all within the previous
16. exhibits that are introduced here, primarily Exhibit 113,
17. we have taken from that exhibit the items that were not
18. considered in the City's computation of the County's loss
19. of net tax revenue.

20. Q. Well, with regard to local taxes alone, no state or fed-
21. eral . . .

22. A. Local revenues rather.

23. Q. Local revenues, right. Local sources, no state or fed-
24. eral, what is the total amount of revenues that would

1. be lost if this annexation were granted that are includ-
2. ed in the County's 1982 budget?

3. A. The 1982 budget is four hundred and fourteen thousand
4. six hundred and nine dollars, in the . . .

5. MR. COGAR: Excuse me, for what year?

6. A. Fiscal 1982, but fiscal 1981 is . . .

7. Q. Just give the number for the 1982 budget alone, again.

8. A. Four hundred and fourteen thousand six hundred and nine
9. dollars. Now, Mr. Wade did not consider the 1982 bud-
10. get at all. That's the reason I was giving other fig-
11. ures, 1981.

12. Q. With regard to the 1981 budget, did Mr. Wade . . .

13. A. Local revenues of three hundred and eighty-four thousand
14. nine hundred and sixty-four dollars.

15. Q. What revenues would be lost from state sources as a re-
16. sult of the annexation using the 1981 budget if this
17. annexation is granted?

18. A. Three hundred and ~~ninety-four~~ thousand a hundred and
19. twenty-nine dollars.

20. Q. And what would that amount be using the 1982 budget?

21. A. Three hundred and fifty-five thousand a hundred and forty-
22. two dollars.

23. Q. And from federal sources? What will the County lose
24. based on the 1981 budget if the annexation is granted?

*State
Revenue
lost*

1. A. A hundred and sixty-three thousand five hundred and
2. seventy-eight dollars. In 1982 it's a hundred and thirty-
3. six thousand seven hundred and twenty-seven dollars.

4. Q. It's less in the 1982 budget?

5. A. Yes sir.

6. Q. Is that because the County anticipates less federal reve-
7. nue?

8. A. Yes sir.

9. Q. If the County had to compensate itself for the loss,
10. what's lost that Mr. Wade for the City says that the City
11. should not compensate it for, what would that do to the
12. tax rate in fiscal year 1981?

13. A. Fiscal year 1981, I believe we presented that to the
14. Commission. I don't have that figure before me, Mr.
15. Fitzgerald, but . . . (document handed to witness). In
16. 1981 the County would have to increase its tax rate by
17. twelve cents on all assessables of the County. Fiscal
18. 1982, it would have to increase its tax rate on all ass-
19. essables by thirteen cents.

20. Q. That would be to compensate for the loss that the City
21. does not propose to compensate the County for, is that
22. correct?

23. A. That is correct.

24. MR. FITZGERALD: Your Honor, here are these

1. taxable sales and the number of merchants.

2. JUDGE MOON: That was not an exhibit, was it?

3. MR. FITZGERALD: No sir. That would be 124,

4. I believe. Your witness.

5. JUDGE MOON: Let's take a recess.

6. (Recess)

7.

8. Cross Examination by Mr. Cogar:

9. Q. Mr. Robinson, would you just turn to Exhibit 107? Look-
10. ing at number 22 on there, 22.A., the items listed for
11. taxable values are identical to the items listed for
12. levy, is that correct?

13. A. Yes sir.

14. Q. If I look at the percentages opposite all the items in
15. A, those percentages are identical to call items in B.

16. A. Yes sir. No, they are not either. There is one differ-
17. ence on there, the total is the difference.

18. Q. Well, that's what I don't understand. If you have all the
19. same items for taxable values, with the same percentages,
20. that you have for the levy for the same items with the
21. same percentages, and you come to a total, how do you
22. come up with 14.15% in one case and 15.34% in the other
23. case?

24. A. There may be a difference in . . . there may be a typo-

1. County's total financial picture. This is why I feel
2. that we have approached the point that some other consid-
3. erations should be given. In this particular case, I
4. don't think . . . well, I don't think there's ever been
5. a case where the County lost as much in its sales tax as
6. this case here, and the sales tax now is a big item in
7. the County's total tax resources. This is why I say I
8. think we have come to the point where other considerations
9. should be taken into account, other than the ad valorem
10. tax base.

11. JUDGE ARTHUR: Is that consistent with your
12. statement contained in the note at the foot of County
13. Exhibit 110?

14. A. No sir, no sir, it is not. And in the computations here
15. where you come to loss of net tax revenue, if we'll go
16. to 116, if you'll note in there the debt service reduc-
17. tion is based on the fourteen percent rather than the
18. twenty-four percent. But, I say, this is a minimum loss,
19. not only for revenue, but it's a minimum reduction in the
20. assumption of debt. It would be almost a million dollars
21. more in the assumption of debt if you considered all
22. these items of local revenue.

23. JUDGE ARTHUR: Yes, well, I'm just trying to
24. get it straight in my mind. If you'll look at that state-

1. ment on the exhibit I just referred to, it sets out there
2. what the County of Rockingham expects.

3. A. Yes sir, as a minimum.

4. JUDGE ARTHUR: Is that what you mean by that?

5. A. Yes sir.

6. JUDGE ARTHUR: But you are suggesting now
7. that they ought to contribute more than that.

8. A. Yes sir, I am suggesting that the Court give considera-
9. tion to other factors in the County's . . . or the
10. financial impact of this case on the County's finances.

11. Q. I believe you said that one of the reasons you proposed
12. that is because you've never been in a case in which a
13. City seeks the amount of sales tax that the City would
14. receive in the event . . .

15. A. The percentage of the County's sales tax.

16. Q. The percentage of the County's sales tax. Well, that's
17. not the only revenue that is involved, is it, in this
18. annexation?

19. A. No sir, but the sales tax throughout local government has
20. become a greater factor. First of all we've got this
21. matter of inflation, and sales tax is going up with in-
22. flation, probably more so than many other items of reve-
23. nue.

24. Q. Well, if we are awarded the sales tax that we seek, that

1. would be derived from the annexation area, what percent-
2. age is that of the total County local revenues?
3. A. I have not computed it, but I could compute it for you.
4. Q. Well, would you just give us your best approximation, or
5. compute it if you like.
6. A. All right. The loss of sales tax alone, the sales tax
7. alone is almost equal to the loss in the levy in this
8. case. Total levy loss, the sales tax loss is almost
9. equal to the total loss of tax revenues from all the
10. ad valorem taxes. That's almost a hundred percent.
11. Q. I want all the revenues. What's the total local levy?
12. A. The total local levy . . .
13. Q. This is for the whole County.
14. A. The total local levy . .
15. Q. Where are you looking, Mr. Robinson?
16. A. I'm looking at item 24 on County Exhibit 107. The total
17. local levy is \$7,372,254.00. Now, the loss by annexation
18. is \$1,148,571.00. Now, when you compare that . . .
19. Q. That's what percent?
20. A. Approximately fifteen percent. Now, . . .
21. Q. No sir, let's add the two together and see, of the com-
22. bined, what the percentage is.
23. A. Combine what?
24. Q. Combine the total local levy with the sales tax, the one

1. percent, and tell me what relationship that which would
2. be lost compares to the whole.
3. A. I don't know if I follow you, Mr. Cogar.
4. Q. All right . . .
5. A. Maybe you have already computed it . . .
6. Q. No sir, I haven't. If you could take \$7,300,000.00 . . .
7. A. Seven million three hundred thousand dollars?
8. Q. That's right. And what is the total County sales tax?
9. A. The County sales tax, I think, is \$1,106,000.00, but let
10. me be sure I'm looking at the right figure. A million
11. one hundred and six thousand dollars.
12. Q. All right, sir.
13. JUDGE ARTHUR: Now, that's the one percent?
14. A. That's the one percent.
15. Q. So, that's about seven million five, something in that
16. neighborhood?
17. A. Yes.
18. Q. Now, . . . I mean eight million five, combining the two.
19. A. Yes sir.
20. Q. Now, what percentage of the sales tax that the County
21. would receive, what is that to the whole? What would
22. the City receive from the annexation area?
23. MR. FITZGERALD: Do you mean what would the
24. County lose?

1. Q. What would the City receive in sales tax from the annex-
2. ation area?

3. A. A million and forty-seven thousand dollars. And this
4. is what I said just a moment ago, that the sales tax loss
5. is equivalent to the total ad valorem tax loss. And
6. that's why I say it should be considered.

7. Q. Is that the percentage of . . .

8. A. I'm not talking about percentages.

9. Q. Well, I am.

10. A. Okay, we'll do it your way. Whatever you say.

11. Q. What the City will receive, what percentage of that is
12. that of the total County levy, including the total County
13. sales tax?

14. MR. FITZGERALD: I would ask that that ques-
15. tion be repeated, I sure didn't follow it.

16. Q. The one percent okay, take the \$7,372,254 . . .

17. JUDGE TRABUE: What page are you on?

18. MR. COGAR: I'm sorry, Judge, on page 6 of
19. 8 of Exhibit 107.

20. A. You're looking at the last figure on that page?

21. Q. Right. Add to that the County's total sales tax.

22. A. You just asked me to add the \$7,300,000.00, but now you
23. are asking me to add the figure there, which is
24. \$7,372,254.00. Now, which one do you want?

1. MR. FITZGERALD: Well, he doesn't know.

2. JUDGE MOON: Let's let him ask the next ques-
3. tion. It doesn't show anything.

4. MR. FITZGERALD: All right, sir.

5. Q. Of the revenues derived from your taxable values and
6. from your sales tax, the sales tax that will be lost
7. represents 11.6 of the whole, is that correct?

8. A. The sales tax loss represents 11.67% of the County's
9. total ad valorem tax and sales tax anticipated for the
10. year 1981-82.

11. Q. All right, sir. That's fine, thank you.

12. JUDGE ARTHUR: Now, before we leave this, just
13. so I'll understand, when we say sales tax are you talking
14. about the . . .

15. A. The local sales tax. One percent.

16. JUDGE ARTHUR: Imposed locally by ordinance
17. and collected, but we're not talking about the state
18. sales tax.

19. A. It's imposed locally but collected by the state. It's
20. collected by the state. It's collected within the four
21. percent the state collects on all sales.

22. Q. If I go down to the store on the way home this evening
23. and I buy something that costs a dollar, they're going
24. to charge me a dollar and four cents, is that correct?

1. A. Unless it's a tax exempt item.
2. Q. Well, let's assume that it isn't. That whole four cents
3. goes to the state, is that correct?
4. A. Yes sir.
5. Q. And then one penny is returned to the locality.
6. A. That's correct, if the locality has imposed the local
7. one percent.
8. Q. The one cent over the three cents, which both Rockingham
9. County and Harrisonburg have?
10. A. Right.
11. Q. And that's the one percent that we're talking about.
12. A. Right.
13. JUDGE TRABUE: Then another penny comes back
14. from the state prorated on the school enrollment?
15. A. School age population, five through nineteen plus two,
16. three, four, twenty and twenty-one handicapped children.
17. Q. But that's not what we're talking about here. That's
18. totally different and computed differently, isn't it?
19. A. Yes sir.
20. Q. We're going to get into that at a later time.
21. JUDGE ARTHUR: I think I understand. Thank
22. you.
23. Q. Now, you were in the Winchester case, were you not?
24. A. Yes.

1. Q. And you are aware, are you not, that in that case, and
2. quite a point was made over it, the City was awarded
3. fifty-four percent of the sales tax of the County.
4. A. I don't recall the percentage, I know this is the great-
5. est I've ever seen in any case.
6. Q. Well, do you agree with me that fifty to fifty-five per-
7. cent was the order of magnitude?
8. A. I don't recall. It could have very well been.
9. Q. Don't you read the briefs and opinions of the Court and
10. follow them very closely, Mr. Robinson?
11. A. That's been fifteen years ago . . . well, not fifteen
12. years ago, it's been approximately ten years ago. But
13. I have not had to review that case in the last about six
14. or seven years.
15. Q. Well, let's talk about the larger aspect of this thing.
16. A. I think this is a very large aspect.
17. Q. I know you think it is. But in terms of the fourteen per-
18. cent of let's call it taxable values that the City seeks
19. of the whole County, how does that compare to other an-
20. nexations you've been in?
21. A. Well, they've been from one percent to forty-six percent.
22. Q. Norfolk County was forty-six percent of all the taxable
23. base of the County was awarded. Is that correct?
24. A. That is correct.

1. Q. Compared to fourteen percent sought here.

2. A. I beg your pardon?

3. Q. Compared to fourteen percent sought here.

4. A. That was an entirely different case, Mr. Cogar.

5. Q. I understand that. And the one you've just been in . . .

6. A. That was before these sales tax, occupancy tax, motor
7. vehicle tax, and some of the other taxes.

8. Q. Well, that hurt all the more then, didn't it?

9. A. No, it did not in that case. The County compromised
10. that case and agreed to it.

11. Q. You were recently in the Lynchburg case, were you not?

12. A. Yes sir.

13. Q. And twenty-six percent of the taxable values of Campbell
14. County were awarded the City of Lynchburg, were they not?

15. A. That was probably correct.

16. MR. FITZGERALD: Your Honor, I would like to
17. impose an objection here. What has been done percent-
18. wise in other cases is totally irrelevant in this case,
19. unless the Court has before it all the corresponding
20. comparable facts that tell the Court what all that means.
21. The percent of assessables is meaningless unless the
22. Court has all that information. What has been done in
23. other cases is not pertinent to what has to be done or
24. what may be done in this case.

1. JUDGE MOON: But on cross examining this wit-
2. ness he said this is the highest he's ever seen in all
3. his fifty-some cases, and it's a proper subject for cross
4. examination.

5. MR. FITZGERALD: He was talking about the
6. sales tax being the highest.

7. MR. COGAR: That's just part of the total re-
8. venue picture.

9. JUDGE MOON: I agree with you, what happened
10. in those cases has nothing to do with this one.

11. Q. You were in the Petersburg and Prince George County, were
12. you not?

13. A. Yes.

14. Q. And you know that thirty-five percent of Prince George's
15. total taxable values were awarded to the City.

16. A. Yes sir.

17. Q. And fourteen percent is sought here?

18. A. Yes sir.

19. Q. In the very recent Roanoke case, 22.5% of the taxable
20. values of Roanoke County were awarded to the City of
21. Roanoke, were they not?

22. A. That sounds correct.

23. Q. And fourteen percent is sought here.

24. A. Yes.

1. Q. Now, you were talking around Exhibit 113, about the
2. town's share of the County's tax. Is that correct? At
3. what exhibit were you discussing how the towns partici-
4. pated in the County's share of sales tax? Where did you
5. show that on the exhibit and discuss it?

6. A. I don't . . .

7. JUDGE ARTHUR: That was the A.B.C. tax,
8. wasn't it?

9. A. I spoke of the A.B.C. profits, of the tax being given
10. to the towns direct. It does not come through the County
11. at all.

12. Q. Now, do the towns get any part of the County's sales
13. tax?

14. A. Yes sir.

15. Q. Did you reflect that in your exhibit?

16. A. No sir.

17. Q. That's not the one percent we've been talking about.

18. A. What's not the one percent?

19. Q. What the towns receive. Is that in the one percent that
20. we're talking about?

21. A. Yes sir.

22. Q. What percentage do the towns get?

23. A. (Witness examines documents)

24. Q. Are you looking at your revenue exhibit?

1. A. No, I'm looking at the general pertinent data, page one
2. on County Exhibit 107, page one of eight. At the bottom
3. of that page, item 8. The towns would receive, all the
4. towns in the County would receive one-half of 6.52%.
5. In other words, in that item there, the towns constitute,
6. or the school age children, the school age population,
7. of the County, 6.52% are in the towns. So, they get
8. one-half of that. The towns would get 3.26% of the
9. County's sales tax.
10. Q. Now, on the A.B.C. funds, how are they redistributed to
11. the towns?
12. A. They are not redistributed to the towns. They are dis-
13. tributed direct to the towns by the state.
14. Q. How are they distributed, on what basis?
15. A. They are distributed to the towns on the basis of the
16. town's population. It does not enter into the County
17. population at all. In other words, the County does not
18. receive any A.B.C. profits on the population of the towns.
19. If there is a ten dollar per capita distribution of A.B.C.
20. profits during the year, for example, and the towns had
21. a hundred people as against a thousand people or nine
22. hundred in the County, then the towns would get one-tenth
23. of that A.B.C. profits being distributed by the state.
24. And the County's population within the towns is not con-

1. sidered when the County receives its A.B.C. profits.
2. And the state distributes it direct to the towns.
3. Q. They take all the revenues in the State of Virginia
4. derived from the sale of liquor and wine.
5. A. Whatever they see fit to distribute.
6. Q. But first they take all of it, and then they determine
7. to distribute a certain amount of it throughout the
8. state.
9. A. Right.
10. Q. Regardless of where it came from?
11. A. Right.
12. Q. And that's distributed on a population per capita basis.
13. A. Right. And the County does not receive anything on a
14. population basis for A.B.C. profits for the population
15. of the towns.
16. Q. No sir, that goes to the towns.
17. A. Yes sir.
18. Q. And that will continue to go to the towns.
19. A. Yes sir.
20. Q. Now, in that regard, the County taxes, imposes an ad
21. valorem tax on the towns, just as they do the residents
22. of the County, is that correct, who don't live in town?
23. The same tax?
24. A. Yes sir.

1. Q. The owner of a fifty thousand dollar property in the
2. County which is not in a town will pay the same real es-
3. tate tax as a resident of a town with the same value of
4. property. Correct?

5. A. That's correct.

6. JUDGE ARTHUR: Pay the same to the County?

7. A. Yes sir.

8. JUDGE ARTHUR: Plus the town.

9. Q. And in addition to that, towns traditionally impose some
10. additional tax.

11. A. It varies as to the amount and it varies as to the class
12. of taxes that towns may or may not assess.

13. Q. Now, have you made any study along with all of these
14. others that you have as to the amount of moneys collect-
15. ed from towns by the County that are returned to the
16. towns?

17. A. I don't know if I understand your question, Mr. Cogar.

18. Q. Well, if you took the time to look fully through the
19. County's budget, would you not be able to break out,
20. as you have by your interpolation and extrapolation,
21. the total amount of revenues received from the towns,
22. citizens of the towns, that were in fact returned in some
23. form of service to the towns?

24. A. I don't think you can do it, Mr. Cogar.

1. Q. Well, I know I can't do it.

2. A. There's no information available to compute that.

3. Q. You've been present in cases when that was testified to,
4. have you not?

5. A. No sir, I don't believe I have.

6. Q. In Christiansburg?

7. A. I don't think so, no, I don't think there was any return
8. of taxes to the towns.

9. Q. Well, we know what they get, we know what the County
10. does for the towns other than education, other than
11. schools.

12. A. Well, as far as I'm concerned, I think the towns receive
13. each and every service of the County that the County
14. furnishes in any way. I don't know that they are ex-
15. cluded from any service of the County in any way.

16. Q. Well, let me ask you this. The enormous capital expen-
17. ditures, so characterized by others, that have occurred
18. in the area of water and sewer in and around Harrisonburg
19. since the filing of the annexation suit, how have the
20. towns benefited from that?

21. A. I don't know that they have benefited from it.

22. Q. Do they benefit from it at all?

23. A. I don't know, Mr. Cogar. I've heard some testimony in
24. the case before that the County and one of the towns is

1. participating in the Regional Authority. I have not gone
2. into the operation of the Authority.

3. Q. That deal was struck before the annexation suit was
4. filed?

5. A. I don't know.

6. Q. Are there seven towns?

7. A. Six or seven.

8. Q. All right, and you've examined all the audits of the
9. County over the years, have you not?

10. A. Yes sir.

11. Q. And do you find any expenditure in the seven towns for
12. any water or sewer facilities?

13. A. I have not come across any such that I can recall.

14. Q. But you do find expenditures around the perimeter of
15. Harrisonburg in the last five years for those kinds of
16. projects?

17. A. I'm not sure of the source of those revenues. For in-
18. stance, the towns get a proportion of the federal revenue
19. sharing funds, and I think according to the City's ex-
20. hibit and some answers to interrogatories that the County
21. has spent considerable amounts of money in water and sew-
22. er facilities from the revenue sharing funds.

23. Q. So, a considerable amount of the money that has been
24. spent on utility improvements around the City of Harri-

1. sonburg have come from federal revenue sharing funds. Is
2. that your testimony?

3. A. They were non-categorical funds that the County received
4. and the towns received, and the County saw fit to spend
5. it as it wished, and it's my understanding that they did
6. spend some of this federal revenue fund for capital im-
7. provements.

8. Q. Considerable amounts you said.

9. A. According to your exhibits, yes. I have not investigated
10. it to see what they have spent.

11. Q. And in addition to that, in the improvements, water and
12. sewer improvements, around the City, some were paid for
13. from the general fund, is that correct?

14. A. I'm not certain. I have not investigated that.

15. Q. Well, where else would it come from?

16. A. Well, I don't know.

17. Q. If it didn't all come from federal sources, where would
18. it come from?

19. A. I have not investigated it. In other words, I have not
20. considered any capital funds here at all, as you've
21. heard me testify. All capital expenditures have been
22. eliminated from any consideration here in my testimony
23. whatsoever.

24. Q. Well, if any were paid for from the general fund, then

1. that would mean that town revenues have helped to pay
2. for utility improvements around the City. Is that cor-
3. rect, if you make that assumption?

4. A. Well, I don't think you can isolate it that way. You
5. asked what the County is furnishing to the towns, the
6. County is first of all not taxing the towns for utility
7. taxes, it's not taxing the town's citizens for automobile
8. licenses. It is in turn though making contributions to
9. each and all the towns' fire services and this kind of
10. thing. I don't think you can isolate it in that manner.

11. Q. I'll go back and ask the question one more time. To the
12. extent that utility improvements have in any way been
13. funded out of local revenues in and around Harrisonburg,
14. there would be in there revenues, if it came from the
15. general fund, that have come from towns. Is that cor-
16. rect?

17. A. It's commingled.

18. Q. Yes. Now, let's turn over to your expenditure exhibits.
19. Before we do that, if you would look at Exhibit 107, page
20. six of eight. You have shown there County of Rocking-
21. ham 1981 estimated taxable values of locally taxable
22. property by classes. Is that correct?

