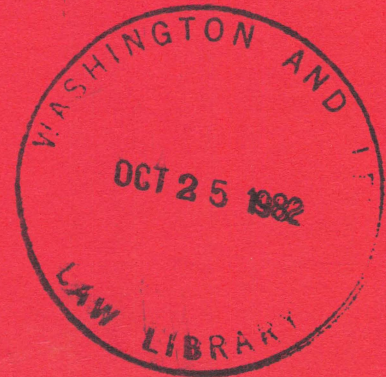


IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 812007



COUNTY OF ROCKINGHAM

Appellant

v.

CITY OF HARRISONBURG

Appellee

JOINT APPENDIX
Volume III

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant

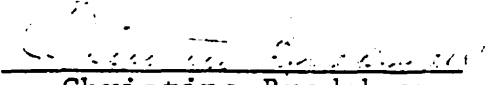
VOLUME VI

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 17th day of April, 1981, in the Courtroom of the Circuit Court of Rockingham County, at Harrisonburg, Virginia.

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

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

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

WILLIAM G. O'BRIEN,

Cross Examination by Mr. Cogar (continued):

Q. Mr. O'Brien, when we concluded yesterday we were discussing the County's master plan for recreation, which I believe you acknowledged had been adopted by the Board of Supervisors. Is that correct, sir?

A Yes sir.

Q. When was it adopted?

A. I believe it was adopted in 1972.

Q. All right, sir. Now, I'll ask you to turn to page 23 of that report, and on the column to the left, which is an analysis of the needs, it is stated that Rockingham County Recreation and Parks Department owns only six acres. And then in the next paragraph it says that there is a need for 711 acres to meet the demand for recreation areas in 1971. Based on population projections for 1980 there will be a need for 894 acres. Now, the County adopted this plan. Will you tell the Court what they have done in furtherance of that objective?

A. In purchasing land?

Q. Yes.

A. None has been purchased.

Q. If you turn over to page 106, it says based upon the assumptions which preceded the 1971-72 budget for Rock

1. ingham County should be approximately two hundred and
2. sixty-eight thousand. And based on, I take it, 1972 dol-
3. lars they project that by 1980 the budget should have
4. risen to approximately three hundred and fifty-four
5. thousand. I don't know what the inflationary growth would
6. be, but that would be in today's dollars at least seven
7. hundred and fifty thousand dollars, would it not?

8. A. I'm not sure, Mr. Cogar.

9. Q. All right, sir. What do you have in your 1980 budget?

10. A. For recreation the total budget is in the neighborhood
11. of a hundred and fifty or sixty thousand dollars.

12. Q. If I am correct that a 1972 value of three fifty-four
13. would be at least double that in today's dollars, you
14. are expending at the rate of maybe fifteen percent of
15. what the County's master plan calls for.

16. A. Well, very obviously, Mr. Cogar, in the intervening nine
17. years since this plan was adopted there have been other
18. priorities identified by the Board of Supervisors, such
19. as education, health and welfare, utilities and so on
20. where we have directed our resources.

21. Q. Yes sir. And the major priority of all these, as we
22. know, out of the non-school area, has been this Maginct
23. line of water and sewer services erected in the annexation
24. area since the adoption of the annexation ordinance in

1. 1975, is that not a fact?

2. A. Well, that's your statement, Mr. Cogar. When we look at
3. our total operating budget we don't separate out school
4. operations and discount them in our considerations.

5. They are one of the major expenditures in the County,
6. and since that time we have made additions to schools,
7. we have built a new high school facility. So, in allo-
8. cating the County dollar, all of those factors have to
9. be taken into consideration.

10. Q. All right, I understand, Mr. O'Brien, that in every lo-
11. cality, city and county, major expenditures of local
12. government go to schools, which is the basic need. Now,
13. next to that, the concentration of spending of Rockingham
14. County since May of 1975 when this annexation ordinance
15. was adopted has been for utility improvements and other
16. expenditures in the annexation area, has it not?

17. A. Well, it has and we allocated those funds there because
18. there was a definite need there. We also spent money in
19. our utilities systems outside the area proposed to be
20. annexed.

21. Q. But the major portion has been spent in the annexation
22. area, and there had been needs beyond the annexation area
23. in other parts of the County for water and sewer services,
24. had there not?

1. A. Yes sir.

2. Q. Which preexisted the needs that are within this annexa-
3. tion area?

4. A. We've been attempting to meet all the needs, Mr. Cogar.

5. Q. What have you done about Grottoes needs?

6. A. Grottoes? We formed a Regional Sewer Authority with
7. the Town of Grottoes.

8. Q. I mean, the plant is down there, but what have you done
9. to solve the health problems in Grottoes that they have
10. with sewer?

11. A. We haven't had to do anything because since the time the
12. Regional Sewer Authority was formed, between the Town of
13. Grottoes and Rockingham County, the town has met its own
14. needs.

15. Q. Has Grottoes come to the Board for help?

16. A. They came to the Board to form a regional authority
17. which would allow county-town participation, a similar
18. cooperative type approach that we got into with water
19. with the Town of Dayton.

20. Q. Yes sir, I understand. But has Grottoes asked you to
21. assist them in getting a sewage collection system in
22. place in the town because of health hazards that they
23. have there?

24. A. Yes sir.

1. Q. Have you done anything about that?

2. A. Yes sir.

3. Q. What?

4. A. We formed a regional authority, as I just testified to.

5. Q. I know you formed a regional authority, that's the plant
6. down there that could receive the sewage, but you've got
7. to have a collection system before that authority can
8. do anything to treat it. Isn't that correct?

9. A. Yes sir.

10. Q. All right, sir. Does Grottoes have a sewage collection
11. system?

12. A. They are in the design phase.

13. Q. Is the County contributing anything for it?

14. A. No sir.

15. Q. How long have they been in the design phase?

16. A. I can't testify to that.

17. Q. How long have they needed it?

18. A. I can't testify to that.

19. Q. How about Mt. Crawford, does it have a water service?

20. A. A central water service, no sir. Last night the Board
21. of Supervisors approved a project which will extend the
22. twelve inch water main down Route 11 to the vicinity of
23. the Town of Mt. Crawford. So, I would say that in the
24. near future water will be available in that area.

1. Q. And how long has it been needed down there?
2. A. I haven't the slightest idea, Mr. Cogar.
3. Q. Annexation has a wonderful way of moving forward priori-
4. ties, does it not? How about sewer in Mt. Crawford?
5. A. As I testified to yesterday, Rockingham County paid the
6. local share of the Town of Mt. Crawford to become a mem-
7. ber of the Regional Sewer Authority.
8. Q. The one percent. That was how many dollars?
9. A. That's all they needed.
10. Q. They don't need any because they don't have any system.
11. A. It was roughly forty-eight thousand dollars.
12. Q. They don't need any, do they?
13. A. Sir?
14. Q. They don't need any capacity in that plant, because
15. they don't have a collection system.
16. A. It's good future planning.
17. Q. Well, how long have they needed a sewage collection sys-
18. tem in Mt. Crawford?
19. A. I don't know.
20. Q. How long has Mt. Crawford been there?
21. A. It's been there a right good while.
22. Q. Has it been there since 1975?
23. A. Yes sir.
24. Q. Have you given them one dime, has the County given them

1. one dime to assist them in installing a sewage collection
2. system?

3. A. The County in the past has assisted in grants prepara-
4. tions for utilities for the Town of Mt. Crawford. Re-
5. cently, I believe it was two years ago, the Town Council
6. in Mt. Crawford opted not to go ahead at this time with
7. a sewage collection system.

8. Q. Did they opt because they couldn't afford it?

9. A. I don't know. You'll have to ask the Mayor of Mt. Craw-
10. ford.

11. Q. Well, you sat here yesterday and said as manager you
12. lent your services to the towns, presumably because a
13. part of your salary is paid for it, and you serve them,
14. you know something about the problems of the town.

15. A. Well, the difference between the functions of the County
16. government and the functions of the town government, we
17. make it a policy not to interfere in the operation of the
18. town government. We assist them when we can.