23. A. Yes sir.

24. Q. That's a billion four under A for the whole County.

1. And in the area proposed to be annexed the taxable values
2. are one hundred and forty-nine million nine hundred and
3. forty-three thousand and ninety dollars. Correct?
4. A. Yes sir.
5. Q. In your projections of prospective loss of net tax reve-
6. nues, you did not confine yourself merely to these reve-
7. nues, did you?
8. A. No sir.
9. Q. Now in your sixty . . . how many cases?
10. A. Fifty to sixty.
11. Q. You have been aware of the provision of the statute
12. applicable to this, have you not?
13. A. To this what?
14. Q. To the award of prospective loss of net tax revenues.
15. A. Yes sir.
16. Q. And you have adopted your own approach to the statutory
17. requirements, the statutory language?
18. A. Yes sir.
19. Q. Now, let me just read to you this language, Mr. Robinson.
20. It says, "The Court has the power to require payment by
21. the City to the County of an amount to compensate the
22. County in not more than five annual installments for
23. prospective loss of net tax revenues during the next five
24. years to such an extent as the Court in its discretion

1. may determine because of annexation of taxable values to
2. the City." You are aware of that language?

3. A. Yes sir, I think there's something else before that too,
4. Mr. Cogar.

5. Q. Well, what is it that you want to call attention to?

6. A. Balancing of the equities. I think all of it goes into
7. one ball of yarn.

8. Q. Well, you understand what I've read to you, that part
9. of it, it says, "because of annexation . . ."

10. A. I can't read one sentence of the statute and limit it to
11. that, Mr. Cogar. I understand what you've read, but I
12. can't read one sentence of the statute and stop there.

13. Q. You have heard that part that says, "because of annexa-
14. tion of taxable values."

15. A. Yes sir.

16. Q. The taxable values which would be annexed to the City
17. are shown on your exhibit, are they not?

18. A. These are the ad valorem taxable values, yes sir. I con-
19. sider a child, I consider a person, as a taxable value
20. when you bring it down to the question of getting state
21. sales tax, or getting A.B.C. profits. I consider those
22. just as much a taxable value as merchant's capital.

23. Q. Are federal grants taxable values?

24. A. Federal grants are not taxable values, but there again

1. they are in the balancing of the equities in my judg-
2. ment.

3. Q. Are state revenues?

4. A. Depending on the source and . . .

5. Q. Are they taxable values?

6. A. If the County is entitled to state taxes as the result
7. of having a child here or person here or A.B.C. profits,
8. I consider that a taxable value to the County. If there
9. were no people here, many of those taxes would not be
10. available, they would not be taxable values to the County.

11. Q. Well, are they taxes imposed by the locality on values
12. within the County?

13. A. As long as it's an A.B.C. profit or a child, as far as
14. I'm concerned, they are taxable values to the County.

15. Q. But insofar as the way you have constructed your exhib-
16. it, you have shown taxable values within the annexation
17. area on Exhibit 107.

18. A. Yes sir, these are the taxable values on the County's
19. books.

20. Q. Yes sir. But when you get to the projection of the pro-
21. spective loss of net tax revenues, you not only use the
22. taxable values of the area but you also use all federal
23. and state revenues.

24. A. All funds.

1. Q. Now, if you will turn over to Exhibit 111, the first
2. page.

3. A. Yes sir.

4. Q. Now, let me ask you right up front here, when you were
5. before the Commission on Local Government, you were using
6. the 1981 budget figures.

7. A. Yes sir.

8. Q. You weren't using the 1982 budget figures.

9. A. They had not been adopted.

10. Q. And throughout these exhibits, you have combined actual
11. expenses, audited expenses and revenues with budgeted.

12. A. No sir, they are shown separate in each case.

13. Q. Well, I know they are shown separately, but for the pur-
14. pose . . .

15. A. They are not combined in any way there. They are reflect-
16. ed here on a comparative basis, not combined.

17. Q. Mr. Robinson, when you take a ten year period for pur-
18. poses of determining what the projected increases in rev-
19. enues and expenses are, you average budget figures in
20. with actual expenses, don't you?

21. A. Comparatively-wise, yes.

22. Q. Well, you put them all together and average them.

23. A. No, I don't put them all together. I just compute the
24. rate of average annual increase. They are not mixed.

1. Q. Mr. Robinson, for a ten year period how do you arrive
2. at an average? You just add up eight years of actual
3. expenses and two years of budget expenses, correct?

4. A. You go from the beginning period to the ending period
5. and compute your rate of average annual increase through-
6. out that period.

7. Q. And if in the ending period you have two budget years,
8. then that is in the sum of the ten years.

9. A. No sir, you're going from the beginning to the end.
10. They're not in the sum at all. If you eliminated every-
11. thing from the first to the last and only used a number
12. of years, you would have the same thing, Mr. Cogar. You
13. could eliminate 1977, you could eliminate through 1981.
14. If you compute your rate of average annual increase, you
15. wouldn't need any of that.

16. Q. Are you telling the Court, Mr. Robinson, that in arriving
17. at your projections of future expenditures and future
18. revenues based upon past experience, that you have not
19. derived your average by combining actual expenses with
20. two budget years?

21. A. Not combining them, no sir. No, they're not combined in
22. any way, Mr. Cogar. The only thing . . .

23. Q. Well, I'm using combining to mean to add together and
24. arrive at a percentage.

1. A. No sir, you don't add together and divide. You take the
2. number of periods that are involved, the beginning per-
3. iod and the ending period and the number of periods that
4. are involved to arrive at an average.
5. Q. Let's just turn over here. Show us where you have pro-
6. jected your annual rate of . . . let's take Exhibit 117,
7. sheet one of one. Have you got it?
8. A. Yes sir.
9. Q. Have you got item I.(c)?
10. A. Yes sir.
11. Q. If I go over to the last column for the rate of average
12. annual increase in expenses I get a figure of 12.39%,
13. don't I?
14. A. Yes sir, and that's using only two figures to arrive
15. at that. That's using the thirteen million in 1976 and
16. the twenty-seven million in 1982 and taking the number
17. of periods involved.
18. Q. But you have used actual figures with budgeted figures to
19. get your percentage of increase, have you not?
20. A. I used only the two periods, Mr. Cogar.
21. Q. Okay, but have you combined actual figures with budgeted
22. figures?
23. A. I have used an actual figure for 1976, I used a budgeted
24. figure for 1982.

1. Q. The result of that is your projected increase in expenses.
2. A. Yes sir.
3. Q. Is it an accepted accounting practice to use budgeted
4. figures for this purpose?
5. A. Yes sir, in my book, yes sir.
6. Q. In anybody else's book?
7. A. Yes sir, yes sir. The City has used the budgeted figures
8. in this case.
9. Q. But they didn't make these kinds of projections.
10. A. No sir, but they used the budgeted figures to arrive
11. at the loss of net tax revenue.
12. Q. Now, with respect to the operating budget of 1982, when
13. was that adopted?
14. A. The County has been working on it for some six months,
15. I think, Mr. Cogar. It was adopted, the final adoption,
16. oh, I believe Monday or Tuesday of this week. It was
17. advertised, public hearings had been held on it, and it
18. could not adopt it at the time of the public hearing,
19. they had to wait for an additional period under the sta-
20. tute.
21. Q. It was just adopted this week, but these exhibits were
22. prepared prior to the adoption of it.
23. A. Yes sir. Not prior to the public hearing, not prior to
24. the advertisement.

1. Q. So, nothing was going to change, the public hearing you
2. knew was not going to change it.
3. A. Well, very frankly, I didn't anticipate that it would
4. change it. If I would have anticipated it, I would have
5. waited to prepare the exhibits.
6. Q. Now, when is that 1982 budget going to go into effect?
7. A. July 1 of this year.
8. Q. And it was adopted when?
9. A. I think it was Tuesday night, if I recall.
10. Q. The middle of April?
11. A. Yes.
12. Q. That's very unusual in the history of public hearings
13. and budget adoptions in Rockingham County, is it not?
14. A. No sir, it's not. No sir.
15. Q. It's not?
16. A. No sir.
17. Q. Do you know over the past ten years when public hearings
18. have been held?
19. A. No sir, I do not.
20. Q. And do you know the date of the adoption of budgets over
21. the last ten years?
22. A. No sir, I do not. But I say it's not unusual. I've pre-
23. pared budgets myself and had them adopted.
24. Q. I'm asking about Rockingham County.

1. A. For Rockingham County, I don't know in the past. I know
2. this, that they wanted to get this out of the way so they
3. would concentrate on preparing itself for this case. And
4. they did not want their department heads working with the
5. budget while they were in this case. I do know that.

6. Q. The adoption of this budget in anticipation of this case
7. gives you the opportunity to use two columns of figures,
8. neither of which have been spent or audited. They could
9. not have been audited because they haven't been spent.
10. It has that benefit to you, does it not?

11. A. I don't see that it has any benefit, Mr. Cogar, because
12. I think if you'll look at some of the exhibits you can
13. see what's going to happen to it anyway. We could have
14. just taken, gone back and taken actual figures and pro-
15. jected it out and it would have been just the same thing
16. about.

17. Q. But instead we adopted a budget a couple of months earlier
18. than what we customarily adopt it.

19. A. It may have been. I'm sure it was adopted earlier than
20. it would have been had they not been preparing for this
21. case.

22. Q. Have you from the study of the audits of the County, Mr.
23. Robinson, noted or discerned a perceptible growth in ser-
24. vices over the past five years since the commencement of

1. this annexation suit?

2. A. I have not noted any major increase in services. There
3. may have been some increase. I think if you take five
4. years with the rate of inflation you've had a fifty per-
5. cent or better increase in costs, with no additional ser-
6. vice whatsoever. And I might say this, that the major
7. items in any governmental unit's budget is in personnel
8. cost. And you add to the personnel cost some twenty-five
9. to thirty percent for fringe benefits. And you take the
10. school budget, something on the order of seventy-five per-
11. cent of it is in personnel alone. In the County it's not
12. that much, but it is a major item of cost.

13. Q. Have you noticed in your study of the County audits, have
14. you noticed a perceptible increase for additional ser-
15. vices since the commencement of this annexation case?

16. A. No sir, I have not analyzed each item beyond what you
17. see in these exhibits, and I think these exhibits will
18. reflect each and every cost during this period of time.

19. Q. Well, you were examined about this at some length by the
20. Commission on Local Government, were you not?

21. A. I don't recall the specific examination. I think there
22. was some question about some of the items. I recall one
23. item in particular that the Commission asked me about,
24. and that was the reassessment.

1. Q. I'm not talking about reassessment.

2. A. I understand, but that's what the Commission did ask me
3. about.

4. Q. Well, they asked you about the increases in expenditures,
5. did they not?

6. A. Yes sir, and that wasn't one of them. That wasn't one
7. of them.

8. Q. Well, let's look at Exhibit 111. You show some dashes
9. on here which would indicate to me that there were not
10. expenditures for these line items in those years in which
11. the dashes occur. Now, I understand you to testify to-
12. day that the reasons that those dashes are in there is
13. because you're going to a different accounting method.

14. A. Let's take . . .

15. Q. Just let me . . . I haven't asked you any question at
16. all yet. Now, you did not say that to the Commission on
17. Local Government, did you?

18. A. I said there were some additional services. I think it's
19. very true here. Take item 11, you see assessment of real
20. property . . .

21. Q. Excuse me, did you remember my question?

22. A. Yes sir.

23. MR. FITZGERALD: You were asking about the
24. dashes.

1. Q. That's right. You did not to the Commission on Local
2. Government say that the dashes were there because of a
3. change in accounting practice.

4. A. I don't know that I said that. There are many things that
5. I have said here . . .

6. Q. In this room is the first time you've said it.

7. A. It may very well be.

8. Q. Today?

9. A. It may very well be.

10. Q. Now, are you suggesting to the Court that if they go
11. across the columns from 1976 to 1980 or 1981 and a dash
12. is there, that there were expenses for that item in
13. prior years, but they just don't happen to be reflected
14. in here because of the change in accounting practice?

15. A. Yes sir. Yes sir, let's take item 2 there, finance
16. and purchasing. Each and every one of us knows that the
17. County has had the same financing and purchasing they've
18. got now, except that they have separated it and taken it
19. out of the County Administrator's Office. But those
20. functions went on just the same. And it was impossible
21. here to say that a person under the County Administrator
22. did the purchasing or financing when that person could
23. not be separated.

24. Q. All right, well, let me ask you about some of these items.

1. Under personnel services, I don't see anything until we
2. get up to the budget year we're currently in, which is
3. \$60,943.00.
4. A. That is exactly right, but the personnel services were
5. required in the County administration just as they are
6. now prior to that. They had a personnel function through-
7. out the years.
8. Q. All right, sir, what is this \$60,943.00 budgeted for?
9. A. For an office of County Personnel Director.
10. Q. How long have they had an office of County Personnel
11. Director?
12. A. In 1981, but those functions were performed by others
13. prior to that, Mr. Cogar.
14. Q. This is for a new office . . .
15. A. It's a segregated office.
16. Q. All right, but this is a person or people who are devoted
17. to that task.
18. A. Yes sir.
19. Q. And they didn't have that office before this budget year.
20. A. Not as such, no.
21. Q. Data processing. We show for the first time in 1978
22. \$64,000.00, line item 20 under 12.
23. A. Yes sir, the County has long had data processing func-
24. tions, Mr. Cogar. Some of those were contracted for and

1. charged to individual departments who were receiving this
2. service.

3. Q. Well, were they spending money of this magnitude, this
4. order of magnitude?

5. A. I can't say as to how much they were spending, but I do
6. know for instance in the Commissioner's Office in parti-
7. cular, they were contracting for some of this service.

8. Q. Now, have you made any effort to ascertain for these
9. newly appearing items what was expended for these before
10. they first appear in this exhibit?

11. A. No sir.

12. Q. You could very easily have done that, couldn't you?

13. A. No sir, it's almost impossible because those functions
14. were not . . .

15. Q. Well, let's take data processing for example. Do you
16. have a copy of the County's audit for 1976?

17. A. No, I do not.

18. Q. Well, let me give you one. Now, see what you can find
19. here for data processing.

20. A. This is what I said awhile ago, it is impossible to
21. determine if there are items in here, but I do know that
22. the County was receiving . . . all right, here we are,
23. you've already underlined it.

24. Q. I wanted to help you.

1. A. Under the taxable property here, data processing service
2. under the Commissioner of Revenue's Office, \$3,140.00.

3. Q. That's for the year 1976?

4. A. Yes sir.

5. Q. Three thousand dollars.

6. A. Yes sir.

7. Q. In 1978, sixty-four thousand dollars. How about central
8. garage?

9. MR. FITZGERALD: He hasn't finished answering
10. your question yet, I don't believe.

11. A. You asked me to see if I could find anything else on
12. there. Do you want me to analyze it? Again, I won't
13. say that that's the only item of data processing in the
14. County. That's the only one I see that you marked on
15. that page.

16. Q. Well, I couldn't find any other.

17. A.. Well, I don't say that you could or I could either, but
18. I'm sure that the County had other services.

19. Q. Well, if you are, that's what an audit is for, isn't it?

20. A. Yes sir.

21. Q. All right, I want you to find it, if they had any other
22. expenditures for data processing. I want you to find
23. it.

24. A. They could have had other contractual services that may

1. not reflect as data processing, Mr. Cogar. I couldn't
2. tell you.

3. Q. Well, show me an example.

4. A. I don't see any on here, but I said they could have had
5. other items.

6. Q. If that's what it was in 1976, you've got a three thousand
7. percent increase in two years, is that right?

8. A. That's very true.

9. Q. How about the central garage? Now, that's an item down
10. here, 21.

11. A. Twenty-one?

12. Q. Yes. That shows up in 1980 as ninety-seven thousand dol-
13. lars.

14. A. Yes sir.

15. Q. Will you look through there and see if you can find a
16. corresponding item for that?

17. A. They did not have it as such, but let's take the Sher-
18. iff's Office. I'm sure . . .

19. Q. Now, wait a minute, we're under the general financial
20. and administration section.

21. A. That's where I am right now. Let's take the Sheriff's
22. Office. I know that the Sheriff has had numerous auto-
23. mobiles that had to be maintained, whether it was con-
24. tracted for or whether it was done at the County's cen-

1. tral garage; but the cost was there somewhere.
2. Q. Isn't that carried at another place in the budget, Mr.
3. Robinson?
4. A. What?
5. Q. In that budget, the expense of the Sheriff's Department.
6. A. Yes, but what I'm saying, the Sheriff's Department now
7. receives that service from the central garage for the
8. maintenance of its cars.
9. Q. I am well aware of it, to the tune of ninety-seven thou-
10. sand dollars. Now, what did they receive prior to this?
11. Prior to the budget year 1980?
12. A. The cost is probably down in the Sheriff's Department.
13. It had to be there. They didn't get it for free.
14. Q. All right. You don't know. You don't know whether there
15. were any expenditures for central garage prior to 1980.
16. A. Not as such.
17. Q. Can you identify any in the audit?
18. A. Not as such. But I say the function of providing this
19. service for the County for all departments had to be
20. there somewhere.
21. Q. Had you reviewed the audits before you testified before
22. the Commission on Local Government?
23. A. I assembled all this data, yes.
24. Q. You were asked these same sorts of questions but you never

1. gave any explanation of that sort, did you?

2. A. Well, the Commission didn't ask me the questions you're
3. asking me.

4. Q. I'm asking you, didn't they ask you?

5. A. Not necessarily . . . I don't recall that they were ask-
6. ing the specific questions that you are asking.

7. Q. Well, they may not have asked it in those words, but
8. you . . .

9. A. Then they wouldn't have gotten an answer in those words
10. then.

11. Q. Well, they would have had about the same result I'm
12. having.

13. A. I'm trying to help you.

14. Q. Now, let's look at the fire and rescue services. In
15. 1976 there was nothing being expended for that, accord-
16. ing to the way this exhibit is constructed. Is that
17. correct?

18. A. You're on page one of four?

19. Q. Yes, on Exhibit 111.

20. A. That says fire department, fire and rescue services.
21. You see nothing in there for 1976, 1977, and 1978; but
22. if you'll turn over to the next page, the top of the
23. page, you'll see volunteer fire departments still under
24. fire and rescue.

1. Q. Yes sir, but I'm asking you about fire department, where
2. we first see an expenditure of \$5,308.00 on Exhibit 111,
3. page one of four, which has jumped up in this budget
4. year to \$104,847.00.

5. A. Yes sir.

6. Q. This is a new item, a new expenditure, a new service, is
7. it not?

8. A. As far as the classification is concerned, as fire de-
9. partment, yes. But it doesn't mean that the County was
10. not spending money for fire services prior to that by
11. any means.

12. Q. Don't you know that the County hired and commenced pay
13. for firefighters for the first time two years ago? You
14. know that, don't you?

15. A. What do you call two years ago?

16. Q. Well, 1979.

17. A. 1979? I don't think they're going to hire two firefight-
18. ers for \$5,308.00.

19. Q. Well, they didn't have any then.

20. A. Well, they had an expenditure here for \$5,308.00; but I
21. don't think that would pay for two firefighters.

22. Q. Well, how about 1980?

23. A. In 1980 there was twenty-nine thousand. I can't tell
24. you the detailed items.

1. Q. They hired two in that year, didn't they?

2. A. Well, that would indicate they've got about three times
3. as many in 1981 and four times as many in 1982.

4. Q. That's correct. So, it's fair to say from that the
5. level of services in the firefighting area is increasing.

6. A. Well, I think it's increasing in all of them.

7. Q. The level of services?

8. A. Yes sir.

9. Q. All right, sir. Let's just stop and ask a question about
10. that, given that statement. As I understand what you
11. have done, that your basic premise springs from your
12. interpretation of the statute which is shown on Exhibit
13. 115, is that correct?

14. A. Yes sir.

15. Q. And there you say that loss of net tax revenue to the
16. County is the amount by which the tax rate necessary to
17. balance the budget without annexation fails to produce
18. the revenue required to balance the budget with annex-
19. ation and to provide the same caliber and level of ser-
20. vice with annexation as provided by the County without
21. annexation.

22. A. Yes sir, that's exactly what we have done there.

23. Q. All right, sir. So you have taken the historical aver-
24. ages for expenses in the County and projected them into

1. the future.

2. A. Yes sir, yes sir. The base year is exactly what has
3. been done here.

4. Q. All right, what is the base year?

5. A. The base year is 1981-82. That's the budget year we're
6. using. And based on what has taken place in this County
7. in the past, we have projected the prospective loss in
8. the future based on that trend.

9. Q. Is the launching pad for your budgetary rocket here the
10. 1982 budget? Is that what you're saying?

11. A. That's where we begin, based on past experience.

12. Q. Well, now, wait a minute. Do you use for purposes of
13. computing the rate of increase in expenditures historical
14. expenditure figures?

15. A. Yes sir.

16. Q. How far back do you go?

17. A. Back into 1976, I believe.

18. Q. All right, sir. So, you arrive at an average for expen-
19. ditures commencing with 1976, and that develops a trend
20. for you which you project forward into the future.

21. A. Yes sir.

22. Q. And you do the same thing for revenues?

23. A. Yes sir.

24. Q. Starting in 1976.

1. A. Yes sir.

2. Q. You take the increase in revenues from year to year, you
3. develop an average, and project it into the future.

4. A. Yes sir.

5. Q. And to the extent that they depart, using all revenue
6. from all sources, you say that that is the extent to
7. which the loss of the area will deprive you of certain
8. amounts which will require increases in your tax rates?

9. A. Yes sir, I believe that to be true.

10. Q. Now, to the extent that in the development of the pro-
11. jected rate of expense going forward, you start in 1976
12. and come up using two budget years to 1982, and project
13. that forward with what you have just said is a continuing
14. across the board increase in the level of services pro-
15. vided to the citizens of Rockingham County, you defy your
16. own definition, don't you?

17. A. No sir.

18. Q. Aren't you imposing, or aren't you attempting to impose
19. on the City of Harrisonburg to pay a portion of the cost
20. of the continuing escalating increase in the level of
21. services in Rockingham County?

22. A. No sir.

23. Q. And you carry those forward right into your average.

24. A. No sir, if the County is left with what it has, this is

1. what I think it will need, this is what I think it will
2. expend, this is what I think will be the loss.

3. Q. Let me just see if we can get this one thing straight.
4. You did say that it is increasing the level of services
5. across the board?