19. Q. Well, do you think that you could have assisted them
20. during the last five years when you were putting in util-
21. ities in and around the City of Harrisonburg, which the
22. City of Harrisonburg could have provided, by transferring
23. that money into the towns where you were collecting taxes
24. in helping to assist in those badly needed programs there?

1: A. Mr. Cogar, we have attempted to assist. And if the Town
2: Council sees fit to make a decision not to install a
3: collection system, I don't see it's the County govern-
4: ment's responsibility or duty to impose services on them
5: that they may not want.

6: Q. All right, sir. What services have you attempted to
7: impose on Mt. Crawford that they declined to accept?

8: A. None.

9: Q. What services have you attempted to impose on or offered
10: to Grottoes that they declined to accept?

11: A. We don't try to impose any services on them that they
12: don't want.

13: Q. Well, let's just continue. What services have you offer-
14: ed them that they have declined to accept?

15: MR. FITZGERALD: He's answered the question.
16: Objection to the repetition.

17: Q. I don't think so. What services have you offered them
18: that they have declined to accept?

19: A. I answered that question, Mr. Cogar.

20: JUDGE MOON: Well, just answer it again.
21: None or some or . . .

22: A. We have not attempted to impose any services on the Town
23: of Grottoes.

24: Q. All right, sir, you haven't attempted to impose any, have

1. you offered any?

2. A. In what time period?

3. Q. In the last five years.

4. A. Other than the assistance with the sewer authority there,
5. we worked with the Town of Grottoes on forming the
6. Grottoes-Rockingham Sewer Authority.

7. Q. Is that it?

8. A. Yes sir.

9. Q. How about Bridgewater? What services have you offered
10. them in the last five years?

11. A. I don't know of any.

12. Q. All right, let's now make it all towns. What services
13. have you offered them within the last five years?

14. A. Well, as I testified to yesterday, we offered the data
15. processing services that we are currently providing to
16. the Town of Dayton. We entered into a cooperative agree-
17. ment with the Town of Dayton for a joint water project.

18. Q. And that's what is going to be attempted to be accomplish-
19. ed off of that well in the south area, is that correct?

20. A. It will be accomplished, Mr. Cogar.

21. Q. When did you start the design of that well system?

22. A. Several years ago.

23. Q. When? Since you came here?

24. A. Well, it was drilled prior to May of 1977.

1. Q. That well that we passed was drilled prior to May of
2. 1977?

3. A. Yes sir.

4. Q. And it is not functional in April of 1981?

5. A. No sir.

6. Q. That's four years. Have you received a health permit?

7. A. There has been testing done.

8. Q. I didn't ask you that. Have you received a health per-
9. mit?

10. A. I don't believe so. I'd have to check my records.

11. Q. Well, don't you know that more than a year ago you sub-
12. mitted data to the Health Department and you have not
13. yet received a health permit?

14. A. Well, we're in the process of also test pumping again
15. too, as part of that application.

16. Q. I'm asking you if you have had data before the Health
17. Board for over a year and you have not received approval
18. for a health permit, have you?

19. A. Our Director of Public Works has been working with the
20. regulatory agencies and he has been advised as to the
21. necessary steps that the County must take to put that
22. system into operation. And I know of no reason why we
23. cannot use that system.

24. Q. Well, one reason is you've got to get a health permit,

1. and you don't know whether you're going to get it or
2. you're not going to get it.

3. A. We can be reasonably assured that we will get it, if we
4. meet the health standards.

5. Q. Well, you submitted data to the Health Department a year
6. ago, Mr. O'Brien, with respect to the health permit and
7. you have not received it. You submitted data this week,
8. did you not, and you understand that you continue to make
9. improvements in that site at your peril with respect to
10. obtaining a health permit. You know that, don't you?

11. A. No sir, I don't. I feel no peril in this project.

12. Q. Has anybody told you that you can get a health permit?

13. A. The Director of Public Works has been handling that pro-
14. ject, and if there was a problem with any regulatory
15. agency, he would so have advised me, and he has not.

16. Q. Well, if he submitted data for a health permit and it's
17. been down there for a year and you haven't gotten it,
18. is that by your definition, in your lexicon, is that a
19. problem?

20. A. No sir.

21. Q. When are you going to complete that line?

22. A. The system is scheduled to become operational in the lat-
23. ter part of 1981.

24. Q. Well the closest that a line comes to whatever is in the

1. ground there is seven hundred feet, isn't it?

2. A. The closest to what, Mr. Cogar?

3. Q. The closest any line that you have is to the well is
4. some seven hundred feet. You don't even have a line
5. connected to the well, do you?

6. A. We have line on the County property. We have not had any
7. reason at this point to connect the well to the line, be-
8. cause we're still test pumping.

9. Q. Let me ask you this question. Is the closest you have
10. any line to the well seven hundred feet?

11. A. I'm not sure of the distance. It's about a day's work,
12. two days' work, of laying line to get there.

13. Q. Why haven't you connected the seven hundred feet there
14. when you built thousands of yards in other areas?

15. A. I just testified to that, Mr. Cogar, because we are still
16. test pumping that well.

17. Q. You can connect it up and still test pump it, can't you?

18. A. Yes sir.

19. Q. If it had been connected up when the contractor recently
20. wanted to put a charge on that line, you could have used
21. the well instead of asking the City to come down there
22. and pump it in from a truck as they did, did they not?

23. A. I'm not sure of that. As I say, our Public Works Direc-
24. tor has been handling that project.

1. Q. All right, sir. In the summary of recommendations, will
2. you look on that in the report you have there?

3. A. We're back on recreation?

4. Q. Do you have anything else that I gave you before you?

5. A. Yes sir . . . well, I have my exhibits. What page are
6. you on, Mr. Cogar?

7. Q. I'm on page two of the summary of recommendations.

8. In 1972 they recommended the establishment of one county-
9. wide recreational area, which would contain swimming
10. pools, softball fields, little league fields, tennis
11. courts, and the like. That has not been done, has it?

12. A. No sir.

13. Q. Do you have any tennis courts in the County? Public.

14. A. Yes sir.

15. Q. Where are they?

16. A. They are located at various school sites.

17. Q. How many do you have?

18. A. I don't know right off the top of my head, Mr. Cogar.

19. Q. They recommend the redevelopment and expansion of six
20. existing areas throughout the County, Plains District
21. Memorial Park, where is that? In Timberville?

22. A. Yes sir.

23. Q. Do you know anything about that?

24. A. There have been various maintenance projects done by the

1. Recreation Commission and the Recreation Department.

2. Q. Well, that's not what they recommend, maintenance.

3. A. Well, I think, Mr. Cogar, as I previously testified,

4. in the nine years since this plan has been adopted, the

5. Board of Supervisors has seen fit to direct its priorit-

6. ies in other areas.

7. Q. More specifically in the areas surrounding the City of

8. Harrisonburg.

9. A. No sir. We have also built a new senior high school

10. in the McGaheysville area.

11. Q. Well, can you only do one thing at a time?

12. A. No sir, we do a number of things.

13. Q. Well, what other major priorities have there been other

14. than trying to ring the City with utilities since 1975?

15. A. Since 1975 or since the adoption of this report?

16. Q. Since the adoption of the annexation ordinance.

17. A. Well, we have been moving ahead irregardless of the an-

18. nexation ordinance of the City with trying to efficiently

19. operate the County government. And we have taken on a

20. number of projects, as I testified to yesterday. We are

21. in the process of developing a television translator relay

22. system, we're going to go into a County-wide trash system,

23. we're in the school business, we're in the health busi-

24. ness, we're in the welfare business. We've found it to

1. be advantageous to us to operate a central garage, we
2. have added some physical facilities, we've moved the
3. Welfare Department from the County Office Building to
4. the Pleasant Valley area where we acquired an additional
5. piece of property. So, a number of things have been
6. going on, Mr. Cogar.

7. Q. Well, let's just talk about some of those. You have
8. mentioned a combination of things you are going to do
9. and some you have done.

10. A. Some that we are currently doing.

11. Q. As opposed to done and going to do, you are going to
12. build a television tower. Where is that going to be
13. located?