6. A. On occasions it's increasing the level, yes.

7. Q. You said everywhere, across the board, didn't you?

8. A. Yes sir.

9. Q. All right. Now, each year that is increasing the expen-
10. ditures of the County.

11. A. No more than it has increased in the past, Mr. Cogar.

12. Q. But the level of services are increasing and the costs
13. are increasing.

14. A. To the extent that they have taken place in the past, yes.

15. Q. And as you develop an average for the rate of increase and
16. project it into the future, you are attempting to saddle
17. the City of Harrisonburg . . .

18. A. No sir, I'm not attempting to saddle . . .

19. Q. . . . with a part of the cost of projected future in-
20. creases in your level of services.

21. A. No sir.

22. Q. Now, let's look at Exhibit 119. Excuse me, look at 117
23. first, if you will. You are saying that the rate of
24. average increase is 12.39% in expenditures, is that cor-

1. rect?

2. A. Yes sir.

3. Q. That's by taking the average of what years?

4. A. 1976 to 1982.

5. Q. Including the two budget years?

6. A. No, that's considering only the 1982, Mr. Cogar.

7. Q. I don't understand this, Mr. Robinson. If I take . . .
8. what two years did you use?

9. A. I used 1976 and 1982 with the number of intervening years.

10. Q. All right, did you use 1976 and add it to 1982 to arrive
11. at the average, or did you use the figures in each of the
12. years to arrive at your average?

13. A. I used 1976 and 1982 and the number of intervening years,
14. the periods involved, to arrive at a rate of average
15. annual increase. If there would have been ten years, we
16. would have used ten years in there. If it would have
17. been two years, we would have used two years, just as
18. you see on item (c) there.

19. JUDGE ARTHUR: Well, how many years did you
20. use?

21. A. I used for the period, the number . . .

22. JUDGE ARTHUR: Well, how many?

23. A. 1976, 1977, 1978, 1979, 1980, 1981, 1982; so you've got
24. a one, two, three, four, five, six, seven periods there.

1. JUDGE ARTHUR: Seven?
2. A. Intervening periods.
3. Q. All right, now, by using those years to demonstrate the
4. rate of annual increase which you're going to project
5. forward into the future, you arrive at a rate of average
6. annual increase in expenditures of 12.39%.
7. A. Right.
8. Q. We go down to II, using the same years, you develop the
9. average of the rate of average annual increase in reve-
10. nue, which at the end of the column is 9.14%.
11. A. Correct.
12. Q. Those percentages are then used to calculate what the
13. rate of growth in expenditures and expenses will be in
14. the future years which lead you up to that big bloody
15. slash we saw on these exhibits, right?
16. A. Yes sir.
17. Q. Now, sir, would you look at County Exhibit 121.
18. A. I don't believe I have that marked as such . . . oh, yes,
19. here it is.
20. Q. All right, sir. If you will look under expenditures . .
21. A. Yes sir.
22. Q. No, look first under income, revenue. For the years
23. shown on that exhibit, you projected a rate of increase
24. in expenditures of what amount? Or, in revenues?

1. A. I projected . . . I didn't project anything.
2. Q. Well, you said it when you were standing up at the ex-
3. hibit right there.
4. A. I . . .
5. Q. What was the average rate of increase from 1969 to 1979?
6. In income.
7. A. I didn't give a figure on that at all.
8. Q. Well, give one.
9. A. I haven't computed it.
10. Q. You have a large exhibit of this?
11. A. I believe there is a large exhibit.
12. Q. All right, sir. Did you write something on it?
13. A. Yes sir, I did.
14. Q. All right, where is it?
15. A. I wrote 11.55%, I believe, the rate of average annual
16. increase in expenditures during that period of time.
17. Q. All right, sir. And what was the average rate of in-
18. crease in revenue?
19. A. I did not compute it, Mr. Cogar.
20. Q. Well, will you compute that?
21. A. It will take some time, but I'll get it computed for you.
22. Q. So, if we use the average rate--here the average rate of
23. increase in expenditures of 11.55%, that is at variance
24. with the average which you have developed on page 117.

1. A. Yes sir, this is over a longer period of time, and I
2. think any time that you have a longer period of time
3. that you come to something closer. As you'll see in this
4. other exhibit that we were just referring to here, I be-
5. lieve you said 117, you will see on item I.(c) if you
6. take the first two years there, you get 11.19%, you get
7. 12.22%, you get 10.19%, you get 10.79%, you get 13.02%,
8. if you came over through 1981. If you go to 1982 you
9. get 12.39%. Now, if you take a ten year period of ac-
10. tual here, I think this would be very, very close to
11. that. It's 11.55%. You've got a longer period of time
12. and it's naturally going to give you a much more refined
13. figure.

14. Q. Would it surprise you, Mr. Robinson, if you computed the
15. rate of increase in revenues for this period 1969 to
16. 1979, that it would be equal to or more than your expen-
17. ditures?

18. A. Well, Mr. Cogar, I think you're looking at only one part
19. of the picture.

20. Q. I just asked you that question.

21. A. Yes sir, yes sir. If you look at revenues here and the
22. income, you're talking about all income. Now, if you go
23. on down through other items that required that income,
24. you'll see the next item under there that the County dur-

1. ing that period of time had an increase in its capital
2. needs of fourteen percent. That's why the revenue was
3. up. If you go to the debt service, you'll find the debt
4. service more than that. That's why the revenues had to
5. come in, to meet capital and debt service. We were talk-
6. ing here in terms of recurring operating expenses, and I
7. think that's what you have to look at.

8. Q. Well, what it comes down to, Mr. Robinson, is that by
9. grinding in two budget year figures for which you can
10. present no precise figures, you show that the rate of
11. increase in revenues is only going to be seventy-five
12. percent of the rate of the increase in expenditures, and
13. project that into the future. Whereas, when you look at
14. the historical record of audited figures on County Ex-
15. hibit 121, there is no such disparity at all. Is that
16. not a fact?

17. A. I don't think . . .

18. Q. Make any explanation you want to.

19. A. Would you repeat the question.

20. Q. All right, sir. If you look at your County Exhibit num-
21. ber one by the use of two budget years . . .

22. A. County Exhibit 1?

23. Q. 117, excuse me. By the use of two budget years, by
24. grinding those in with the resultant effect upon your

1. actual experience, you arrive at a rate of increase in
2. your expenditures of 12.39% and a rate of increase in
3. your revenues of 9.14%, or seventy-five percent of your
4. expenditures; whereas, if you look at the actual historical
5. facts from 1969 to 1979, they are virtually the same,
6. they are even, they are level, revenues and expenditures.

7. A. You're dealing with an entirely different situation or
8. a different item . . .

9. Q. I'm not using budget years.

10. A. No, no, . . .

11. MR. FITZGERALD: Let him answer the question,
12. Mr. Cogar.

13. A. We were talking of recurring expenses, which includes
14. not only operations but also debt service. Now, that's
15. 12.39%. And if you go to the Exhibit 121, you know what
16. you will find? You'll find total expenditures of 12.07%,
17. the comparable figure. You didn't show the total picture,
18. you weren't combining the same thing, Mr. Cogar.
19. Here on this Exhibit 117 we are saying total necessary
20. expenses, as I've said so many times. That includes not
21. only operations but it also includes debt service. Now,
22. if you'll go to County Exhibit 121, you'll have to go
23. to the bottom of the page rather than the top of the
24. page to get that. And you'll find that the total expen-

1. ditures over that period of time actual, from 1969 to
2. 1979, is 12.07%, compared with 12.39%. That's a very
3. slight variance. And there is eleven years of actual,
4. you've got five years of actual here and two budget years
5. with a difference of less than one-half of one percent.

6. Q. You're really speculating as to what's going to happen
7. in the future, aren't you, Mr. Robinson?

8. A. No sir, I don't think so at all. I don't think so at
9. all. I don't think there's any better way to judge the
10. future than down the road which we have come.

11. Q. Are you telling the Court this is the way it's going to
12. happen?

13. A. I don't think there's any better . . . I can't say it
14. will be 12.07% as against 12.39%, but I don't think it's
15. any better way to judge the future than the road down
16. which we have come, Mr. Cogar. I think that's the best
17. judge that we can make.

18. Q. Well, before the Commission I think you said something
19. like you guaranteed it or you knew it would happen, or
20. something to that effect.

21. A. I haven't said I guaranteed anything, Mr. Cogar.

22. Q. All right, sir.

23. A. I think it's a good basis for projecting the future,
24. based on the road down which we have come.

1. Q. Well, you believe this is achievable?
2. A. I beg your pardon?
3. Q. You believe it's likely to occur this way?
4. A. Yes, I do believe it; yes, I do believe it.
5. Q. That these predictions are achievable?
6. A. Yes sir.
7. Q. And you are a Certified Public Accountant?
8. A. Yes sir.
9. Q. You are a member of the American Institute of Certified
10. Public Accountants?
11. A. Yes sir.
12. Q. You are familiar with their Code of Professional Stand-
13. ards?
14. A. Yes sir.
15. Q. Are you familiar with their Rule 201 of the General Stan-
16. dards, E, related to forecasts?
17. A. Yes sir.
18. Q. Let me read what it says about forecasts. "A member
19. shall not permit his name to be used in conjunction with
20. any forecast of future transactions in a manner which may
21. lead to the belief that the member vouches for the ach-
22. ievability of the forecast." Now, you've just done that,
23. haven't you?
24. A. No sir, I said I don't know of any better way to project

1. the future than down the road which we have come.

2. Q. I know you said that first, but then I asked you if you
3. said you thought it was achievable. And you said yes,
4. you thought that it would develop in this manner.

5. A. Well, if you want to play on words, yes. I think that
6. the record is pretty clear . . .

7. Q. I'm not playing on words. Aren't you required as a
8. Certified Public Accountant when you make projections
9. such as this, to give a caveat to any person to whom
10. that is dispatched?

11. MR. FITZGERALD: May it please the Court, Mr.
12. Cogar is talking about the usual caveat to be given to
13. clients for their use in audits and things of that sort.
14. We have had projections from many, many certified account-
15. ants over the years in annexation cases, and this is the
16. first time Mr. Cogar has seen fit to throw a canon of
17. ethics in anybody's face for making projections. It is
18. totally uncalled for.

19. MR. COGAR: I think Mr. Robinson is familiar
20. with the canons of his profession.

21. Q. You are a practicing Certified Public Accountant?

22. A. Yes sir.

23. Q. To the extent that you make any projections or future
24. forecasts, you are bound by your canons?

1. A. Yes sir.
2. Q. Including these?
3. A. Yes sir. And I don't feel that there's been any viola-
4. tion whatsoever, Mr. Cogar.
5. Q. Yes sir. And customarily if you were doing this same
6. sort of thing in another setting, you would add this
7. caveat, would you not? "Because the projected financial
8. data are based on assumptions and estimates of future
9. events, we express no opinion on the projections or on
10. the accuracy of the resultant projected financial data."
11. A. That's correct.
12. Q. Now, Mr. Robinson, turn to Exhibit 117. In fiscal year,
13. after the County came to a hundred percent assessment,
14. it had an effective tax rate in 1979 of what?
15. A. Thirty-four cents.
16. Q. Two years ago. And the next year it had an effective
17. tax rate of what?
18. A. Thirty-six cents.
19. Q. All right, sir. Now, that we know because that money,
20. the levies have been imposed, the money has been receiv-
21. ed, and the money has been spent.
22. A. Yes sir.
23. Q. And the effective tax rate on the residents of this County
24. was thirty-four cents in 1979, thirty-six cents in 1980.

1. Correct?

2. A. Yes sir.

3. Q. In the budget under which you are presently operating,
4. the thirty-six cents jumps to sixty-nine cents. Is that
5. correct?

6. A. Yes sir.

7. Q. And under the second budget that doesn't go into effect
8. until July 1 of this coming year, that is calculated to
9. jump to seventy-four cents, is that correct?

10. A. Yes sir.

11. Q. And if we turn the page, over to Exhibit 118, and that
12. is without annexation.

13. A. Yes sir.

14. Q. Without any annexation whatsoever. If we look at 1983
15. without any annexation it's going to go to eighty-five
16. cents.

17. A. Yes sir.

18. Q. I think you told the Commission it would be ninety-one
19. cents, didn't you? You're using different figures here
20. than you did before the Commission.

21. A. Yes sir.

22. Q. In 1984, without any annexation whatsoever, the tax rate
23. of residents of Rockingham County will triple from 1979.
24. Is that correct?

1. A. Yes sir.
2. Q. 1985, it would jump to \$1.09, 1986 to \$1.22.
3. A. That's correct.
4. Q. Before the Commission you had it up to \$1.47, didn't
5. you?
6. A. Whatever the record shows.
7. Q. All right, let me see. Well, here's what the record
8. shows. From the Commission's perspective, the County's
9. entire methodology is made suspect by the fact that this
10. "effective tax rate" is projected to increase from thirty-
11. six cents in 1980 to \$1.47 in 1986, an increase of 307%,
12. even without annexation being granted! Those are the
13. figures that you used before the Commission? Is that
14. correct?
15. A. I don't know, I haven't checked the figures that you are
16. reading, Mr. Cogar, and I haven't read the report.
17. Q. Well, let me ask you this. Let's turn back in your
18. exhibit book to your qualifications. On page 13, Exhibit
19. 2 of 4--excuse me, 3 of 4, and 4 of 4, there are indicat-
20. ed some fifty-five annexation suits in which you have
21. participated. Is that correct?
22. A. If that's what you're reading from, yes.
23. Q. Well, do you have your exhibit book?
24. A. No sir, I don't have it.

1. Q. In what case did you first commence to use this theory
2. of projecting loss of net tax revenue?

3. A. Well, in 1952, I believe, the annexation law was rewrit-
4. ten, and I was in several cases prior to that. I think
5. it was 1960, the first case that was developed in this
6. way, in the Roanoke and Roanoke City case in 1960, the
7. first time that each one of these exhibits was presented
8. to the Court.

9. Q. All right, sir, since you don't have it before you . . .

10. A. And that was the case that . . .

11. Q. That's shown on your sheet here as the thirteenth case;
12. and I attach no significance to that number.

13. A. Yes sir.

14. Q. In 1961. And that's when you commenced to use this?

15. A. Yes sir.

16. Q. The outcome in that case was that annexation was denied
17. because the City was unable to demonstrate its financial
18. ability to absorb the annexation, isn't that correct?

19. A. I don't know the reason for it being denied, Mr. Cogar.

20. Q. But you know that's a consideration.

21. A. I don't know that was a consideration at all. I know it
22. was denied, I know it went to the Supreme Court, but I
23. don't know why it was denied.

24. Q. All right, sir. Now, you have continued to this day to

1. I said in all major cases we have used it.

2. Q. All right, would you say that what you show from 1961
3. down to the Montgomery County case, that's your thirteen-
4. th case to your fifty-fifth case, that's forty-two cases
5. you show on here; is it fair to say you used it in
6. twenty-five of those cases?

7. A. Probably in thirty-five.

8. Q. Thirty-five. All right, let's just take that number,
9. thirty-five cases. Now, in the thirty-five cases has
10. any Court ever accepted this theory of future escalation
11. which you have projected before this Court here today?

12. A. I don't think any Court has ever said that they accepted
13. or rejected it to that degree, Mr. Cogar. I do know
14. this, in many cases they have awarded level payments.
15. I suppose . . .

16. Q. Well, . . .

17. MR. FITZGERALD: Let him answer the question,
18. Mr. Cogar.

19. A. Probably the strangest case was the case of York and
20. Williamsburg. We had a similar situation where values .
21. two large industries had come in during the base period
22. of projection, Vepco and Amoco, and the County had shown
23. a rate of decrease in its tax rate; yet the Court saw
24. fit in that case to escalate the loss of revenue. At the

1. same time the Court rendered an opinion in the James City
2. case, both counties involved, it put it on a level pay-
3. ment basis. So, I don't know why the Court saw fit to
4. do one one way and saw fit to do the other one in another
5. way. At the same time in York the rate of taxes was go-
6. ing down and in James City it was going up; but the
7. Court reversed itself as far as the method of compensat-
8. ing the County for loss of net tax revenue. So, I can't
9. say why or how the Court has arrived at its judgment in
10. awarding loss of net tax revenue.

11. Q. You have chosen to use the adjective "strange" in des-
12. cribing the result in York County, and I accept that
13. as strange because is it not a fact that in the thirty-
14. five cases in which you have used this theory . . .

15. MR. FITZGERALD: If it please the Court . . .
16. excuse me, I'd like to voice an objection. I have let
17. this go on hoping that we could expedite the cross exami-
18. nation. What other courts have done and how another
19. court might have determined the loss of net tax revenue
20. is solely speculative on the part of any witness who
21. wasn't sitting on that court. It's total speculation as
22. to why a court has granted or has not granted, unless
23. Mr. Cogar has it written out in the opinion that they
24. accepted or didn't accept the escalation theory. Now, if

1. that one.

2. Q. I'm sure that that's one that I won't want, but you go
3. ahead and give it to me anyway.

4. A. Probably the largest case in the history of Virginia, the
5. Henrico case, the Court awarded the exact dollar for the
6. effective . . . on a static basis, the exact dollar,
7. fourteen million and some odd dollars.

8. Q. Yes sir. And Richmond had to turn that annexation down . . .

9. JUDGE MOON: Well, wait a minute.

10. MR. COGAR: Richmond turned down that annexa-
11. tion because it was not financially feasible--in their
12. judgment it wasn't financially feasible.

13. MR. FITZGERALD: I object.

14. MR. COGAR: He brought it up.

15. A. I don't know why they turned it down.

16. MR. FITZGERALD: I object.

17. JUDGE MOON: Sustained.

18. Q. Let's just get this question. You have mentioned the
19. York County case, the "strange" case. In that case the
20. Court awarded loss of net tax revenues for five years
21. on an escalated basis with a two thousand dollar annual
22. increase, is that not correct?

23. A. I don't recall the amount, but I do recall it was an
24. escalated payment, an escalated amount. I also recall

1. that that case went to the Supreme Court, the Supreme
2. Court required the City to assume additional debt and
3. did not take that into consideration by reducing the
4. loss of net tax revenue. Which, in effect, even escalat-
5. ed more when they went to the Supreme Court.

6. Q. And whether or not that was an issue raised on the ap-
7. peal will be reflected in the opinion of the Court.

8. A. It was.

9. Q. And those are available to everybody. In none of the
10. other thirty-four cases before a hundred and one other
11. judges has any court ever awarded you any escalation in
12. amount from one year over the other. Is that not a
13. fact?

14. A. That is correct. They put it all on a level payment
15. basis.

16. MR. COGAR: I have no further questions.

17.
18. Re-Direct Examination by Mr. Fitzgerald:

19. Q. Do you have any way of knowing whether or not they con-
20. sidered the escalation in dividing it up into equal pay-
21. ments over the years?

22. A. No sir.

23. Q. Mr. Cogar questioned you about your projections, budget
24. projections; chastised you for it, you might say. As a

1. budget consultant is it necessary for you to make budget
2. projections?

3. A. Yes sir.

4. Q. As a County Administrator was it necessary for you to
5. make budget projections?

6. A. Yes sir.

7. Q. Do you draw on that experience to make your projections
8. in this case?

9. A. Yes sir.

10. Q. Mr. Cogar talked to you about the effect of the towns
11. on the County. Did you have some computations as to the--
12. first of all as to the amount of value of commercial and
13. industrial property in the area proposed to be annexed
14. compared to the remainder of the County?

15. A. Yes sir. I don't believe I can put my finger on it at
16. the moment, but I here it is.

17. MR. COGAR: What exhibit are you referring to?

18. MR. FITZGERALD: We're not on any exhibit, sir,
19. we're on testimony.

20. Q. Mr. Robinson, . . .

21. MR. COGAR: What is the question?

22. MR. FITZGERALD: I hope to get it out.

23. Q. Will you tell the Court what percent of the County's
24. commercial and industrial assessable values are in the

1. area sought to be annexed?

2. MR. COGAR: If Your Honor please . . .

3. Q. If you exclude the towns.

4. MR. COGAR: . . .I believe this was all cover-
5. ed on direct examination.

6. JUDGE MOON: Well, I think probably the ques-
7. tion would be. I think you're getting to something else,
8. aren't you?

9. MR. FITZGERALD: Yes sir, the question of the
10. effect of the towns.

11. JUDGE MOON: All right, go ahead.

12. MR. FITZGERALD: That I did not go into.

13. Q. What percent of the County's industrial and commercial
14. assessables are in the area sought to be annexed as shown
15. by your analysis?

16. A. Excluding the towns, it's 54.37%.

17. Q. If you include the towns, what is it?

18. A. Forty-three point fifteen percent.

19. Q. What percent of the County's present commercial and in-
20. dustrial assessables are in the remaining part of the
21. County if you exclude the towns?

22. A. Forty-five percent.

23. Q. If you include the towns?

24. A. Thirty-six percent.

1. Q. Did you make an analysis of the revenues that would be
2. coming to the County, but because of the incorporated
3. towns goes to the towns?

4. A. Yes sir.

5. Q. In accordance with the current budget.

6. A. In accordance with the towns latest reports, audit reports.

7. Q. All right, what is the total amount of funds that the
8. towns by reason of the fact that they are towns siphon
9. off from the County's revenues?

10. A. Approximately five hundred and fifty thousand dollars per
11. year.

12. Q. Mr. Cogar asked you if the providing of the water and
13. sewer had any benefit to the people in the towns. Do
14. the people, the taxpayers of the towns, being taxpayers
15. of the County get benefit out of the commercial and in-
16. dustrial developments that may be caused by water and
17. sewer development?

18. A. I would say so.

19. Q. Would you turn to your Exhibit 119. Mr. Cogar at length
20. questioned you about the use of budget figures rather
21. than final audit figures. If this annexing were granted
22. and became effective, what's the earliest date it could be-
23. come effective?