14. A. Well, we're going to have a system of sites. Generally
15. one will be located in this area (indicating on map),
16. another one will be located generally in this area, and
17. one other will be located up above the Bergton community
18. generally in this area. It's a system of three trans-
19. lator sites.

20. Q. And that system was developed to get the three major
21. networks, to the extent possible, into the remote areas
22. of the County where reception is difficult because of the
23. terrain, is that correct?

24. A. Yes sir, it's been reported to various members of the

1. Board of Supervisors that there are various areas of the
2. County which receive little or extremely poor television
3. reception, and we do have people who are elderly and shut
4. in that can enjoy this service.

5. Q. And to the extent that they don't have a recreational
6. facility such as have been adopted here as a part of your
7. master plan, they can watch television.

8. A. Well, my answer to that, Mr. Cogar, would be that in
9. effect the people have spoken. We put the question to
10. a referendum and it was very favorably received by the
11. voters.

12. Q. Was this an advisory referendum?

13. A. It was a referendum that is set forth in the state code,
14. that if passed it authorizes the County to construct,
15. operate and maintain a television translator system.

16. Q. And that will be funded out of what?

17. A. It will be funded out of a combination of funds. We
18. will earmark some revenue sharing funds for it, we will
19. also earmark general funds for it.

20. Q. Any other funds?

21. A. No sir.

22. Q. You indicated that Harrisonburg will get the benefit of
23. that?

24. A. Yes sir.

1. JUDGE TRABUE: Are there any other counties
2. in Virginia that have similar projects?

3. A. Yes sir, the two that I am familiar with are Shenandoah
4. County, immediately to the north of us, and Accomack
5. County.

6. JUDGE TRABUE: Thank you.

7. Q. Just one final question on that. That would bring the
8. three major networks into the County?

9. A. Well, it will enhance the signals of the major networks
10. coming into the County. I don't mean to say that we
11. don't have the major networks already serving the area.
12. The local television station serves the County with a
13. major network. I believe we receive a signal from one
14. of the stations in Charlottesville. But our plan is to
15. provide the three major networks to the majority of the
16. citizens of the County in addition to the public tele-
17. vision station.

18. Q. All right, let's move on here to another subject. You
19. have mentioned something about welfare, a building having
20. been built down in the industrial area, the Industrial
21. Park area?

22. A. We purchased a piece of property in the Pleasant Valley
23. area. The buildings were already in place. It was a
24. piece of property formerly owned by Smith's Transfer,

1. which has an office facility and also a vehicle mainten-
2. ance facility.

3. Q. And is this simply where you do your bookkeeping or is
4. this the office out of which you run your social services
5. program?

6. A. It is the office out of which the program is operated.
7. The Welfare Superintendent and the eligibility officers
8. are housed there.

9. Q. And those in need of social services, wherever they may
10. be within the eight hundred and some miles of the County,
11. come down to the industrial center?

12. A. Those that are able to. I understand that there are some
13. requirements, that they must also have an outreach capa-
14. bility where if someone is handicapped or incapacitated
15. and cannot physically come to the department, that that
16. service can be brought to them.

17. Q. That is that they have some physical limitation?

18. A. Yes sir.

19. Q. How many people do you have that operate in that function?

20. A. I believe it's in the neighborhood of twenty-eight.

21. Q. Is that the whole department?

22. A. Yes sir, to my knowledge.

23. Q. But how many do field service work?

24. A. I don't know how many eligibility workers there are.

1. Because of the additional services that that department
2. is required, such as the fuel assistance program, we re-
3. cently moved a temporary structure, a former mobile class-
4. room building, to that site, and that program is operat-
5. ing out of there. And we are presently drawing plans to
6. expand our building by about fifty percent.

7. Q. Do you have any means of transporting recipients of social
8. service who can't afford to get to that site?

9. A. On a regularly scheduled basis?

10. Q. On any basis.

11. A. The Welfare Department has a number of vehicles assigned
12. to it, and I imagine that they could be used for that
13. purpose.

14. Q. Do you have a transportation system that affords the
15. means for people who don't have means of transportation
16. to get to the industrial site to address their social
17. needs?