24. A. December 31, 1981.

1. Q. And what budget will be in effect at that time?
2. A. The 1981-82 budget.
3. Q. Is there any possible way to reflect this annexation
4. on the finances of the County if you don't use that bud-
5. get?
6. A. No sir.
7. Q. And in fact did the City use a budget, a 1981 budget?
8. A. They used a 1980-81 budget.
9. Q. If you look at Exhibit 119, are the figures on that from
10. the year 1970 through 1974 budget or audit figures?
11. A. These are all audited figures.
12. Q. All of them?
13. A. Yes sir.
14. Q. Mr. Cogar put you through an exercise that I'm constrain-
15. ed to say I didn't quite get. I believe he had you add
16. the revenue from the tax budget and the revenue from the
17. sales tax, did he not?
18. A. Yes sir.
19. Q. Would you tell what the total of those two revenues are
20. as shown in 107 on page 6; page 6 and 8. Would you add
21. those totals together now?
22. A. The 1981 levy?
23. Q. Yes sir.
24. A. Seven million three hundred and seventy-two thousand

1. two hundred and fifty-four dollars.
2. Q. And would you add to that then the sales tax revenue
3. in the 1981-82 budget, the one million six hundred thou-
4. sand.
5. A. Yes sir.
6. Q. And what is the total of those two?
7. A. Eight million nine hundred and seventy-two thousand two
8. hundred and fifty-four dollars.
9. Q. Now, to get any meaningful comparison out of adding those
10. two together, would you add the loss that the annexation
11. if granted would produce on the tax levy, as shown on
12. page 7. Do you have that on page 7?
13. A. Which figure are you speaking of? If you want a million
14. six hundred thousand dollars, right?
15. Q. No sir, I want the figure that you show as the total
16. County of Rockingham tax levy by class in the area pro-
17. posed to be annexed, as shown on item 24, page 7.
18. A. All right, that's a million one hundred and forty-eight
19. thousand five hundred and seventy-one dollars.
20. Q. Is that what the County would lose if the annexation is
21. granted?
22. A. As far as the ad valorem tax is concerned.
23. Q. Yes sir, just as far as you just added those two things,
24. as far as the ad valorem tax is concerned. Now, if you

1. add to that what you show the County would lose in sales
2. taxes . . .

3. A. A million forty-seven thousand three hundred and sixty
4. dollars. Two million one hundred and ninety-five thou-
5. sand nine hundred and thirty-one dollars.

6. Q. All right, out of the sum of the ad valorem tax and the
7. sales tax the County would lose the sum of what?

8. A. Two million one hundred and ninety-five thousand nine
9. hundred and thirty-one dollars.

10. Q. What percent of the total of those two items of revenue
11. would that loss be?

12. A. The sales tax . . . 47.69%.

13. MR. FITZGERALD: That's all.

14.
15. Re-Cross Examination by Mr. Cogar:

16. Q. Mr. Fitzgerald asked you about the values of commercial
17. properties within and without the towns. Is that correct?

18. A. Yes sir.

19. Q. The percentage of the whole of the assessables that they
20. represent.

21. A. Yes sir.

22. Q. The ad valorem tax that's imposed on commercial establish-
23. ments, the tax rate is the same rate that's imposed upon
24. non-commercial properties, is it not?

1. A. As far as real estate, yes.

2. Q. Throughout the County.

3. A. Yes sir.

4. Q. And in the towns?

5. A. Yes sir.

6. Q. You said the towns siphon off five hundred and fifty
7. thousand dollars per year from the towns, is that correct?

8. MR. FITZGERALD: No, from the County.

9. Q. Excuse me, from the County.

10. A. Would you restate the question now.

11. Q. The best I could catch it, I think the question was how
12. much does the towns siphon off from the County?

13. A. Now, which did you mean?

14. JUDGE MOON: Well, the question was, how much
15. do the towns siphon off from the County.

16. Q. Yes sir. How much do the towns siphon off from the
17. County, and you said five hundred and fifty thousand dol-
18. lars.

19. A. Approximately five hundred and fifty thousand.

20. Q. Now, how much does the County siphon off from the towns?

21. A. I don't know that the County siphons anything off the
22. towns, because they are part of the County.

23. Q. Well, I think you used "siphoned" in the sense of trans-
24. fer of money. What is the total amount of taxes collect-

1. ed by the County from the towns?

2. A. I have no way of knowing.

3. Q. It's far, far, far in excess of five hundred and fifty
4. thousand dollars, isn't it?

5. A. I would hope so, because the County furnishes many ser-
6. vices to the towns.

7. JUDGE ARTHUR: What for instance?

8. A. Schools is a big item.

9. JUDGE ARTHUR: What else?

10. A. Policing, fire help . . .

11. JUDGE ARTHUR: Police?

12. A. Yes sir.

13. JUDGE ARTHUR: Don't the towns have their own
14. police force?

15. A. They have their own police, but the Sheriff still serves
16. them. Health, welfare, every function of the County. I
17. can't think of any function . . .

18. JUDGE ARTHUR: Well, I live in a town and I
19. can't think of any function that the County delivers to
20. the town; not one, except schools. Maybe we're differ-
21. ent.

22. Q. If it's a much larger town you probably don't see the
23. services of the County to that extent.

24. ~~JUDGE MOON: Well, Mr. Robinson, isn't this~~

~~LARRY SIMMONS,~~

having been duly sworn, testified as follows:

Direct Examination by Mr. Fitzgerald:

1. Q. Would you state your name, please?
2. A. Larry Simmons.
3. Q. Where do you reside?
4. A. 115 New Brunswick Road, Fishersville, Virginia.
5. Q. And by whom are you employed?
6. A. I am employed by the Commonwealth of Virginia, the State
7. Water Control Board.
8. Q. Are you familiar with the report of the Commission on
9. Local Government with regard to this annexation case?
10. A. Yes, I am.
11. Q. Were you quoted as a source of certain statements with
12. regard to the sewage treatment plant owned and operated
13. by the Regional Authority here?
14. A. Yes, I was.
15. Q. Would you state to the Court whether or not the informa-
16. tion set forth in the Commission's report on pages 21
17. and 22 is correct?
18. A. The information was basically correct. It was somewhat
19. oversimplified from the conversation that I had with
20. the Commission.
21. Q. Were you cited in footnote as one of the sources?
- 22.
- 23.
- 24.

1. A. Yes sir.

2. Q. And did you find or feel it necessary to write a letter
3. correcting the oversimplification of the statements that
4. were made?

5. A. Yes sir, that's correct.

6. Q. And do you have a copy of that letter with you?

7. A. Yes sir, I do.

8. JUDGE ARTHUR: I wonder if you could state
9. what was said by the Commission first, and wherein they
10. were wrong?

11. MR. FITZGERALD: Your Honors, we submitted a
12. letter which was I believe accepted for identification
13. or accepted not for the truth of it, or it was a quali-
14. fied acceptance. And I believe it's Exhibit 103, I
15. think.

16. JUDGE ARTHUR: I remember the letter.

17. MR. FITZGERALD: Exhibit 104.

18. JUDGE ARTHUR: Well, what I'm really trying
19. to get at is what is there in the report that the witness
20. contends is erroneous.

21. Q. Would you tell the Court what in the report that you
22. find is an oversimplification.

23. A. Okay, basically, beginning with the last paragraph on
24. page 21 and extending to page 22. The discussion is

1. concerning the treatment capacity of the Harrisonburg-
2. Rockingham Regional Sewer Authority's sewage treatment
3. plant on North River, and the need to expand that capa-
4. city from eight million gallons per day to twelve million
5. gallons per day. The Commission contacted the Water
6. Control Board about such an expansion and exactly what
7. would be involved with an expansion of that magnitude.
8. I guess in the footnote, Footnote 44 at the bottom of
9. page 22, the statement, "These officials advised that
10. the increase in hydraulic capacity can be accomplished
11. merely by accelerating and modifying the treatment pro-
12. cess." That quotation oversimplified the problem at
13. hand.

14. Q. Can you go ahead then and tell the Court briefly what
15. would have to be done?

16. A. Okay, in discussing the expansion of the plant with the
17. Commission, I failed to note to the Commission that there
18. is a duality of responsibility for sewage treatment
19. plants in the state. The State Department of Health has
20. dual jurisdiction over municipal wastewater treatment
21. plants. All parties concerned in this matter are aware
22. of it since they've dealt with both agencies for a number
23. of years. But we have been discussing the possibility of
24. expanding the Harrisonburg-Rockingham Plant with the

1. Authority's Executive Director for some time. In fact,
2. we have begun a river study to determine if, indeed, ad-
3. ditional waste load can be placed on the North River.
4. What I indicated to the Commission was that in order to
5. expand this plan, this study would have to be accomplish-
6. ed. It would be a rather detailed, intensive look at
7. the condition of the North River and its capability for
8. assimilating waste.

9. Q. Is all that set forth in your letter of April 2, 1981?

10. A. Yes, it is.

11. MR. FITZGERALD: We offer it in evidence.

12. MR. COGAR: It's already in evidence.

13. MR. FITZGERALD: Well, we offer it for un-
14. qualified acceptance by the Court.

15. JUDGE MOON: Yes sir. Now it's in for the
16. truth of the matter asserted in the statement.

17. MR. FITZGERALD: Your witness.

18. MR. COGAR: We have no questions.
19.
20.
21.
22.
23.
24.

WILLIAM G. O'BRIEN,

having been duly sworn, testified as follows:

Direct Examination by Mr. Fitzgerald:

Q. State your name, please.

A. William G. O'Brien.

Q. And where do you reside?

A. I reside at 150 South Main Street, Dayton, Virginia.

Q. What is your employment with the County?

A. I'm County Administrator for Rockingham County.

Q. How long have you occupied that position?

A. This May will be four years since I was employed by the County.

Q. And what was your position prior to coming to Rockingham County as County Administrator?

A. From July 1, 1973 I was employed as County Administrator for Warren County.

Q. Are your qualifications set forth correctly on County Exhibit 1?

A. Basically they are correct. There are a couple additions that were left off. Under the professional affiliations I would point out that from the years 1976 through 1978 I held the position of Vice President and President of the Association of Virginia County Administrators. And under professional experience, from 1978 to present, I

1. have worked as a part-time instructor in the business
2. department at Eastern Mennonite College.

3. Q. What degrees do you hold, Mr. O'Brien?

4. A. I have a Master of Business and Public Administration
5. from Southeastern University in Washington, D. C. I
6. have a Bachelor of Arts Degree from Mansfield State
7. College in Mansfield, Pennsylvania.

8. Q. Would you state for the Court as County Administrator
9. generally speaking what your duties are.

10. A. I serve as the chief executive officer of the County.
11. I am employed by the governing body, the Board of Super-
12. visors. It is my duty to carry out and execute the
13. policies of the County as set forth by the Board of
14. Supervisors, and to see that any state laws which the
15. Board of Supervisors is responsible for, that they be
16. carried out. Also I act as the Board's liaison between
17. the constitutional officers and other local and state
18. officials.

19. Q. Did you cause to be prepared an organizational chart
20. for the County, County Exhibit 14?

21. A. Yes sir.

22. Q. Would you, without reading all the blocks, state to the
23. Court which of these functions come within the purview
24. of your supervision.

1. A. Well, those functions which feed back to the Board of
2. Supervisors come under either my control or coordination.

3. Q. How long has the County had the function of data process-
4. ing?

5. A. The function of data processing has been an integral part
6. of the County's operation for a number of years. The
7. data processing work was performed by a service bureau
8. up until 1977 when the Board commissioned a study and at
9. that time, due to the amount of workload that was being
10. put out in a service bureau, made the determination that
11. we would be better served by establishing an in-house
12. data processing department. And at that time, in 1977,
13. that department was created.

14. Q. Mr. O'Brien, has it been your experience and observation
15. since you've been County Administrator that the County
16. has been in the process of growth and growing?

17. A. Yes sir.

18. Q. Has this necessitated the expansion of certain services?

19. A. Yes sir.

20. Q. Has it also generated some additional revenues?

21. A. Yes sir.

22. Q. The fire services that are shown on here, would you tell
23. the Court how fire suppression and prevention services
24. are performed in the County?

1. A. Well, referring to County Exhibit 55, this shows the ser-
2. vice areas of the seven volunteer fire companies within
3. the County. The Timberville service area, the Broadway
4. service area, Hose Company No. 4 service area, Bridgewater
5. service area, the Grottoes service area, McGaheysville
6. and Elkton. In this area there is an area of service
7. provided by the volunteer fire company in Weyers Cave.

8. Q. How about the rescue . . . well, first of all, while
9. we're still on the fire companies, did there come a time
10. when the County, the Board of Supervisors, saw fit to
11. commence employing paid full-time firemen?

12. A. Yes sir. Since prior to 1944, prior to that time, and
13. up until 1978, the Board of Supervisors, the County, has
14. contributed financially to the operation of the volunteer
15. departments. In 1978 the Rockingham County Firemen's
16. Association requested that the Board of Supervisors tour
17. all of the facilities in the County, and the Board did
18. that. As a result of that tour and the needs that were
19. pointed out by the Volunteer Association at that time,
20. the Board did commission a paid fire service. The pri-
21. mary need that the Association pointed out to the Board
22. of Supervisors was that the volunteer service, although
23. effective, could be made more effective with the addition
24. of paid men to work primarily during the daylight hours

1. when the volunteers were at their gainful employment.
2. They pointed out that employers were becoming more reluc-
3. tant to let their people go to answer fire calls. So, as
4. a result of that, we budgeted funds for the fiscal year
5. to begin July 1, 1979 to have paid--five paid firemen.
6. And they were to be assigned to the No. 4, Hose Company
7. No. 4 station, to that volunteer unit, Bridgewater, Grot-
8. toes, McGaheysville and Elkton. The units in Broadway
9. and Timberville did not express similar manpower short-
10. age, so they were given funds in lieu of paid men; addi-
11. tional funds.

12. Q. And has the Board since seen fit to add to that number
13. of paid firemen?

14. A. Yes sir. With the growth and the expansion of the com-
15. mercial areas to the east of Harrisonburg on the Route
16. 33 corridor, we examined the feasibility and the possi-
17. bility of constructing a fire station in that area.
18. That study determined that we would have to pay somewhere
19. in the neighborhood of two dollars and fifty cents to
20. five dollars a square foot for land. So, we were looking
21. at two hundred thousand dollar an acre land in that area.
22. And the Board of Supervisors made the determination that
23. it would be more feasible, more cost effective, to take
24. some of that money and put it into manpower services.

1. So we added three additional paid men and assigned them
2. to Hose Company No. 4, Incorporated.
3. Q. Was any other entity making a move to provide additional
4. fire service in that area?
5. A. No sir.
6. Q. Does the County have rescue squads?
7. A. Yes sir, there are volunteer rescue squads located
8. throughout the County.
9. Q. Are they divided up into service areas too?
10. A. Yes sir. County Exhibit 57 shows those service areas,
11. and they are Elkton, Grottoes, Bridgewater, Harrisonburg
12. and Broadway. Broadway operates a substation in the
13. Bergton community.
14. Q. Does the County make any contribution to those?
15. A. We contribute to their operations, yes sir.
16. Q. You contribute funds each year to each unit?
17. A. Yes sir.
18. Q. Does that include the one that's in Harrisonburg?
19. A. Yes sir, it does.
20. Q. They provide services to the City too?
21. A. Yes sir.
22. Q. I would assume the City contributes to them?
23. A. I would assume so.
24. Q. The County has a Board of Zoning Appeals and a Planning

1. Commission?

2. A. Yes sir.

3. Q. And has had for some time?

4. A. Yes sir. The first zoning ordinance was adopted by the
5. County in 1969.

6. Q. Does the County have a Planning Department?

7. A. Yes sir, we do. We have a Planning Department staffed
8. by two professional planners.

9. Q. What is the County's solid waste disposal system?

10. A. Prior to 1972 the County operated a series of open dumps,
11. and at that time in 1972 those dumps were closed and we
12. initiated a landfill disposal method on the County Farm
13. property. I might point out that we're in the process
14. of developing a regional refuse collection system. Funds
15. have been earmarked for some time for that system. We
16. have recently advertised for bids on the first site,
17. which will be located in the northwest area of the County
18. in the Bergton area. And our intention is that every cit-
19. izen of the County will be located no further than six
20. miles from one of these sites.

21. Q. You have a Recreation and Parks function.

22. A. Yes sir, since 1969.

23. Q. Since when?

24. A. 1969.

1. Q. And what does that unit do?

2. A. The Recreation and Parks Department is headed by a Recrea-
3. tion Director who is assisted in her function by a Recrea-
4. tion Commission which is appointed by the Board of Super-
5. visors. And they plan the recreational programs for the
6. County citizens.

7. Q. The Engineering Department, what does it do?

8. A. Well, we have been developing an engineering/public works
9. function for a number of years. The County first enter-
10. ed the water and sewer utility business back in the late
11. fifties, early sixties, with the Park View Sanitary Dis-
12. trict, when that was created. And in 1973 the engineer-
13. ing function was added, and the County hired a profess-
14. ional engineer in 1974 who heads the Public Works Depart-
15. ment. As a matter of fact, his title is Director of Pub-
16. lic Works. The engineering function, because our Direc-
17. tor of Public Works is a professional engineer, we are
18. able to perform a number of professional engineering func-
19. tions in-house.

20. Q. The Utilities Department?

21. A. The Utilities Department operates the County water and
22. sewer systems, both within the Sanitary District and
23. outside the Sanitary District.

24. Q. Does the Utilities Department utilize the data process-

1. ing? Do all these departments utilize data processing?

2. A. Most departments utilize data processing. I might back
3. up, when you spoke of growth and the attendant demand on
4. the various departments, in 1977 when we started our data
5. processing function, we went on a lease program with
6. I.B.M. and we had a System III, Model 8. And that is
7. generally referred to as a batch system where the users
8. codify their data and these code sheets are sent to the
9. data processing department and the data is input through
10. a data entry device. So, you have your departments fun-
11. neling into that function, and that creates somewhat of
12. a bottleneck. So, to alleviate that problem, we upgraded
13. our hardware and went to an I.B.M. System 34, which has
14. the capability of handling sixty-four remote stations.
15. So, we have remote stations in the user departments with-
16. in the County.

17. Q. Can you give an example as to the efficiency of the sys-
18. tem in regard to getting out needed bills or the like?

19. A. Yes sir. One example would be doing W-2's, for example.
20. We have . . .

21. Q. Is that the federal income tax report that has to be
22. given to every employee?

23. A. To every employee, whether they work all year or only
24. one week. And we do perform this function for the School

1. Board which has the largest number of employees of any
2. division within the County. And I think they generate
3. in the neighborhood of fourteen to sixteen hundred W-2's
4. at the end of the year. And it used to take the central
5. staff of the schools approximately three weeks to do the
6. W-2's, and now we do them in twenty to thirty minutes.

7. Q. Would you state how many County employees are employed
8. by the County?

9. A. We have 182 full-time employees and 9 part-time employees
10. in the County.

11. Q. Are many of those employed within County facilities here
12. in the City of Harrisonburg?

13. A. Yes sir.

14. Q. Most of them, would you say?

15. A. Yes sir, the vast majority of them.

16. Q. Does the County participate and contribute to a library
17. system for the residents?

18. A. Yes sir. The library is a regional library. It serves
19. the Counties of Rockingham and Page, and the City of
20. Harrisonburg.

21. Q. Each of these jurisdictions contribute to the cost of the
22. library system?

23. A. Yes sir.

24. Q. I refer you to Exhibit 59. Would you just tell the Court

1. briefly what that shows.
2. A. Well, Exhibit 59 shows the headquarters of the library,
3. it's located within the City of Harrisonburg. There are
4. library stations located in Criders, Bergton, here in
5. the Broadway-Timberville area, and in the Elkton commun-
6. ity. And the green circles represent the various stops
7. of the bookmobile from the library.
8. Q. Does the County have an Industrial Development Authority?
9. A. Yes sir, it does.
10. Q. Can you just state generally whether or not it has made
11. efforts and has attracted business and industry to the
12. area?
13. A. Yes sir, it has. It's a very active Authority, and it
14. assists our local businesses in bond issues, both within
15. the County and the City of Harrisonburg.
16. Q. Does the County have a building code?
17. A. Yes sir.
18. Q. It has to now, is that true?
19. A. Yes sir.
20. Q. It's had one for some time?
21. A. It's had one, I believe, since 1972.
22. Q. Does it have a Building Inspector?
23. A. Yes sir.
24. Q. A Building Inspections Department.

1. A. A Building Inspections Department, yes sir.
2. Q. All right.
3. A. That Department falls within the Public Works Department.
4. Q. What function does your Recreation Commission perform?
5. A. The Recreation Commission performs a guidance function,
6. if you will, for the Recreation Department. It is made
7. up of ten members appointed by the Board of Supervisors,
8. and assists the Recreation Director and staff with the
9. various programs that the Department operates.
10. Q. Exhibit 42 on the board, would you state what that shows.
11. A. Well, that shows the recreational facilities that are
12. available within the County. These are the pools and lo-
13. cations that are used by the Department for programming.
14. The squares are facilities owned by the Recreation De-
15. partment. We have a park in this area here, and we op-
16. erate a recreational facility/community center in the
17. Singers Glen area.
18. Q. Does the County utilize, for instance, school property
19. for recreational purposes?
20. A. Yes sir, we do. I might say that because of the amount
21. of physical facilities that are available in the area,
22. as I'm sure the Court is aware, we do have a very beauti-
23. ful County and a lot of National Forests and National
24. Parks. The County participates in the Upper Valley Re-

1. gional Park Authority which operates physical facilities.
2. The thrust of our recreation program has been more in
3. programs and activities than operating physical facilit-
4. ies.

5. Q. Would you state whether or not in your judgment the
6. County is organized, able and capable of providing the
7. needed services in the area sought to be annexed?

8. A. Yes sir.

9. Q. Now, Mr. O'Brien, turning to some other subjects, there
10. has been considerable pieces of information provided
11. concerning the development of water and sewer services
12. to the Valley Mall. Would you relate to the Court the
13. history of the development of water and sewer services
14. to the Valley Mall by the County.

15. A. Yes sir. In May of 1977, when I was employed by the
16. County, the County was already in the planning stage to
17. provide utilities to the Route 33 East corridor. We were
18. going to develop a system of wells and standpipes to pro-
19. vide the necessary water, and we were going to provide
20. the sewer system back through the Ashby Heights collec-
21. tion system. We were going to carry the sewer . . . it
22. would be south of Route 33 toward Ashby Heights.

23. Q. How far had the County gone in making these plans?

24. A. They were fully engineered, we were ready to go to bid.

1. Q. Who had done the engineering on them?

2. A. We had a consulting engineer do the engineering.

3. Q. And when was this now that the County was ready to go
4. ahead and construct these facilities?

5. A. Well, I say we were in the planning stages in May of
6. 1977 when I came here. The engineering was underway with
7. our consultant. We knew that the area was ready for de-
8. velopment, the property owner of where the Valley Mall
9. now sets had held preliminary discussions with the County
10. Engineer, and he was advised--the property owner was ad-
11. vised, that the County would provide the water and sewer
12. services, realizing that we would have to develop a sys-
13. tem independent of the City. The County had tried on a
14. number of occasions in the past to attempt to buy whole-
15. sale water from the City; as a matter of fact, in 1973
16. the Chairman of the Board of Supervisors at that time,
17. Mr. Heatwole, had written the Mayor requesting various
18. master meter locations where the County would be desir-
19. ous of picking up water service, and indicated that the
20. Board of Supervisors at that time were willing to build
21. a one million gallon storage tank. And that request was
22. never answered.

23. Q. No reply ever came from the City?

24. A. No sir.

1. Q. Go ahead.

2. A. Well, in late 1977 the City learned of the County's plan
3. to service this area. I believe they learned it from
4. representatives of General Growth Development Corporation
5. out of Des Moines, Iowa, which was the developer of the
6. Mall. The City Manager called a meeting with representa-
7. tives of General Growth. Mr. Vic Stein, who was a repre-
8. sentative of General Growth, advised me that they were
9. chided for approaching the County; that the City had
10. fully expected to provide those services there. As a
11. result of the City learning of our plans, they made an
12. offer in late 1977 to sell water to the County at a
13. wholesale rate and to agree to transport the sewage out
14. of there to the Authority line. And we were receptive
15. to that. The Board of Supervisors authorized the County
16. staff to work with the City staff in developing the
17. agreement. We worked rather feverishly in early January
18. of 1978, the respective staff did, and we put together
19. basically thirty year agreements from 1978 whereby the
20. County agreed to buy the water from the City and the City
21. agreed to sell it, at a negotiated rate, and agreed to
22. transport sewage from that area to the Authority's lines.
23. So, we pay for the water service, we pay the City for
24. transporting the sewage, and we pay the Authority for

1. treating the sewage.

2. Q. And how long was the term of that agreement?

3. A. It was basically a thirty year agreement. It's twenty
4. years with a ten year notice provision.

5. Q. Was the City able to furnish the County water with pro-
6. per quantity and pressure?

7. A. Proper quantity, but not proper pressure. I haven't
8. looked at the agreement lately, but my recollection is
9. that the City agreed to deliver the water at the point
10. of pickup in the area right at the Valley Mall at thirty
11. pounds per square inch pressure. And our meter indicated
12. that we were picking it up somewhere around ten or eleven
13. pounds. So that created some problems both for the County
14. and for the City. There were pressure problems in Fair-
15. way Hills, they were reported in the paper. And when
16. the County pumped to fill our tank, the people virtually
17. had no water in the Fairway Hills area. So, for a while,
18. until we could get the necessary equipment, we sent a
19. man out at midnight to turn the pumps on and at 6:00 A.M.
20. in the morning to turn the pumps off so we wouldn't in-
21. convenience those City customers. And we eventually in-
22. stalled a time clock so we could pump during those hours.
23. Q. What facilities did the County have to install to be able
24. to serve this area with water?

1. A. Well, we installed or constructed here in the area of
2. Chestnut Ridge a half million gallon storage tank. And
3. we constructed this water line down to the Mall, and we
4. put in a booster station here to get the water to the
5. tank.

6. Q. There's been some mention of K-Mart and Krogers. Up to
7. the point that the County put in its system, had they
8. been customers of the City?

9. A. Yes sir, they were customers of the City. During the
10. negotiations between the City staff and the County staff
11. on the contract, the matter of K-Mart and Krogers and
12. the two banks came up. And the City was not able to
13. provide adequate pressure to operate the sprinkler sys-
14. tems in the manner in which they were designed within
15. K-Mart and Kroger, and we offered to sell water back to
16. the City and let them take advantage of the pressure in
17. our tank for those customers. And they looked at it,
18. and I think they looked at the engineering cost on it,
19. and came back and offered those four customers to the
20. County, and we agreed to take those customers. And they
21. are now served by the County and from our tank.

22. Q. And the County maintains the lines, is that correct?

23. A. Yes sir.

24. Q. Would you point to that map and just show generally what

1. area the water system you have installed there does and
2. will serve.

3. A. This tank is capable of serving actually this entire
4. area. We thought possibly that the City may have wanted
5. to take advantage of the pressure in our tank to relieve
6. some of their problems, most notably over here in the
7. Fairway Hills area. So, we included a provision in the
8. contract where the City could take advantage of that
9. pressure. They never have. But this tank generally can
10. serve this entire area, and we are presently serving to
11. the south, generally south-southwest area of the tank,
12. over through the Ridgeville area. We serve Ashby Heights
13. subdivision, we serve Portland East subdivision, we're
14. serving another development outside their proposed line,
15. and we're also going to provide service here to the Deer
16. Run Apartments. Eventually we could also go over the
17. ridge and serve to the east of the ridge also.

18. Q. Prior to purchasing the water, the bulk water from the
19. City, what had been the plan of the County for water
20. supply?

21. A. Well, we had developed one well, we had purchased the
22. land for one well and we were going to purchase sufficient
23. land and develop another well where we would have a well
24. system to serve this tank here. The County purchased the

1. water system in Ashby Heights, and that system was on
2. wells. And we eventually linked it up to the tank to
3. provide a more reliable service from that half million
4. gallon storage tank.

5. Q. Have any improvements been made to the Ashby Heights
6. system?

7. A. Yes sir, we installed fire hydrants within the subdivis-
8. ion. You're specifically speaking of water?

9. Q. Yes sir.

10. A. Yes sir, we went in and we did upgrade the system by
11. putting fire hydrants in there.

12. Q. All right, sir. We've heard considerable mention, I
13. believe, of the South County Water System. Would you
14. tell the Court what stage of completion that system is
15. in?

16. A. Well, we are moving along towards completion of that
17. system. The tank, a 1.5 million gallon storage tank,
18. will be located here (indicating on map), on an area
19. generally referred to as Kaylor's Hill. This line, which
20. is a twelve inch water line to the Town of Dayton, is in
21. the ground, completed. This black line here, which is a
22. twelve inch water line back to the well, is in the ground,
23. completed. We are presently out for bids on the develop-
24. ment of the well and the installation of this line and

1. the construction of the tank. This project is a result
2. of an agreement that was effected between the Town Coun-
3. cil of the Town of Dayton and the Board of Supervisors
4. to do two things. To allow the County to provide service
5. within this area and south down to the Mt. Crawford area.
6. We have budgeted funds in next year's budget beginning
7. July 1 to extend this twelve inch line down to the
8. vicinity of Mt. Crawford, south on Route 11. And the
9. advantage to the Town is that they will have adequate
10. pressure and fire protection from this tank. They now
11. have a small tank. Their water supply is from Silver
12. Lake and they have a small tank, I believe about a
13. seventy-five thousand gallon tank, they are selling about
14. eight hundred thousand gallons a day; so they are turning
15. that tank over, as you can see, about ten times a day.
16. And they need the storage for fire protection. So, the
17. agreement is one that gives a mutual benefit to both the
18. County and the Town to improve their service. Now, the
19. tank--one-third of the capacity in that tank will be or
20. under the contract is allocated to the Town of Dayton,
21. and two-thirds to the County. We will commingle our wat-
22. er, if you will, our water from the well, their water
23. from Silver Lake, and we have a contractual arrangement
24. to cover emergencies, if they need to draw upon our water

1. or we need to draw upon their water. We can either re-
2. plenish, replace it, or we can--either party can purchase
3. it.

4. Q. If needed in the future is it possible to link up the
5. well . . . is that on the County--what's called the old
6. County Farm?

7. A. Yes sir, this property extends back up in this direction,
8. and the County Farm that we own now is back in here, but
9. extended out through this area (indicating on map), prior
10. to being sold off.

11. Q. There have been exhibits introduced before showing con-
12. siderable industrial development in that area. Was any
13. of that developed on what had been the old County Farm?

14. A. Yes sir. To my knowledge the first development that took
15. place was the Walker development here. Back in 1960 re-
16. presentatives of the Rockingham Development Corporation
17. came to the Board of Supervisors and sought assistance
18. in extending water service to that area. That contact
19. was followed up by a contact from the then Mayor and
20. City Manager, and an agreement was worked out whereby
21. the City would extend their water main to the then City
22. limits at their expense, and construct the line out to
23. the Pleasant Valley area with the County paying the ex-
24. pense from the southern City limits to the Pleasant Val-

1. ley area, and I believe Walker Manufacturing Company bore
2. the cost of constructing a tank. And the facilities then
3. became the property of the City. And I believe that the
4. County's share of that project in 1961 when the payment
5. was made was sixty-seven thousand dollars.

6. Q. You have checked that?

7. A. Yes sir.

8. Q. The line shown as going north on Route 11, I believe it's
9. been testified to that there was some need for water ser-
10. vice in that area.

11. A. Yes sir. We had been contacted by a developer who is--
12. I believe it's on this piece of property in here (indi-
13. cating on map), is developing a warehouse facility. And
14. they need water service.

15. Q. Do you know of any effort on the part of the City to
16. extend water along Route 11 to take care of those prob-
17. lems?

18. A. No sir.

19. Q. Will an extension of a City line down Route 11 duplicate
20. what you've got there?

21. A. Yes sir. I might back up and clarify one thing as far
22. as the City's involvement is concerned. The construction
23. of this facility in this area is now underway, and the
24. owners of that property in contacting us desired to ac-

1. celerate their construction schedule and I told them that,
2. you know, we would not be in a position to provide that
3. service until about October of this year. And back in
4. late 1980 a letter was sent both to the County and the
5. City asking for an arrangement whereby the City would
6. sell water to the County on a temporary basis, that we
7. would put City water in that pipe, to allow the developer
8. to proceed on an accelerated schedule. And the City nev-
9. er answered that.

10. Q. The City hasn't answered that letter either?

11. A. No sir.

12. Q. Did there come a time when the County was requested to
13. provide sewer service to the Massanetta and Sunnyside
14. Home?

15. A. Yes sir. There was a study done, I believe it was 1974,
16. examining the feasibility of a sewage treatment plant
17. out there, and I think two factors went against that.
18. I don't believe it was economically feasible at the time
19. and also there were plans to extend this line, which is
20. the Ashby Heights interceptor, which is a line that is
21. owned by the Harrisonburg-Rockingham Regional Sewer
22. Authority and on which the County paid the local share
23. of construction. So, in 1976 the County entered into an
24. agreement with Massanetta Springs and Sunnyside to con-

1. struct a pump station and a main to connect to the Sewer
2. Authority line to provide service to that area.

3. Q. Stop right there, if you would. Ashby Heights has sewer
4. service, is that correct?

5. A. Yes sir.

6. Q. And how did Ashby Heights happen to get sewer service?

7. A. Ashby Heights got sewer service because the County went
8. in there and put in a sewer collection system. We had
9. a notification from the Health Director that it posed a
10. potential health problem. And because of that the Board
11. of Supervisors authorized the sewer collection system to
12. be installed in there.

13. Q. Did the City make any move to put sewer lines in there?

14. A. No sir.

15. JUDGE MOON: Just a minute. You asked that
16. question, did the City make any move, is it my understand-
17. ing that the City could have done something? Do they
18. have the authority to go into the County?

19. MR. FITZGERALD: They have done it, yes sir.

20. JUDGE MOON: Well, I mean, do they have the
21. authority though without County permission? Do they have
22. any power of eminent domain in the County to serve County
23. citizens? I'm just trying to get . . . what is it that
24. you are asking should the City have done? I mean, are

1. you saying they should have offered to do it, or are you
2. asking did they offer to do it, or did they exercise some
3. legal power they had to do it?

4. MR. FITZGERALD: The evidence thus far has
5. shown that the City has provided water and sewer in cer-
6. tain instances in the County. And I think we all can
7. assume that they had the legal authority to do so.

8. JUDGE MOON: I mean, is it some authority they
9. have in some statute, or do they have to do this with
10. permission of the County?

11. A. Your Honor, up until I believe 1973 there was no prohi-
12. bition against extension of sewer lines by municipal
13. corporations into the adjoining territory. And I believe
14. it was 1973 that there was legislation passed that re-
15. quired that any extension to serve or to be capable of
16. serving three or more connections within the County then
17. needed the approval of the Board of Supervisors.

18. MR. FITZGERALD: As to capacity and capability
19. of service. The Charter of the City of Harrisonburg per-
20. mits them to extent their lines outside the City.

21. JUDGE MOON: If they go across someone's land
22. I take it they have to contract with those people.

23. MR. FITZGERALD: They have the power of eminent
24. domain within and without the City.

1. MR. COGAR: Excuse me, is it clear that we
2. have to have the permission of the County to do it?

3. MR. FITZGERALD: It's my understanding of the
4. statute, and we can perhaps argue this later, that the
5. approval is solely as to the capacity of the services
6. offered, the design of it, that they have the supply and
7. the capacity so far as water is concerned, and the capa-
8. city to take care of the sewage service. It is a ques-
9. tion that to my knowledge has never been answered by the
10. Court, as to whether if the governing body of the County
11. told the City, "You can't run out in the County", whether
12. or not they could stop it. I don't believe it ever has
13. been answered. There has been some litigation on it,
14. it never got to be a final litigation. I think some
15. down Judge Arthur's way that never came to a final de-
16. cision, they settled it some way.

17. JUDGE MOON: Excuse me, go ahead then.

18. MR. COGAR: At this stage of the proceedings
19. we would just like for the record to indicate we don't
20. agree with that, and we will argue it as a matter of law
21. at the conclusion of the case.

22. Q. All right, sir, the County in any event did install a
23. collector system for Ashby Heights, is that correct?

24. A. Yes sir.

1. Q. The Ashby Heights interceptor line, is that the one shown
2. in red here?
3. A. Yes sir.
4. Q. How about the line on this side, is that part of it,
5. further down, or is it just this one?
6. A. This line is the Ashby Heights interceptor here. It
7. flows back into the City and connects to what was then--
8. and I'm not sure of the legal status of it now, was a
9. City owned line, approximately four thousand feet of
10. line, where the Authority connected at this end and
11. connected at this end.
12. Q. The Authority's interceptor line connected on both ends
13. of the City's interceptor line?
14. A. Yes sir.
15. Q. My recollection of the testimony is that the City has .
16. half the representation on the Authority?
17. A. Yes sir, they have four of the eight members on the
18. Authority board.
19. Q. And the County has one?
20. A. Yes sir.
21. Q. And the towns have the other three?
22. A. Yes sir.
23. Q. When that was connected, the Authority's lines were con-
24. nected to the City's interceptor line, was any complaint

1. made or any protest made by the County at that time?

2. A. We had a problem with that, both in the County and at
3. the Sewer Authority. The basic thrust of what happened
4. at the Sewer Authority was that the ownership of that
5. line became an issue, and the City attempted to have
6. the Authority become a customer of the City to use that
7. line. At about the same time, when we were attempting
8. to provide the service to Massanetta Springs and Sunnyside . . . and for the Court's information, Massanetta
9. Springs is a church-related convention-type facility and
10. Sunnyside is a Presbyterian Home for the Aged. . . and
11. they were opening a new facility at Sunnyside, they were
12. staffed, they had occupants ready to go in, and we had a
13. problem over the use of that line.

14.
15. Q. Let me ask you this, at the time the County entered into
16. the contract with Massanetta, to provide for Massanetta
17. and Sunnyside, the Authority signed the agreement, did it
18. not?

19. A. Well, we had the right to use that line, and we were
20. dealing with the Authority. We had no knowledge at that
21. time that the Authority connected at both ends of a
22. City owned line.

23. Q. Would you tell the Court what happened when you got ready
24. to provide the service?

1. A. Well, as I said, the City attempted to make the Authority
2. a customer of the City, and then they went one step be-
3. yond that.

4. Q. The City?

5. A. The City attempted to make Massanetta Springs and Sunny-
6. side a customer of the City. And we were slightly upset
7. at that time, because of the fact that they were located
8. in the County and they were connected to County-owned
9. facilities.

10. Q. Would the City of necessity have to utilize the County's
11. facilities to provide that service?

12. A. Yes sir. What happened was, I believe it was December 7,
13. 1977, we were attempting to try to effect some type of
14. solution to provide service out there. The County's main
15. concern was to see that that Presbyterian Home facility
16. opened up. And I was at Sunnyside discussing the situa-
17. tion with Mr. Sam Shrum, who is the President of the
18. Board of Trustees at that time at Sunnyside Home, and Mr.
19. Martin Bratcher, who was the Administrator of the Home,
20. when a call came in asking them to . . .

21. Q. From whom?

22. A. From the City Manager's Office, asking them to come to
23. the Municipal Building. And they did go, and they were
24. presented with a letter from the City Manager addressed

1. to the Executive Director of the Regional Sewer Authority,
2. the President of the Board of Trustees of Sunnyside Home,
3. Incorporated, and the Executive Director of Massanetta
4. Springs, Incorporated. And it has been signed by the City
5. Manager and the Executive Director of the Sewer Authority.
6. And the bottom line of this letter was that Massanetta
7. Springs and Sunnyside were being asked to pay directly
8. to the City eighty-four cents per thousand gallons of
9. sewerage to be transported through the City's lines.
10. Q. Was that agreement signed by Massanetta Springs and Sun-
11. nyside?
12. A. No sir, they were customers of the County.
13. Q. Well, how was the matter resolved?
14. A. Well, eventually this came full circle. It was discussed
15. at the Authority that the Authority either lease or pur-
16. chase the City's line, and I think that there was a re-
17. commendation that came down from the--and there was also
18. some discussion of paralleling that line, but that seemed
19. slightly ridiculous. So, eventually it was resolved by
20. an agreement whereby the Authority would pay to the
21. City a sum of roughly eighty-seven hundred dollars a
22. year for twenty years to purchase the line.
23. Q. And that's how it was resolved?
24. A. Eventually. The service to Massanetta Springs and Sunny-

1. side was started before that agreement was effective.
2. Q. You mentioned awhile ago that the County paid the full
3. local share of building one of the Authority's inter-
4. ceptors.
5. A. Yes sir.
6. Q. Which one was it?
7. A. The Ashby Heights interceptor.
8. Q. The red line that you pointed to here? Just this line
9. here?
10. A. That is correct.
11. Q. Now, was that on the plans to be built by the Authority?
12. A. The Authority built that line. The Authority commission-
13. ed that line.
14. Q. Well, ordinarily would the Authority have paid the local
15. share, or how would that have been done?
16. A. The financing on that line was worked out before my em-
17. ployment with the County. I believe there was an agree-
18. ment whereby the County would pay the local share because
19. it primarily benefited the County.
20. Q. All right. In any event, the sewer service was provided
21. to Massanetta.
22. A. Yes sir, as it turned out.
23. Q. And the old folks home.
24. A. Yes sir.

1. Q. When the County and the Town of Dayton entered into the
2. agreement to provide the water storage and pressure for
3. that area, did the City take any action that would have,
4. if carried out, hampered the service?

5. A. Yes sir, they did. The City Manager on October 18, 1978
6. sent a letter by certified mail to the Mayor of the Town
7. of Dayton instructing him to start counting the strokes
8. of the pump.

9. Q. Now, explain to us what the effect of that was.

10. A. Well, I guess if they had to count the strokes of the
11. pump to get their water, it would have effectively cut
12. off their water supply. Back in 1915, August of 1915,
13. there was a deed between the Silver Lake Improvement
14. Company and the Town of Dayton whereby the Town agreed
15. to purchase water for their use. And this deed of agree-
16. ment set forth the conditions and the rates that they
17. were to pay, and I think it's been testified to that
18. Silver Lake is now owned by the City. And Mr. Milam in
19. his letter referenced this agreement whereby the agree-
20. ment calls for the measurement of the rate of flow by
21. the strokes of the pump.

22. Q. Well, in those days did they have pumps that you could
23. count the strokes on?

24. A. In 1915, yes sir, they did.

1. Q. And at the time Mr. Milam wrote the letter, was it any
2. kind of a pump that you could measure the count of the
3. strokes on?

4. A. No sir, I don't believe so.

5. Q. Now, Dr. Gardner testified the other day about his devel-
6. opment of Fairway Hills. Are you aware of any effort on
7. his part to extend the development there?

8. A. There was an attempt to extend that development back in
9. 1979. It was Section 3 of Fairway Hills. The County has
10. a policy whereby we enter into an agreement for the ex-
11. tension of utility services.

12. Q. Did he apply to the County for the extension of those
13. services?

14. A. His partnership did, yes sir. Fairway Hills, a limited
15. partnership, applied and we entered into an agreement
16. that was approved by the Board of Supervisors whereby
17. the County would provide water and sewer services to
18. Section 3 of Fairway Hills.

19. Q. And what has happened since then?

20. A. The developers have curtailed their activity on Section
21. 3. I understand that there was a problem in obtaining
22. a drainage easement from the Spotswood Country Club, and
23. they opted not to proceed any further with their develop-
24. ment.

1. Q. You've mentioned, and others have mentioned too, I be-
2. lieve, the water pressure problems in that area. Could
3. those pressure problems have been solved by utilizing
4. the pressure the County has in its storage tank?

5. A. Yes sir.

6. Q. But the City has never availed itself of that?

7. A. No sir.

8. Q. You have testified there came a time when the Board of
9. Supervisors caused or employed paid firemen to serve
10. in certain fire stations of the County, of the volunteer
11. fire system. Would you tell the Court the history of
12. the providing of a paid fireman at Hose Company No. 4
13. located in the City of Harrisonburg at the No. 4 station?

14. A. Yes sir. The County assigned, as I previously testified
15. to, five paid men initially, one to each of the five
16. identified fire stations. And we had assigned one man
17. to Hose Company No. 4, Incorporated. Back in mid-1980
18. by letter of June 5, 1980, which was hand delivered to
19. my office from the Fire Chief of the City of Harrisonburg,
20. he advised that effective at 5:00 P.M. on June 13, 1980,
21. the County employee that was assigned to the City Fire
22. Station No. 4 would no longer be allowed to work in the
23. building, and he listed some reasons for his action.
24. And this precipitated somewhat of a crisis between the

1. County and the City and Hose Company No. 4, because they
2. were in danger of losing their paid fireman.

3. Q. Who wrote the letter?

4. A. Mr. William H. Austin, who is the Chief of Fire for the
5. City of Harrisonburg.

6. Q. And who did he write it to, Hose Company No. 4?

7. A. No sir, he wrote it to me as County Administrator.

8. Q. And why did he say you couldn't put a paid fireman in
9. Hose Company No. 4?

10. A. I'll read from the letter, "This action is based on the
11. following facts: A) After approximately eight months I
12. have not received a request from your office to allow
13. this employee to work in the City fire station. B) While
14. the City does have two signed working agreements with
15. Hose Company No. 4, Inc., neither of those agreements
16. allow for provision of the County as a third party at
17. this time or at any time in the future. C) Pursuant to
18. the authority granted under the City Code, I will not
19. allow any person to work in a City owned fire station
20. who is not under the supervision and control of City
21. fire officers."

22. Q. Was the paid fireman assigned to Hose Company No. 4 any
23. different than the unpaid firemen who were members of
24. Hose Company No. 4 so far as supervision was concerned?

1. A. No sir. As a matter of fact, the man was also a member
2. of the volunteer company, the paid employee. And he was
3. not assigned to the City fire station, he was assigned
4. to the volunteer fire company.
5. Q. The volunteer fire company did have an agreement with
6. the City fire department to put their equipment there?
7. A. Yes sir.
8. Q. And serve the City as well as the County?
9. A. Yes sir, they do.
10. Q. How was that matter resolved?
11. A. Well, shortly after that the City Manager and I talked
12. somewhat, and then I received a letter, and that letter
13. was dated June 12th, 1980, and it reads as follows, and
14. this is from the City Manager: "Dear Mr. O'Brien: As
15. you are aware, a meeting was held on Monday, June 9,
16. 1980, at 2:00 P.M. in this office to discuss the situa-
17. tion of a County employee working in a City owned fire
18. station. Present at that meeting in addition to myself
19. were William H. Austin, Chief of Fire, Page W. Sencindiv-
20. er, President of Hose Company No. 4, Inc., and Robert
21. Layman, Chief of Hose Company No. 4, Inc. In an effort
22. to arrive at a workable solution to this problem the
23. following alternatives were proposed by City officials
24. for consideration by Hose Company No. 4 and, more impor-

1. tantly, by the County Board of Supervisors. A) The trans-
2. fer of funds for salary, fringe benefits and overhead to
3. the City. Any employee would become a City employee who
4. could respond on County fire calls. B) Transfer of funds
5. to Hose Company No. 4, Incorporated in order for the Com-
6. pany to hire and employ fire personnel. C) A letter from
7. the County requesting permission to place the County em-
8. ployee in the building with the understanding that super-
9. vision would come from City fire officers and that the
10. employee would respond on City and County fire calls.
11. There is, of course, one other alternative and that is
12. to remove the employee from the building as directed by
13. the Chief of Fire. It would appear that a workable solu-
14. tion of this problem can be attained if the County recog-
15. nizes its own position in the situation and makes note
16. of the fact for future reference that the facility is a
17. City-owned building and requires the inclusion of the
18. City as a party to any planned changes in policies or
19. procedures. Thank you for your attention to this matter.
20. Sincerely, Marvin B. Milam, City Manager."

21. Q. Did you respond to that?

22. A. Yes sir, I believe I did. I responded by letter of June
23. 16 to Mr. Milam. "Dear Mr. Milam: Regarding your letter
24. of June 12, 1980, which you hand delivered to me during

1. our meeting of June 13th, please be advised as I stated
2. to you during our meeting that the three alternatives
3. that are outlined in your letter are not acceptable to
4. Rockingham County. In addition, the other alternative of
5. removing the employee from the building as directed by
6. the Fire Chief is not acceptable, as the individual has
7. been assigned to Hose Company No. 4, Inc. and not to the
8. City fire station. Please be further advised that the
9. employee in question has been directed by me to report
10. to duty this date and thereafter. As set forth in our
11. joint statement of June 13th, it is my desire that we
12. will be able to establish mutually beneficial working
13. procedures between the County, the City fire service and
14. Hose Company No. 4, Inc. Sincerely," and I signed that
15. letter. Now, during our meeting of June 13th, Mr. Milam
16. and I issued a joint statement, since this issue was
17. rather highly publicized and needed to have some resolu-
18. tion. And it read as follows: "On June 13, 1980, Mr.
19. Marvin B. Milam and Mr. William G. O'Brien met to discuss
20. the situation regarding the paid County firefighter assign-
21. ed to Hose Company No. 4, Incorporated. The meeting re-
22. sulted in an agreement that the individual assigned to
23. Hose Company No. 4, Inc. would continue working in his
24. present capacity and that a meeting will be scheduled in

1. the near future between Mr. Milam, Mr. O'Brien, Mr. Robert
2. Layman, Chief of Hose Company No. 4, Inc., and Mr.
3. William Austin, Harrisonburg Fire Chief, to establish
4. mutually beneficial working procedures between the County,
5. the City fire service, and Hose Company No. 4, Incorporated."
6. And then Mr. Milam and I signed that statement.

7. Q. Did the paid fireman then report for duty?

8. A. He continued to report, yes sir. I believe that agree-
9. ment was signed by us on a Friday, and a meeting was
10. called between the four people mentioned in that state-
11. ment for the following Monday, and we met that Monday.
12. The meeting got off to a rather shaky start. My concern
13. was that we were dealing with an issue regarding the
14. safety of citizens in the area served by No. 4. I felt
15. that the City's position was one that revolved around
16. the issue of annexation. And when I confronted the Fire
17. Chief with a statement that he had made to Mr. Layman
18. and Mr. Sencindiver that he wouldn't care if the County
19. put fifteen paid firemen in there when annexation was
20. over, he never denied that statement. I believe he said
21. that it was not to have been repeated. So, my concern
22. was that. And we did through negotiations between the
23. parties in question enter into what I consider to be a
24. very common-sense agreement, whereby now, and I believe

1. Mr. Austin testified to it, that the closest fire unit
2. responds to the fire, whether it be in the City or the
3. County, or whether it be a City paid fireman or a County
4. paid fireman. And that was the end result of that strug-
5. gle.

6. Q. Does this agreement permit then the County to assign
7. additional paid firemen to Hose Company No. 4 to provide
8. service for the City and the County?

9. A. Yes sir. It says that the Harrisonburg Fire Department
10. agrees to allow Rockingham County firefighters to work
11. at Fire Station No. 4, and it goes on to state that the
12. Fire Chief will be. . . approval of the Fire Chief is
13. required for the use of the dormitory by the firefighters,
14. and that Hose Company No. 4, Incorporated agrees to noti-
15. fy the Harrisonburg Fire Department as to the number of
16. County firefighters that will be assigned to Hose Company
17. No. 4, Incorporated.

18. Q. Mr. O'Brien, has the County taken any steps towards improv-
19. ing telecommunications or television communications in
20. this area?

21. A. Yes sir, we have. The County, because of our remoteness
22. from the Washington area and the Richmond area, receive
23. in some areas rather poor television reception. A member
24. of the Board of Supervisors asked that we explore improv-

1. ing service. We explored it and the Code of Virginia
2. does provide that a referendum may be held whereby the
3. citizens of the County can vote on a question as to
4. whether or not the County will construct, maintain and
5. operate a television relay transmitter system. Such a
6. referendum was held in late 1979 and passed by a wide
7. margin. Since that time the County has hired the engi-
8. neering firm of Kessler and Associates from Gainesville,
9. Florida to do a feasibility study on that system. That
10. feasibility study has been completed and the bottom line
11. of that report is favorable. So, the Board has instruct-
12. ed our engineers to move ahead in the area of permitting
13. on this. We need to deal with the Federal Communications
14. Commission, we need to coordinate with Green Bank and
15. Sugar Grove federal facilities in West Virginia since we
16. fall within the quiet zone of those facilities. And we
17. are moving ahead on this project, we are exploring site
18. acquisition. We have identified generally the sites
19. where the transmitters will be located, and have had some
20. initial contact with property owners. We will have three
21. sites on high points on mountain tops in the County. We
22. are looking toward bringing in the three networks and
23. enhancing the local public educational network and re-
24. broadcasting those signals throughout the County. And

1. everyone in this area, including the City residents, will
2. benefit from that enhancement. Our estimated initial cost
3. for that project is in the neighborhood of half a million
4. dollars, and our estimated annual cost is in the neigh-
5. borhood of twenty to thirty thousand dollars.

6. JUDGE MOON: Excuse me, I don't think it's
7. come up, but are there cable facilities in the area al-
8. ready?

9. MR. FITZGERALD: There are some. I was going
10. to ask him that.

11. Q. There are certain cable television facilities in the area
12. now?

13. A. Yes sir, the City of Harrisonburg is served by cable,
14. the Town of Dayton, I believe Bridgewater is served by
15. cable, the Broadway-Timberville area is served by cable.

16. Q. Some of the motels around here are hooked up to it?

17. A. I believe so.

18. Q. Is there a fee for hooking onto the cable system?

19. A. To the cable system, yes sir.

20. Q. And a monthly or annual charge.

21. A. A monthly charge.

22. Q. This service then that you're talking about would be at
23. no charge to any of the people who want to put up their
24. antenna.

1. A. That's correct. As part of the study our consultants are
2. identifying the best type of antenna that the homeowner
3. would buy and would put on his house. We have some
4. areas, even though we have a local television station,
5. we have some areas back in some of the hollows of the
6. County that receive no television reception.

7. Q. Mr. O'Brien, it has been the suggestion here that the
8. City may have overlooked another plum in the way of the
9. Donnelley Plant, and that ought to be thrown into the
10. pot too. Would you tell the Court the circumstances of
11. the Donnelley Plant locating where it is located?

12. A. Yes sir. Basically the facts are as follows. On Octo-
13. ber 11, 1978, I received a telephone call from a local
14. attorney who was representing Donnelley Publishing Com-
15. pany requesting that the County provide water and sewer
16. services for the Plant to be erected--that was planned to
17. be erected on what was then the property owned by the
18. Rockingham Fair Association. That day I attempted to
19. contact the City Manager to determine whether or not the
20. City would be willing to enter into contractual arrange-
21. ments similar to that arrangement that we had on the
22. east side of the City, so that we could locate that
23. plant here. There had been some considerable discussion
24. of the Donnelley Plant, they had been looking at various

1. sites. They had looked over the mountain in Albemarle
2. County. And I was not able to contact Mr. Milam, but I
3. did contact the Assistant City Manager, Mr. Driver, and
4. his response was very favorable that we could work out
5. some arrangement. That night, as a matter of fact, the
6. Wendy's Restaurant out here on the east side of town had
7. an opening, and I believe Supervisor Byrd and Sipe were
8. there for the ribbon cutting, and Vice-Mayor Green was
9. there, and we discussed this industry coming here. And
10. his response was very positive towards working out an
11. arrangement for that water and sewer service.

12. MR. COGAR: Whose response?

13. A. Mr. Green's. On January 11, 1979, the Board of Supervis-
14. ors and the City Council met and we presented--the County
15. presented water and sewer contracts for the City Council's
16. consideration. The Board of Supervisors impressed upon
17. the City Council the need to move swiftly in view of
18. Donnelley's projected March, 1980 opening for Donnelley.
19. Subsequent to that meeting the City came back with a
20. proposal basically to serve the utilities there, and
21. they were advised on February 8, 1979 that its counter-
22. proposal to the contract was unacceptable to the County.
23. Then on March 8, 1979 the Board of Supervisors and City
24. Council then again met to discuss the water and sewer

1. service to the Donnelley site. No agreement was reached
2. at that time. On March 15, 1979, the Board of Supervis-
3. ors and the City Council met and they agreed on the pre-
4. sent contract for water and sewer services for Donnelley,
5. and generally a member of the Board of Supervisors ex-
6. plained the type of services that we would have and the
7. general alignment of the sewer line, which became a mat-
8. ter of controversy subsequent to that. In the summer of
9. 1979 the Director of Public Works met with the City staff
10. to review the sewer plans that would serve both the ex-
11. pansion of the Mennonite Home and the Park View area
12. and Donnelley, and he received verbal concurrence during
13. that meeting. On November 8, 1979, the engineering plans
14. for the sewer service were transmitted by Mr. Krueger,
15. our Public Works Director, to Mr. Devier, the City Engi-
16. neer. Following that transmittal we received a letter,
17. I believe it was dated November 14th, from Mr. Lapsley,
18. the City Attorney, to Mr. Krueger, the County Director
19. of Public Works, alleging that the plans that we submit-
20. ted did not follow the terms of the contract for services
21. to the Donnelley Plant. Following that there were a
22. number of discussions held between the City and County
23. officials, and because of the time moving ahead on this,
24. the County initiated legal action against the City so

1. that we could move ahead with providing that service.

2. Q. Excuse me, what was the point of contention, the loca-
3. tion of the line that you mentioned awhile ago?

4. A. Yes sir. The point of contention was the point of con-
5. nection. When we negotiated the contract it was our
6. understanding that the City's sewer line ended just at
7. this point at the corporate limits. And during that, I
8. believe that summer, the City extended a water line up
9. the Kratzer Road to the corporate limits. And we knew
10. about that water line, but we didn't know that they were
11. also extending the sewer line. And the reason we didn't
12. know that is there was only one ditch, and the Health
13. Department regulations generally say where feasible you
14. should have a ten foot horizontal separation between your
15. water and sewer lines. But they put a sewer line also
16. in that ditch, unknown to us. So, when it came time . . .
17. when we took the plans to the City, Mr. Krueger took
18. them to the City Engineer, generally the Donnelley Plant,
19. as you know, is located up in this area (indicating on
20. map). Our plans called for a gravity sewer line to come
21. down and to follow Black's Run. There was another reason
22. for that too, we also have a sewer line that comes up and
23. goes in as you can see here to provide service to Park
24. View. This line was installed approximately fifty years

1. ago. It was dug by hand and we weren't even sure of the
2. location of it. It was put in service by Eastern Menno-
3. nite College back in the thirties. And we knew that this
4. line was an old line, it was undersized, and we really
5. ought to put it out of use. So, we thought we could
6. kill two birds with one stone by bringing this sewer line
7. down, following the natural drainage, and eventually cut-
8. ting in here and discontinuing the Sanitary District line.
9. And the City's position was that the contract stipulated
10. that we would connect at the end of the line at the cor-
11. porate limits, and they said now, you know, that the
12. line was here. And that we should install a pump station.
13. The City in the past has taken the position that they
14. don't like pump stations; I guess they don't like them
15. in the City, but they're all right for the County. And
16. they wanted us to install a pump station which I guess
17. would then be just a service line for Donnelley, and
18. bring it back along the Kratzer Road and bring it in
19. here. So, that was the basis of the controversy, and
20. the County initiated legal action over that controversy.
21. And before it went to Court the matter was settled.

22. Q. How was it settled?

23. A. By the County connecting at the point that it contended was
24. the point that we had agreed upon.

1. Q. The City finally agreed to it?

2. A. Yes sir.

3. Q. When the County hooked up its water system into the
4. Ashby Heights system, did it improve the water pressure
5. there? Back on that side?

6. A. Yes sir.

7. Q. And the water in storage for firefighting purposes?

8. A. Yes sir. That system, as I testified to earlier, is
9. connected to this half million gallon storage tank.

10. Q. Does that also provide the services on back down the
11. road to Deer Run?

12. A. Yes sir. This system is connected back up to the tank.

13. Q. And does that provide the same storage, the same pres-
14. sure, as it provides over at the Valley Mall?

15. A. Yes sir.

16. Q. And it's sufficient for firefighting purposes?

17. A. Yes sir.

18. JUDGE ARTHUR: Mr. O'Brien, what was the
19. final solution of the Donnelley contest?

20. A. The City agreed to the County's position as to where
21. we would hook up.

22. JUDGE ARTHUR: You brought it by gravity?

23. A. Yes sir.

24. Q. In fact, isn't that the same location of a line that was

1. shown on a City plan in prior years?

2. A. Yes sir, I believe one of the City's exhibits in the
3. 1962 annexation, that there was a line shown in that gen-
4. eral area. And as I testified to earlier, the County
5. made no secret that this was the route that we intended
6. to come during the negotiations. As a matter of fact,
7. Mr. Sipe, who is a member of the Board of Supervisors,
8. was reported in the newspaper as saying that the County
9. intended to bring the sewer line through the industrial
10. area. And at that time in this general area, there was
11. only one . . . in the whole area, as a matter of fact
12. here, there was one industrial area. And that was a
13. piece of property that had been recently rezoned for the
14. Sarco Manufacturing Corporation.

15. Q. Mr. O'Brien, it was mentioned earlier today about the
16. services that the County provides, whether or not they
17. are received by residents of the towns. Are the town
18. residents treated as County residents, the same way?

19. A. They are in every way a County resident as anyone who
20. lives outside the corporate limits of a town.

21. Q. Are the services that are provided by general funds col-
22. lected from all those taxpayers and they receive services
23. too?

24. A. Yes sir.

1. JUDGE ARTHUR: What services do they receive,
2. Mr. O'Brien?

3. A. Well, they receive virtually all the services, Your Honor,
4. that we show on our organization chart. The . . . as I
5. say, they are residents of the County as are those resi-
6. dents who live outside the corporate limits.

7. MR. FITZGERALD: Your Honor, may I go down
8. the list here and ask them individually?

9. JUDGE ARTHUR: What page are you on?

10. MR. FITZGERALD: Exhibit 14.

11. JUDGE ARTHUR: I don't know how material this
12. is, but I'm just curious. I must be living in the wrong
13. part of the state.

14. MR. FITZGERALD: Judge, I think a lot of the
15. services the County provides are not as ostentatious
16. perhaps, but they're just as costly.

17. JUDGE ARTHUR: We're not talking about things
18. like the streets, the curbs and gutters, the street
19. lights and fire protection and police protection and
20. things like that, are we?

21. A. Yes sir.

22. JUDGE ARTHUR: All right, let's go down the
23. list then.

24. Q. For instance, over on the left, we have a clerk of the

1. court that's paid for partially by the County. Does the
2. clerk of the court serve the towns too?
3. A. Yes sir. The County maintains this building, the Court-
4. house, which is also shared by Harrisonburg since it's a
5. city of the second class.
6. Q. But the towns pay nothing extra for the use of the
7. Courthouse, do they?
8. A. No sir.
9. Q. For whatever utilization they may have of it.
10. A. No sir.
11. Q. The Commonwealth Attorney the same thing?
12. A. Yes sir.
13. Q. The Sheriff the same thing?
14. A. Yes sir.
15. Q. The Treasurer, Commissioner of Revenue?
16. A. Yes sir.
17. Q. Does the Commissioner of Revenue furnish the assessments
18. to the towns?
19. A. Yes sir.
20. Q. All of these regional functions that the County partici-
21. pates in, the people of the towns get the benefit of
22. that just as much as the people outside the towns?
23. A. Yes sir, they do. Some of them are a little more spe-
24. cialized. When you get into the Harrisonburg-Rockingham

1. Regional Sewer Authority, for example, you know, that's
2. a contractual arrangement whereby various parties agreed
3. to that.

4. Q. How about your office, do you serve the people in the
5. towns as well as outside the towns?

6. A. Yes sir.

7. Q. The personnel . . .

8. JUDGE ARTHUR: Well, what do you do? If the
9. town has a Town Manager, what do you do within that
10. town? Do any of these towns have a Town Manager?

11. A. Yes sir, they do.

12. JUDGE ARTHUR: Well, what service do you ren-
13. der, or which one, in Bridgewater, for instance.

14. A. Well, the . . .

15. JUDGE ARTHUR: What do you do in the Town
16. of Elkton?

17. A. Well, I don't go over there, Your Honor, and operate an
18. office; but those citizens in the Town of Elkton are also
19. citizens of the County.

20. JUDGE ARTHUR: They certainly are. They pay
21. taxes to the County.

22. A. Yes sir, they pay taxes.

23. JUDGE ARTHUR: And their children go to the
24. County schools. Now, beyond that, really what service

1. does the County render to the towns, the people of the
2. Town of Elkton?

3. A. Well, we provide recreational programs within the various
4. towns that the town citizens can take advantage of. As
5. an example, our data processing function, we made that
6. available and we went out--our data processing director
7. went out to all the towns and those towns that we were
8. aware that were doing their utility billing through a
9. service bureau, we offered services to them. And we felt
10. that those citizens living outside the towns couldn't
11. subsidize that operation, but we made it a very favorable
12. arrangement whereby the Town of Dayton entered into an
13. agreement with us where we cut their data processing
14. costs in half for their utility billing, and are provid-
15. ing them with additional services such as delinquent
16. billing registers which they weren't receiving from their
17. service bureau. And we cut their cost in half.

18. Q. If I could ask this question, can the towns exist with-
19. out the County?

20. A. No sir.

21. JUDGE ARTHUR: Well, let me ask you this . . .
22. excuse me.

23. MR. FITZGERALD: I had one more question.

24. JUDGE ARTHUR: All right, go ahead.

1. Q. Can the County in this day and time operate without an
2. Administrator?

3. A. No sir.

4. JUDGE MOON: Well, is it the position of the
5. County, not just this County, that there shouldn't be
6. any incorporated towns? That all these people are just
7. demanding services that they are not entitled to and
8. taking away from the rest of the County?

9. A. No sir, not at all.

10. JUDGE MOON: Or do you approve of towns?

11. A. We very much approve of towns, Your Honor. We have a
12. very good working relationship with the seven towns
13. of Rockingham County.

14. MR. FITZGERALD: Our purpose in showing the
15. financial difference in a county that has towns in it
16. and one that doesn't, is to show that when a town exists
17. you do have a different situation. The County does not
18. get all the revenue from the . . .

19. JUDGE MOON: The County doesn't provide all
20. the services, they don't deserve all the revenue, do
21. they? Doesn't the town do a whole lot to deserve some
22. of that revenue?

23. MR. FITZGERALD: That depends on the town
24. and what functions the town provides. This is an argu-

1. ment that goes on all over the state.

2. JUDGE MOON: Well, that's what we hear all
3. over the state. And I'm just wondering, you know, if
4. there's an attitude in counties that there shouldn't be
5. any towns.

6. MR. FITZGERALD: No sir, I don't think so;
7. but in some cases I think that's absolutely right, there
8. shouldn't be any towns. In some cases the towns are
9. absolutely essential. But in the case here we wanted to
10. show the Court that because we do have towns, when we
11. speak of revenues of the County, there are certain reve-
12. nues of this County, like other counties, because of the
13. number of towns here, in this case five hundred thousand
14. dollars a year, that goes to the towns that doesn't go
15. to providing schools, that doesn't go to paying the Sher-
16. iff, that doesn't go to paying the Commissioner of Reve-
17. nue, that doesn't go to any of these functions. That
18. the people of the towns receive, but the money that's
19. taken out of those funds doesn't go to pay for it.
20. Those funds then go to pay for what the town wants to
21. provide, maybe an extra police officer or two.

22. JUDGE MOON: But it's something they need,
23. it's something they couldn't hardly get without it in
24. most cases, isn't it?

1. MR. FITZGERALD: Not ordinarily, Your Honor.
2. They can get it by levying their own--like a Sanitary
3. District. They can levy a piggyback tax, like they do,
4. to provide, like they all used to do. But over the years
5. when all these new taxes were put on, they were not all
6. given to the County. If you had a town, even though you
7. provided these general services to the towns, certain
8. of these other revenues were divided up with the towns.
9. Without a corresponding decrease in services, the Sheriff
10. and all these other offices provide the same service,
11. the schools are identical, the same, all the same; but
12. the towns pay nothing extra for that. They do provide
13. other additional services for the citizens of the town.
14. They in many cases levy an additional tax to do that and
15. they get these additional revenues. There are some cases
16. that are very extreme in effect. For instance, in the
17. County of Montgomery, our last check on that there was
18. something like seventy-five percent of the people of
19. Montgomery County who live in towns. Now, there's nothing
20. wrong with that, but it does emphasize the extreme of it.
21. When the County of Montgomery, a utility tax, if it want-
22. ed to levy one, it would be hardpressed to do so. I
23. don't know whether it has one now or not. It didn't,
24. because in that case twenty-five percent of the taxpayers

1. of the County would be subsidizing the other seventy-five
2. percent in the towns. Because that tax would only apply
3. to twenty-five percent of the people. So, it does have
4. an impact. As to how much impact it has, it depends on
5. the size of the town, population, the school age popula-
6. tion, as Mr. Robinson testified to; all of these factors
7. have an effect. The only thing we wanted to show you is
8. that the County does have of its revenues that it would
9. receive if they didn't have towns, five hundred thousand
10. dollars a year.

11. JUDGE MOON: But aren't the towns an asset?
12. Don't the urban services offered by towns generally . . .
13. aren't they what attract the industry that pays these
14. big taxes?

15. MR. FITZGERALD: That's exactly the point of
16. it, Your Honor, and that's why we put this evidence on,
17. because the City put evidence on that the County had all
18. its commercial development in the towns. We wanted to
19. show that even though they did have that and the County
20. does benefit from that, that it's not all plus, there
21. is some minus. This is the minus.

22. JUDGE MOON: Okay.

23. MR. FITZGERALD: That's all.

24. JUDGE ARTHUR: What's your largest town in the

1. Q. Now, turning to Exhibit 14, which I think you can perhaps
2. anticipate from what we did before the Commission on
3. Local Government. I recall you stating that there are
4. some hundred and eighty employees in County government,
5. and I take that to be exclusive of the school system.

6. A. Yes sir, and excluding those that are in the adult work
7. experience program which we administer.

8. Q. I'm looking at the exhibit, the table of organization,
9. and I want you to indicate within the various departments,
10. administrative departments, how many employees you have
11. in each. If we look at the County Administrator block,
12. that's you, that's one, correct?

13. A. Right, and Mr. Cogar, if you'd like to get to the County
14. employees that are responsible directly to the Board of
15. Supervisors, I can give you that.

16. Q. I want to know how many are responsible directly to you.

17. A. All right, you want to start in the County Administrator's
18. Office?

19. Q. Yes, just tell me the number.

20. A. Three.

21. Q. All right, sir. Then come down to Public Works.

22. A. I don't have that figure broken out in all the different
23. blocks there, Mr. Cogar. I can give you some general
24. figures, but I don't believe under oath I could testify

1. exactly to the number of employees in each department.
2. Q. Let me give you some answers to interrogatories that you
3. served on us. Now, what do you show there? You show
4. in administration three people.
5. A. Yes sir.
6. Q. All right, finance and purchase.
7. A. Two.
8. Q. Where do I find finance and purchase?
9. A. (Witness indicates on document).
10. Q. All right, what's next then? Commissioner of Revenue
11. is not under your authority?
12. A. The Commissioner of Revenue is a constitutional officer.
13. Q. Correct. How about the Treasurer?
14. A. He's a constitutional officer.
15. Q. Personnel services. How many do you have?
16. A. Three.
17. Q. You still have three?
18. A. Well, actually we've got really two and a half. The one
19. secretary, I believe, is now budgeted as being shared.
20. Q. Shared with what other department?
21. A. County Administrator.
22. Q. Then you have two and a half in the County Administrator's
23. Office?
24. A. Yes sir. Three and a half--well, no, two and a half.

1. Q. What do you have in data processing?
2. A. Four.
3. Q. You still have four?
4. A. Yes sir.
5. Q. Fire service?
6. A. Eight.
7. Q. Now, I was under the impression that you had five fire-
8. fighters.
9. A. No. Initially the Board of Supervisors authorized the
10. employment of five firefighters, and since that initial
11. allocation there have been three additional positions
12. funded, which I testified to. So, that gives us eight.
13. Q. Are they funded or are they filled?
14. A. They are filled.
15. Q. And how many of those are here in Harrisonburg?
16. A. We have four assigned to Hose Company No. 4.
17. Q. And the other four are in . . . one each in the various
18. towns.
19. A. Well, three are in towns and one is in McGaheysville.
20. Q. How many days a week does that person work? Each of
21. those.
22. A. How many days a week?
23. Q. Yes.
24. A. They work five days.

1. Q. Two days they are off?
2. A. Yes sir.
3. Q. What two days?
4. A. Those outside of No. 4 are off on Saturday and Sunday
5. when the volunteers are available. And then there is a
6. different schedule for those at Station No. 4, since
7. there are four of them. And that schedule is establish-
8. ed by the Fire Chief of No. 4.
9. Q. Look down here and see a block called public works.
10. A. Yes sir.
11. Q. Look at every block under that. Isn't that what we gen-
12. erally consider in one block, everything that's in there
13. as public works?
14. A. No, no. There are different functions.
15. Q. All right. Well, how many are in the public works block?
16. A. We would have five.
17. Q. Is that what you reported . . .
18. A. Well, we have . . . the total we have in that function,
19. of general administration, maintenance, refuse disposal,
20. and utilities, we have nineteen.
21. Q. Let me just check that. Which blocks do you want to put
22. these people in? Because you have answered this, the
23. breakdown you have given in your interrogatories as to
24. employment by department is totally different than the

1. organizational schedule you have; so I just can't put the
2. two together.
3. A. All right, well, you would take the five in refuse dis-
4. posal, they would be down in solid waste.
5. Q. All right, you have five down in solid waste.
6. A. Right. And then you would have four in buildings and
7. grounds.
8. Q. All right.
9. A. And then in the general administration, public works,
10. you would have two.
11. Q. Excuse me, where is that, what block would you put that
12. in?
13. A. Public works.
14. Q. We've just put five in there.
15. A. No, we put five down in public waste disposal, and
16. four in buildings and grounds.
17. Q. Well, what is the total number in public works?
18. A. Nineteen.
19. Q. Where do you get them from? I don't see the numbers on
20. there.
21. A. If what you're asking me, Mr. Cogar, is generally these
22. functions as shown, functions within the public works
23. department, that's correct, they are.
24. Q. These are all functions of public works.

1. A. Right.

2. Q. If you had answered my question affirmatively some mo-
3. ments ago; then I could have said from public works to
4. the bottom of that series of blocks how many employees
5. do you have, and you could have said nineteen.

6. A. Yes sir.

7. Q. Okay, public works . . .

8. A. Well, no, actually it would be more than that, because
9. you'd have to put inspections in there.

10. Q. This is a chart created for this annexation case, is
11. that correct?

12. A. For this exhibit, yes sir.

13. Q. Yes, this is not the way your government is organized.
14. It is a functional presentation.

15. A. It shows the functions in the departments of County
16. government.

17. Q. But these departments as such don't operate each out of
18. a different office.

19. A. Not necessarily.

20. Q. Well, do they or don't they?

21. A. Well, some do, some don't.

22. Q. Well, let's see if we can find out how many employees
23. you have, Mr. O'Brien. You put them wherever you like,
24. as you deem appropriate, but let's see if we can come up

1. with a total number.
2. A. Well, I can tell you, Mr. Cogar, that out of the 182
3. County employees that I testified that we had, ninety
4. of them are with the constitutional officers, sixty-four
5. of them . . .
6. Q. Ninety are where?
7. A. In the offices of the constitutional officers.
8. Q. Well, what do you have to do with that?
9. A. What do I have to do with that?
10. Q. Yes.
11. A. Well, we perform their purchasing function, we perform
12. the payroll function, we perform their budgetary . . .
13. Q. Are they County employees?
14. A. Yes sir.
15. Q. Break that down a little further. What departments are
16. we talking about?
17. A. Well, we have five constitutional offices. The Clerk
18. of the Circuit Court, the Commonwealth Attorney, the Sher-
19. iff, the Treasurer, and the Commissioner of Revenue.
20. Q. That's ninety of those that you're talking about in
21. there?
22. A. Yes sir.
23. Q. All right, sir. Now, maybe we're making some headway.
24. You have a hundred and eighty total?

1. A. A hundred and eighty-two.

2. Q. Where are the other blocks of them?

3. A. Well, we would have those other sixty-four that are in
4. those functions that are responsible to the County Ad-
5. ministrator or Board of Supervisors.

6. Q. Sixty-four?

7. A. Yes sir.

8. Q. That's what I want to find, where the sixty-four are on
9. this chart. I have a total down here . . . in your
10. answers to interrogatories it says total general govern-
11. ment, which is administration, finance and purchase,
12. Commissioner of Revenue, Treasurer, personnel services,
13. switchboard, data processing, central garage and registrar,
14. of thirty-four employees.

15. A. Yes sir.

16. Q. Now, where are the others? Now, I'll turn over here
17. and in addition to that you have in public works nineteen.
18. Is that correct?

19. A. Yes sir.

20. Q. Nineteen and thirty-four. Now, if you can help me lo-
21. cate the others.

22. A. Well, there are twenty-eight full-time employees within
23. the Welfare Department.

24. Q. Twenty-eight in Welfare. And to whom is Welfare respon-

1. sible?

2. A. Well, they are County employees. They work for the
3. Welfare Board, which is appointed by the Board of Super-
4. visors.

5. Q. And how many did you say in Welfare?

6. A. We have twenty-eight full-time and three part-time.

7. Q. All right, that gives me eighty-one. Are there any
8. others?

9. A. The breakdown, Mr. Cogar, is that there are ninety
10. full-time employees in the constitutional offices, there
11. are twenty-eight in the Welfare Department, and there
12. are sixty-four which are responsible to the Board. So,
13. that should add up to a hundred and eighty-two.

14. Q. Now, in the answers to interrogatories you had a hundred
15. and forty-eight employees.

16. A. Well, I wasn't giving you information from the interroga-
17. tories. They were dated August 29, 1980. I'm giving
18. you information provided to me from the personnel direc-
19. tor by memorandum of March 23, 1981.

20. Q. Do you have a copy of that memorandum?

21. A. In front of me.

22. Q. May I see it, please?

23. A. (Memorandum handed to counsel)

24. Q. Now these services that most immediately touch the lives

1. of your citizens, public works, utilities, building in-
2. spections, solid waste, buildings and grounds, planning
3. and zoning and subdivisions, those functions, because
4. they are broken down differently in these answers . . .
5. how many people does the County employ?

6. A. I don't understand your question.

7. Q. What I'm trying to get at is in these areas of service
8. to your citizens, those things, as opposed to the Sher-
9. iff's Office, the serving of papers and the Commissioner
10. of Revenue in the collection of taxes and that sort of
11. thing, the service activities of the government; how
12. many employees do you have in the service activities?

13. A. I include all of them, Mr. Cogar. Even though the
14. employees in the offices of the constitutional officers
15. do not come under the direct operational control of the
16. Board of Supervisors, they are still County employees
17. which are engaged in performing services to the County
18. citizens. So, we look at it in the whole.

19. Q. Now, if you'll look at it the way I want to for a moment,
20. if we take data processing, fire services, planning,
21. public works, engineering, zoning and subdivisions,
22. utilities, building inspections, solid waste disposal,
23. buildings and grounds, don't you have something in the
24. neighborhood of fifty to sixty employees?

1. A. I testified that there were sixty-four employees that,
2. under your definition, are responsible back to the County
3. Administrator and Board of Supervisors out of the hundred
4. and eighty-two.

5. Q. All right, sir. Now, is the Director of Planning employ-
6. ed by the Planning Commission?

7. A. No sir. The Director of Planning is employed by the
8. Board of Supervisors, and the Planning Director works
9. with the Planning Commission and provides professional
10. service to the Commission.

11. Q. Is the Director of Planning going to testify in this
12. case?

13. A. Yes sir.

14. MR. COGAR: He will be testifying, Mr. Fitzger-
15. ald?

16. MR. FITZGERALD: Sir?

17. MR. COGAR: Will the Director of Planning be
18. testifying?

19. MR. SMITH: He's on your list.

20. MR. FITZGERALD: He's on your list.

21. MR. COGAR: I've had . . . these lists have
22. proven very meaningless.

23. MR. FITZGERALD: The answer is yes. He said
24. yes, I said yes, the answer is yes.

1. the same question that was answered by the personnel of-
2. fice.

3. Q. Have you hired in excess of thirty people since last
4. August when you answered these interrogatories?

5. A. No sir.

6. Q. In the area of data processing, you went in-house in
7. what year?

8. A. 1977.

9. Q. You mentioned that you have offered this service to
10. some towns.

11. A. Yes sir.

12. Q. Dayton?

13. A. All the towns to my recollection, Mr. Cogar, were offer-
14. ed that service.

15. Q. How many have accepted?

16. A. One.

17. Q. That's Dayton?

18. A. Yes sir.

19. Q. And what service do you perform for Dayton?

20. A. We do their utility billing.

21. Q. What do you charge them for that?

22. A. I don't have that figure.

23. Q. You do charge them?

24. A. Yes sir.

1. Q. And the offer made to the other towns was on the basis
2. of a charge to them for the service?
3. A. Yes sir.
4. Q. And they declined.
5. A. They never accepted.
6. Q. You mentioned from 1944 to 1978, 1977-78, it recurs in
7. your testimony right much, that the Board toured all the
8. facilities in the County?
9. A. From 1944 to 1978?
10. Q. No sir, excuse me, I beg your pardon. From 1944 to 1978
11. that the County had contributed to the volunteers.
12. A. I think I testified that even prior to 1944, and that's
13. about as far back as we looked, that the County had
14. been contributing to the operations of the volunteers.
15. Q. From 1944 to 1978, or as far back as you checked, were
16. they contributing within the towns or here in the Harri-
17. sonburg area where the Courthouse complex is located?
18. A. To the best of my knowledge they were contributing to
19. all of these volunteers that had companies in the County.
20. Q. You searched the records yourself?
21. A. No.
22. Q. Do you have any information that you can give me as to
23. how much was being contributed to the towns as recently
24. as 1978?

1. A. We weren't contributing anything to the towns.
2. Q. The volunteer companies in the towns.
3. A. Well, we were contributing to the volunteer companies.
4. It was an amount, a similar amount to each of the compan-
5. ies, with the exception of the Bergton . . . no, I'm
6. sorry, with the exception of Weyers Cave. Weyers Cave
7. was given a lesser amount.
8. Q. What amount in 1977 and 1978 were you giving to the
9. various towns, the volunteer companies?
10. A. If I had our audit report I could tell you, but I don't
11. have that . . .
12. Q. Can you give me an order of magnitude?
13. A. Sir?
14. Q. Order of magnitude, approximate amount.
15. A. Ten or twelve thousand dollars per company.
16. Q. Does the County own any fire equipment in any of the
17. towns?
18. A. No. The towns . . . you're speaking of the volunteer
19. fire departments, is that correct?
20. Q. Well, let me ask you this. Does the County own any
21. fire equipment anywhere?
22. A. No sir.
23. Q. Has the County ever been requested to purchase any fire
24. equipment or contribute toward the purchase of any fire

1. equipment by any resident of the County, town or other-
2. wise?
3. A. We recently have had a request to purchase some paging
4. equipment.
5. Q. I'm talking about equipment, ladder trucks, tankers,
6. pumpers, engines.
7. A. I don't recall any specific request to buy any specific
8. equipment. The requests that have been received from the
9. volunteers have been either requests for funding and for
10. paid men.
11. Q. Does the County own any fire stations?
12. A. No sir.
13. Q. Now, at the time of this incident that you reported in-
14. volving a fireman at Engine Company No. 4 . . .
15. A. Hose Company No. 4.
16. Q. Hose Company No. 4. When that man went down there he
17. went under the impression that the County had the owner-
18. ship or some ownership in that building, did he not?
19. A. Not to my knowledge, Mr. Cogar.
20. Q. The building is owned by the City?
21. A. Yes sir.
22. Q. And you dispatched the man there without any prior con-
23. tact with the Chief in charge of the building, is that
24. correct?

1. A. I dispatched the man there with the . . . after informing
2. the Chief of Hose Company No. 4 that he was coming. And
3. Hose Company No. 4 has an agreement with the City of
4. Harrisonburg whereby they are given use of a portion of
5. that building.

6. Q. And what do you pay for the use of that portion of the
7. building?

8. A. What do we pay?

9. Q. Yes.

10. A. We contribute to the operation of Hose Company No. 4,
11. Incorporated.

12. Q. But do you pay anything for the building that they are
13. housed in? Anything toward its upkeep and maintenance.

14. A. You're talking about a direct payment from the County to
15. the City?

16. Q. That's correct.

17. A. No sir.

18. Q. Now, without going into this with the sort of detail
19. that I don't think is necessary, the heart of the issue
20. there was that a full-time fireman arrived, Chief Austin
21. said, "You're going to be under my command when you
22. report to fires," and he said he was not, and therefore
23. he was written a letter and told to leave. And when the
24. smoke cleared, he came back into the station and he was

1. if you went to your house and found a whole bunch of
2. people living in it. I think that's what he said.

3. MR. COGAR: I think that's what . . . yes sir.

4. JUDGE ARTHUR: Whatever the arrangement is,
5. has there been any problem that you're aware of in their
6. deciding who is to take what truck where? What do they
7. have to do, have a meeting of the Company to decide?
8. A. No sir, my understanding is that they are now . . . there
9. exists a good working relationship between the Chief of
10. Hose Company No. 4 and the Chief of the City Fire De-
11. partment, and I understand that that arrangement works
12. well.

13. Q. Now, you indicated that you had considered a fire station
14. in the vicinity of Route 33 east, and that after looking
15. out there and seeing that land values were two hundred
16. thousand dollars or more an acre you decided that you'd
17. just continue to house your firemen in the City station.
18. Is that correct?

19. A. I did not make that decision, Mr. Cogar, the Board of
20. Supervisors did.

21. Q. But that's the decision that was made?

22. A. Yes sir.

23. Q. Are you telling this Court that out along Route 33,
24. within response times of three or three and a half min-

1. utes, off 33 but still able to respond in the acceptable
2. limits, you're going to have to pay two hundred thousand
3. dollars an acre for land?
4. A. I didn't testify to that, Mr. Cogar.
5. Q. Well, did you only look at frontage nextdoor to the Mall?
6. A. No sir.
7. Q. Did you look at any off of Route 33?
8. A. When you say look at, do you mean did we get prices on
9. it?
10. Q. Well, did you ascertain any value? Did you employ any-
11. body to make an investigation or study to find out if
12. you could acquire enough land that would be suitable for
13. the construction of a fire house in the vicinity of Route
14. 33 that didn't have to be nextdoor to the Mall or on a
15. two hundred thousand dollar an acre parcel.
16. A. No sir, we didn't hire anybody to determine that. We
17. checked some land prices and made a determination that
18. the money would be better spent in manpower and putting
19. additional people in Hose Company No. 4, Incorporated.
20. And the representatives of No. 4 concurred in that.
21. Q. So, it wasn't that a parcel of land that was two hundred
22. thousand dollars was more than you could pay, you just at
23. some point in midstream decided you'd rather not build a
24. firehouse, you'd rather continue to house them in the City.

1. I don't understand why you mentioned the two hundred
2. thousand dollars an acre.

3. A. It was one of the factors, Mr. Cogar, in not constructing
4. a fire station. Certainly land acquisition costs were
5. one of the factors that we were looking at.

6. Q. How much were you prepared to pay?

7. A. How much? We had hoped to build one station, land acqui-
8. sition and the building and some equipment, we were look-
9. ing towards working out an arrangement with No. 4 to put
10. some fire trucks in it, in the neighborhood of a quarter
11. of a million dollars.

12. Q. And how much of that were you prepared to pay for land?

13. A. We didn't have it broken out as to how much we were go-
14. ing to pay for land, how much we were going to pay for
15. building. The Board of Supervisors indicated that they
16. would allocate approximately a quarter of a million dol-
17. lars for the project. And it appeared to us that we may
18. be spending the lion's share of that quarter of a million
19. dollars for land. So then the determination was made not
20. to build the fire station, but to hire additional men.

21. Q. Contributing how much to the land?

22. A. Well, I said we were faced with somewhere in the neigh-
23. borhood of two dollars and fifty cents to five dollars
24. a square foot.

1. Q. But did you ever, other than the two hundred thousand
2. dollar an acre site, did you ever look at any others
3. for which you have any price figures?

4. A. I think I answered that question.

5. Q. Well, would you do it again? My memory isn't that good.

6. A. We made some preliminary investigations and decided that
7. the land was going to be very expensive.

8. Q. How expensive?

9. A. I just testified to that, Mr. Cogar. Two dollars and
10. fifty cents to five dollars a square foot.

11. Q. How much is that an acre?

12. A. At two dollars and fifty cents a square foot, it is in
13. the neighborhood of a hundred and seven thousand dollars.
14. Double that for five dollars.

15. Q. A hundred and seven thousand to two hundred and fifteen
16. thousand.

17. A. Yes sir.

18. Q. The rescue squads that you showed on Exhibit 57, how
19. many are there?

20. A. There are five.

21. Q. One is in the City?

22. A. Yes sir.

23. Q. The other four are located where?

24. A. Well, you have one in Broadway with a substation in

1. Bergton, one in Elkton, one in Grottoes, and one in
2. Bridgewater.

3. Q. How much do you contribute to the support of these rescue
4. squads?

5. A. In the neighborhood of fifteen to sixteen thousand dol-
6. lars each, plus an additional I believe it's fifty-five
7. hundred dollars or thereabouts to the Bergton substation.

8. Q. Do you provide them with any equipment, or do you own
9. any of their equipment?

10. A. We don't own any equipment. The only way we assist them
11. in acquiring equipment is to act as a purchasing agent
12. for them and buy equipment at a lower cost through the
13. State Purchasing Department.

14. Q. So that the ambulances or whatever, the emergency vehi-
15. cles, that these rescue squads operate out of are funded
16. and financed by the volunteers and those who support the
17. volunteers.

18. A. Yes sir.

19. Q. You mentioned solid waste and that in 1972 the open
20. dumps in the County were closed, I guess prohibited, you
21. created a landfill, and you are at the present time go-
22. ing regional. Is that right?

23. A. That's basically correct, yes sir.

24. Q. Is this in cooperation with whom?

1. A. In cooperation?
2. Q. Well, who else will be involved in the solid waste pro-
3. gram that's going regional?
4. A. No one. Rockingham County exclusively.
5. Q. Well, how is the regional? I don't understand the re-
6. gional concept.
7. A. Well, when I say regional, I mean regional from our cen-
8. tral landfill. As it is now, if you live in the . . .
9. well, referring to 57, if you lived in the Broadway
10. area or the Bergton community, and if you opted not to
11. have private trash pickup and carried your own refuse
12. to the landfill, you would have to drive probably thirty
13. miles one way. So, we are going to put these regional
14. collection points throughout the County so that . . .
15. and attempt to locate them so that no one has to drive
16. more than six miles to drop off their trash.
17. Q. How many regional sites do you have?
18. A. I don't recall right now. I believe it was in the neigh-
19. borhood of six or eight. It's been a couple of years
20. since we did the study.
21. Q. Do you have the sites selected for them?
22. A. We have one. We have one that we are presently to bid
23. on, to develop.
24. Q. You don't have one then.

1. A. Well, we've purchased the land. We've closed the land
2. deal. We have one site which we are going to develop
3. and we are in the stages of developing it.

4. Q. Where is this?

5. A. It's at what is commonly referred to as the Bergton cut-
6. off, on the road, I believe it's State Route 820, that
7. goes back to the community of Bergton.

8. Q. I'm not sure where that is. What quadrant of the County
9. is it in?

10. A. It's in the extreme northwest area of the County.

11. JUDGE MOON: It's up where that green spot
12. is, isn't it?

13. A. At the intersection of Route 259 and 820, approximately
14. in this area (indicating on map), the County has purchas-
15. ed a site from a landowner on which will be developed
16. that refuse site.

17. Q. And is that going to be maintained just like the landfill
18. that we've seen?

19. A. No sir, no sir. That is going to be a collection point
20. where people will drop off their trash, and then it will
21. be hauled from there to the landfill.

22. JUDGE TRABUE: Are they going to put them in
23. Dempsey Dumpsters?

24. A. No sir. We considered that, and that's a right messy

1. type of operation, if you've ever seen some of these
2. boxes scattered throughout. We're going to have large
3. forty yard units where people will drive up and then
4. drop it off into the unit, and the truck will come around
5. from the side and then haul the unit away and bring in
6. an empty unit. And we're going to fence it, we'll have
7. a custodian, and so on, so that we can avoid some of
8. these problems other counties have.

9. Q. There's a receptacle there into which it will be dumped?

10. A. Yes sir.

11. Q. And that receptacle will be transported to another site?

12. A. It will be transported to the landfill.

13. Q. And what is the size of it?

14. A. I believe the specifications are going to be for forty
15. cubic yard containers.

16. Q. Isn't that essentially what a Dempsey Dumpster operation
17. is?

18. A. No, these little green boxes you see are four to six
19. cubic yards.

20. Q. At the present time you're the only County in this entire
21. Planning District without trash collection sites, the
22. green boxes, isn't that correct?

23. A. I can't testify to that.

24. Q. Well, do you know of any other that doesn't have them?

1. A. I have no knowledge on that subject, Mr. Cogar. I know
2. that there are counties that operate "the green box sys-
3. tems", but I know Augusta County has a system.

4. Q. I take it from your testimony that nowhere in the County
5. or in any of the towns you provide any solid waste treat-
6. ment or collection, excuse me.

7. A. You say does Rockingham County?

8. Q. Yes.

9. A. No sir, we do not at this time provide any refuse collec-
10. tion.

11. Q. In the County or the towns.

12. A. The towns, some of the towns either provide their own
13. with their own equipment, or they contract.

14. Q. So, the residents . . . what do the residents in the
15. annexation area do for solid waste collection?

16. A. They either drive to the landfill, which is in relatively
17. close proximity, located on the eastern boundary or the
18. eastern area of the County Farm property, or they con-
19. tract with a private hauler to pick it up at their curb-
20. side.

21. Q. Well, you aren't saying that private residents out there,
22. occupants of residences, put three or four garbage cans
23. in their cars once a week and drive down to the landfill,
24. do they?

1. A. A lot of people do that, Mr. Cogar. Either during the
2. week or . . . Saturday is our busiest day at the land-
3. fill. People throw their trash in the trunk of their
4. car in a plastic bag and haul it to the landfill. They
5. would rather do that when they are performing their er-
6. rands on Saturday than pay a hauler to haul it out there
7. for them. It's a matter of choice.

8. Q. At present you have had and continue to receive large
9. numbers of complaints concerning illegal dumping in the
10. County, isn't that correct?

11. A. No, I haven't received any. I know that there are ille-
12. gal dumps in the County. That's one of the reasons that
13. we're going to this regional system, to provide this
14. service. Generally when I came here, and still, the
15. Board of Supervisors has felt that the private haulers
16. are doing a good job in the County, and it's generally
17. been our position that we're not going to get into the
18. private area where that service is being provided suffi-
19. ciently by the private industry.

20. Q. What does that cost a resident, a once a week pickup?

21. A. I don't know.

22. Q. Do you have any idea what it costs a commercial establish-
23. ment?

24. A. No sir.

1. Q. Do any commercial establishments provide their own?
2. A. Provide their own what?
3. Q. Their own disposal?
4. A. Yes sir, I imagine they do.
5. Q. On the matter of recreation, I believe we have over
6. there Exhibit 42, is that in the book?
7. A. Yes sir.
8. Q. Now, we really start back with a listing of these facil-
9. ities on Exhibit 36 on page two of five. Is that correct?
10. A. Yes sir.
11. Q. There are shown here forty-five Rockingham County public
12. recreation facilities.
13. A. Yes sir.
14. Q. Of those forty-five facilities shown, how many are owned
15. by Rockingham County?
16. A. I believe two.
17. Q. What two are those?
18. A. It would be the Albert Long Park, that's number one.
19. Q. And what is the other one?
20. A. I'll find the number here in a minute. I don't see the
21. other one on here.
22. Q. Well, you only own two recreational facilities in the
23. County.
24. A. Well, the other one . . . I identified it, you wanted the

1. number. The other one is Singers Glen.
2. Q. And what is Singers Glen?
3. A. It's a building that formerly was used as a school facil-
4. ity.
5. Q. It's not on this exhibit?
6. A. I don't see it.
7. Q. Where is it?
8. A. Right here (indicating on map).
9. Q. That's a closed school?
10. A. A former school.
11. Q. And when did it cease to operate as a school?
12. A. Prior to May of 1977.
13. Q. And is the building occupied presently?
14. A. It's used by the Recreation Department.
15. Q. It is used on a daily basis?
16. A. I don't have the schedule. It's used quite extensively.
17. Q. Is there somebody there on a full-time basis?
18. A. No sir.
19. Q. I take it there are playing fields around it?
20. A. Yes sir.
21. Q. Baseball fields?
22. A. Yes sir.
23. Q. Is there any athletic equipment there, recreational equip-
24. ment?

1. A. Yes sir.
2. Q. What?
3. A. I can't testify to that. I know there's some equipment
4. there. Specifically what is there, I couldn't testify
5. to.
6. Q. Well, what you could do there is essentially what you
7. could do on any open piece of ground that you could find
8. to do it on?
9. A. No sir, there is basketball, volleyball that can be held
10. inside, in the gym.
11. Q. But you've got to find somebody to let you in to do
12. that.
13. A. Yes sir, you have to schedule that with the Recreation
14. Department.
15. Q. Albert Long Park is the closest to the annexation area.
16. A. Yes sir, we passed it on the tour.
17. Q. It's not in the annexation area?
18. A. No sir.
19. Q. What's there?
20. A. There's a ballfield. I believe there are picnic facilit-
21. ies there.
22. Q. Is it presently in operation?
23. A. It's open. The Recreation Department, or the Recreation
24. Commission, I should say, has recently taken some action

1. to suspend the use of the ballfield.

2. Q. Rockingham Recreation Commission is reported to have stat-
3. ed earlier this year that it hopes it can get by without
4. using Ashby Heights because heavy traffic . . . or, with-
5. out using Albert Long Park, because heavy traffic in the
6. Ashby Heights-Ridgeville area poses a threat to children's
7. safety. You are aware of that, are you not?

8. A. Yes sir.

9. Q. And some consideration has been given to closing it
10. because of that threat to children.

11. A. Yes sir. I commend them for recognizing that problem
12. and taking some action.

13. Q. Well, it will about recognize you out of business inso-
14. far as facilities are concerned if they follow through
15. with that.

16. A. No sir, that's one ballfield. There are many in the
17. County.

18. Q. Owned by the County?

19. A. No sir, I didn't say that.

20. Q. Well, you don't have to have a Recreational Department to
21. find a place in Rockingham County to get a pickup game
22. of ball, do you?

23. A. No, but you have to have someone to organize your leagues.
24. And it seems to me that it would be ridiculous for the

1. County to needlessly spend taxpayers money to duplicate
2. facilities that are already in existence around the
3. County that can be used for those activities.
4. Q. You show on here as number thirteen Endless Caverns.
5. A. Yes sir.
6. Q. There was a time, was there not, when the Regional Park
7. Authority wanted to buy the Endless Caverns, they had a
8. million dollar grant from the federal government to do
9. it with, and they were turned down by Rockingham County
10. who wouldn't contribute thirty-five thousand dollars to
11. it.
12. A. That was prior to my employment.
13. Q. You're aware of it?
14. A. I'm aware that there was a grant available, that the
15. County did not participate in it.
16. Q. They declined to participate in it.
17. A. They declined to participate in it. And it was also re-
18. ported that the reason they declined to participate in
19. it was because the selling price of the property was too
20. high.
21. Q. There's number sixteen there, Grand Caverns. Have you
22. ever been there?
23. A. Yes sir.
24. Q. That's owned by the Regional Park Authority, is it not?

1. A. Yes sir, we've had our County picnic there a couple of
2. years.
3. Q. You had to go into Augusta County to go to it, didn't
4. you?
5. A. Right over the line, yes sir.
6. Q. So, that's not in Rockingham County?
7. A. No sir. The County contributes to the operations of
8. the Upper Valley Regional Park Authority.
9. Q. On twenty-seven you show Massanutten Village, Incorporated.
10. Now, aside from a resort community, in those five
11. thousand acres you have a village, don't you?
12. A. Yes sir, there is a development there with a number of
13. facilities.
14. Q. And the recreational facilities there are privately operated.
15.
16. A. Privately operated, yes sir.
17. Q. Thirty-nine, it says or there is an indication on the
18. exhibit by the use of the letter "C" that the Commonwealth
19. of Virginia owns that. We tried to wrestle that back
20. from you before the Commission.
21. A. No, you didn't have to wrestle it back. I believe before
22. the Commission I testified that there was an error in our
23. exhibit, and that Silver Lake was owned by the City of
24. Harrisonburg. I believe the fishing is regulated by the

1. Commonwealth of Virginia.

2. Q. Well, it wouldn't have hurt to have given us some little
3. credit line for ownership, would it?

4. A. I'll do that right now, Mr. Cogar. Silver Lake is owned
5. by the City of Harrisonburg, and we did correct that at
6. the Commission, and that should show that.

7. Q. You have expressed the opinion that recreational facilit-
8. ies in Rockingham County are adequate to serve the needs
9. of the residents of the County and the residents of the
10. annexation area.

11. A. Yes sir.

12. Q. Have you ever had a professional study done to ascertain
13. what you need by way of recreation?

14. A. Not since I've been employed by the County, no sir.

15. Q. Well, that wasn't my question, or perhaps it could have
16. been interpreted that way. Has a study ever been done
17. to develop a master plan for recreation in Rockingham
18. County.

19. A. I think so, but I'm not sure.

20. Q. Well, you are here to testify to recreation and the facil-
21. ities, and the extent to which you meet the needs of your
22. citizens, are you not?

23. A. Yes.

24. Q. You are the County Administrator.

1. A. Yes sir.
2. Q. Do you recognize this document?
3. A. (Witness examines document) Yes sir.
4. Q. What is the title of it?
5. A. Master Plan for Recreation for Rockingham County, Virginia,
6. January, 1972.
7. Q. You have had that in hand nine years. Is that correct?
8. A. It is dated January, 1972, yes sir.
9. Q. And if you would look in your exhibit book at . . . well,
10. maybe you need not. That plan has been approved by the
11. Board of Supervisors, has it not?
12. A. I don't recall.

13. Q. Would you turn to Exhibit 36, page one of five.

14. MR. FITZGERALD: Your Honors, before we pro-

15. ceed onward, I would like to inquire of Mr. Cogar how

16. long he intends to carry forth.

17. MR. COGAR: If Your Honors please, I think I

18. will be at least another hour and a half or so with this

19. witness. I regret it . . .

20. MR. FITZGERALD: I was afraid of that.

21. MR. COGAR: I would like for the Court to re-

22. cognize the position I've been put in. We went hurriedly

23. in leading questions with answers of yes and no over the

24. whole range of County services which are shown in this

1. HARRY WILLIAMS,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Fitzgerald:

4. Q. State your name.

5. A. Harry Williams.

6. Q. And where do you live, Mr. Williams?

7. A. Fairway Hills.

8. Q. And what is your occupation?

9. A. I am Plant Manager of R. R. Donnelley and Sons Company.

10. Q. Were you connected with the Donnelley Company when they
11. first determined to locate where they are located now?

12. A. Yes sir.

13. Q. Would you tell the Court whether or not relatively recent-
14. ly you were contacted by officials of the City with re-
15. gard to this annexation?

16. A. Yes sir, I was. I received a letter dated--it was hand
17. delivered, dated the 27th of March.

18. Q. Who delivered that letter?

19. A. Marvin Milam.

20. Q. And would you tell the Court whether or not or what your
21. answer was to Mr. Milam and what your position is with
22. regard to whether or not you are satisfied insofar as
23. your Company is concerned with the services that you re-
24. ceive where you are located in the County.

1. A. Yes, the question was raised as to what our Company's
2. position was, and we have started a number of plants in
3. communities across the eastern half of the United States
4. in the last twenty years, and this is not a new occasion.
5. It is for me, but not for our Company. And I told them
6. that it had been our practice to adopt a passive role;
7. that we felt that that was outside of our jurisdiction
8. and where there was no--where we were not able to see
9. any reason that we were getting unfair treatment, that
10. we adopted a passive role, and that would be my position
11. today. In response to the second half of that, as a cor-
12. porate citizen of Rockingham County, we have received very
13. fine service in all aspects. They have been most cooper-
14. ative and I have no complaints.

15. Q. Did you tell this to Mr. Milam?

16. A. I talked to either Mayor Erickson or Mr. Milam; I can't
17. recall which of the two.

18. MR. COGAR: As I recall, Mr. Milam was going
19. to state what was said, but . . .

20. JUDGE MOON: I sustained the objection.

21. MR. FITZGERALD: That's all.

22.

23. Cross Examination by Mr. Cogar:

24. Q. Mr. Williams, one of the services that you received--or,

1. you received sewer service?

2. A. Yes sir.

3. Q. And you received water service.

4. A. Yes sir.

5. Q. At the time you commenced construction of that facility,
6. you had not finalized plans for water and sewer, had
7. you?

8. A. Well, the plans for the plant were finalized. That is,
9. we had worked with the County engineers to find where
10. the best spot on our land to join was. So, from our
11. perspective, all of the construction--in other words,
12. the leads to the edge of our property were finalized,
13. yes sir.

14. Q. You are familiar with your efforts to obtain water and
15. sewer at that facility.

16. A. Oh, yes sir.

17. Q. And that involved discussions, negotiations, and efforts
18. to work with the County officials and City officials.

19. A. If I may, obviously the services were to be provided by
20. the County, so our major conversations were with the
21. County. And a concern that they would be ready, I had
22. customers who were waiting on me to provide them service,
23. so that was the main part of the discussion. I did have
24. major concerns that they would not be able to provide

1. that service at the appropriate time to allow us to meet
2. our commitments that we had made to customers. And, as
3. a result of that, I did then talk to the City to see if
4. there was anything that I could do or should be doing to
5. assist this controversy between the two.

6. Q. Well, was not the City willing from the beginning to
7. provide you water and sewer?

8. A. The City had made it clear that some way, in their re-
9. assurance, that that would be done.

10. Q. They told you that they would provide you these services?

11. A. We certainly wouldn't have located out there if we
12. hadn't felt that there would be water and sewer out there.

13. Q. You got that assurance first from the City, did you not,
14. sir?

15. A. I don't recall where it came. We never looked at any
16. property that the City actually served, so we didn't have
17. any negotiations with the City per se for the water, it
18. was as an agent for the County to get to serve us. So,
19. I really don't recall exactly when that started.

20. Q. Let me see if I can refresh your recollection. In your
21. negotiations with the County, you learned that the County
22. was unwilling to let the City provide water and sewer to
23. your facility; isn't that correct, at the early stage?

24. A. No sir. No sir, I was not aware of that.

1. Q. All right. There came a time, did there not, when the
2. City told you of their plan to provide sewer to you.
3. A. Directly to Donnelley?
4. Q. Yes sir.
5. A. No sir, I do not recall that. I do not recall any con-
6. versations that I had that the City would directly pro-
7. vide water to us.
8. Q. No sir.
9. A. Or sewer, either one.
10. Q. I'm talking about what was the County's first proposal
11. in terms of sewerage? What were they going to do?
12. A. The County was going to provide sewer tap-ins to the
13. Donnelley property and water tap-ins to the Donnelley
14. property.
15. Q. But they came to you with the proposal that involved the
16. aeration of sewerage on your property. Don't you recall
17. that, sir?
18. A. Only as an alternative if they couldn't meet the obliga-
19. tion of providing it. That was discussed.
20. Q. And the alternative, sir, was to construct a line from
21. up where Donnelley is all the way around the City back
22. into a line down here, and they came back and told you
23. that that was financially not feasible.
24. A. I was not involved in that discussion.

1. Q. Did you ever have a meeting with Dr. Walter Green con-
2. cerning this?

3. A. I met with the City Council, but not with Dr. Green.

4. Q. But Dr. Green was present?

5. A. Yes sir.

6. Q. And did you say at that meeting with the City, with the
7. City Council, that if you were going to be stuck with
8. aeration of sewerage on your property, that Donnelley
9. would not come to this site?

10. A. No, I don't recall saying that. We were too far along.
11. We had money invested, and I didn't say that. I did not
12. say that at all.

13. Q. You were too far along when, when you had your meeting
14. with City Council?

15. A. Yes. See, this was getting . . . I don't know the exact
16. date of it, but we started site preparation, we had to
17. move four hundred thousand cubic yards of fill out there,
18. of dirt and rock, and we started that in the summer of
19. 1979.

20. Q. Well, that's what I had reference to in my earlier ques-
21. tion. That after you had broken ground and commenced
22. substantial site preparation, you met with City Council
23. to discuss water and sewer. And it was at that stage
24. that you had learned that the County proposed to go an

1. aeration route on your property.

2. A. No, your term "proposed" bothers me, because that was
3. never proposed to me. I was told that if there was a
4. delay, that if they couldn't get through at the time to
5. meet my commitments, that there were some short-term
6. alternatives that could be done in the meantime.

7. Q. Well, why were you telling this to the City Council of
8. Harrisonburg?

9. A. I don't remember telling that to the City Council at
10. all.

11. Q. Well, why did you meet with the City Council?

12. A. Because--I thought I stated that.. I met with City Coun-
13. cil to see what could be done, if there was anything that
14. I was doing that held it up. I was in a very precarious
15. position. I had customers depending on me and I was
16. calling a number of people to see if there was anything
17. more that Donnelley could do to assist this. But Donnel-
18. ley really was a customer and not involved. This was,
19. as I viewed it and as I understood from the paper, was a
20. problem between the City and the County. And I was in
21. there as someone who was directly affected and was trying
22. to see if there was anything that I could help with or
23. do that they needed from me that would assist them.

24. Q. If the County had the ability to provide you with the

1. water and sewer which you had to have in order to locate
2. at that site, you had no need to come and discuss any
3. aspect of that with the City Council, did you?

4. A. Except that it wasn't happening. The papers were full of
5. it, of the controversy that was going on, as to how it
6. was going to be done and the route that was going to be
7. made, and a number of other things. And the person who
8. was going to suffer was my Company and my customers, and
9. I couldn't just sit by. I had to see if there was any-
10. thing that could be done.

11. MR. COGAR: All right, sir. Thank you.

12.

13. Re-Direct Examination by Mr. Fitzgerald:

14. Q. The controversy you speak of was over the location of
15. the line down to the tap-in to the City, was it not?

16. A. Yes. And the commitments had been made to me as to when
17. those tap-ins would be available. And I really didn't
18. have that much conversation, I read most of what I knew
19. in the paper.

20. Q. But you were familiar with the County wanting to put it
21. down the gravity feed.

22. A. The present location.

23. Q. And the City wanted to pump it over to some other loca-
24. tion.

1. A. Yes.

2. Q. And it finally ended up going down the way the County
3. wanted it to go.

4. A. Yes. That was really the sewerage and not the water.
5. that was the major controversy. And, as I recall, that
6. is when I did meet with them.

7. Q. And you were able to open on time?

8. A. Yes.

9. MR. FITZGERALD: That's all.

10.

11. Re-Cross Examination by Mr. Cogar:

12. Q. What is the value of your land, the building and the
13. presses?

14. A. I don't . . . the initial estimate was eight million
15. for the building. We're still finishing up some appro-
16. priations and that will be finally determined very short-
17. ly. The land was approximately a million and a half.
18. Approximately ten million on the equipment.

19. MR. COGAR: Thank you very much.

20. JUDGE MOON: Thank you, sir. We will recess
21. then until tomorrow morning. We will try to get away by
22. three o'clock tomorrow then, if you think you're serious
23. about finishing by Tuesday, even if you'll be finished
24. by Wednesday for sure. (End of Day's Proceedings)