18. A. No sir.

19. Q. In this same area, what public housing, if any, do you
20. have in the County?

21. A. There are a number of projects. Deer Run Apartments is
22. under construction and will be opening in the near future.
23. That's a project that's funded by or underwritten by the
24. Virginia Housing Authority.

1. Q. Well, what is Deer Run?
2. A. It's an apartment complex.
3. Q. Who can be housed there?
4. A. I imagine anyone who would want to live there.
5. Q. Well, is there any County money in it?
6. A. No sir.
7. Q. Who owns it?
8. A. It's owned by a private concern.
9. Q. Well, if I ask you, Mr. O'Brien, do you have any--I'm
10. not referring to you personally, I'm referring to you
11. in the role which you're testifying, as chief administra-
12. tive officer of Rockingham County, and therefore I'm ask-
13. ing if the County has any facilities, any housing facil-
14. ities within the County.
15. A. Owned and operated by Rockingham County?
16. Q. Or participated in in any way by Rockingham County.
17. A. No sir.
18. Q. Now, the Deer Run that you mentioned, is being developed
19. by a private contractor, and it will be used to house the
20. elderly and there's no County participation in it, is
21. there?
22. A. Other than we're going to provide the utilities to it.
23. Q. Were you present when efforts were made to get zoning
24. for that site?

1. A. At a Board of Supervisors meeting?
2. Q. Yes sir. That's where you get it, isn't it?
3. A. I imagine I was present. I don't recall the date that
4. that rezoning, public hearing or the action of the Board
5. of Supervisors took place.
6. Q. Well, you do recall that there was great difficulty in
7. getting zoning within the County for that site?
8. A. I'm not sure that there was great difficulty, the zoning
9. was granted for the site, I do recall that.
10. Q. All right, but I'm asking you to tell the Court what you
11. remember in terms of the history of the efforts to get
12. the zoning.
13. A. I recall very little regarding the zoning of that site,
14. Mr. Cogar. In a year's time the Board of Supervisors
15. address many rezoning issues, and that has been some time
16. ago. I do know the site was rezoned.
17. Q. After some difficulty. Is that correct?
18. A. I can't testify to that, Mr. Cogar, without going back
19. and reviewing my records.
20. Q. Well, isn't it a fact that the site that they sought,
21. where they wanted to put it it was denied, and it was
22. moved out to another location further out and that's
23. where they finally obtained it. Do you remember that?
24. A. No sir.

1. Q. Has the Board of Supervisors or have they expressed them-
2. selves with respect to public housing and their attitude
3. toward it?

4. A. I believe they did.

5. Q. Well, let me see, I think in October of 1978 Supervisor
6. Jennings Morris--he's still one of the Supervisors, is he
7. not?

8. A. Yes sir, he is.

9. Q. He is quoted as saying, "I don't see the need for low
10. income housing projects in Rockingham County. He said
11. he feels the low income housing projects would not add
12. anything to the community; in fact, I feel we are creat-
13. ing a slum area." Do you recall that?

14. A. I recall Mr. Morris expressing his opinion, yes sir.

15. Q. And so to the extent that this is regarded as a slum area
16. activity, if it's going to be conducted in this area it's
17. going to have to continue to be conducted by the City of
18. Harrisonburg, which according to the testimony you'll re-
19. call does take in County residents.

20. A. I don't think that's the case, Mr. Cogar. You read, I
21. believe, from a newspaper article that stated Mr. Morris'
22. opinion. Irregardless of his personal opinion the proper-
23. ty was rezoned and the project is being built, and Rock-
24. ingham County is providing the water and sewer to that

1. project site.

2. Q. Which site?

3. A. Deer Run.

4. Q. Well, that's a site for the elderly.

5. A. I imagine anyone can live there. It's rent subsidized.

6. If your income is such that you don't qualify for the
7. rent subsidy, then you pay the full rent. And if you
8. qualify, the federal government underwrites a portion of
9. your rent.

10. Q. Mr. O'Brien, it's for the elderly alone, is it not?

11. A. No sir, not to my knowledge.

12. JUDGE TRABUE: Mr. Cogar, it's been advertis-
13. ed in the local paper as a rent subsidy. For anyone
14. that has an income of less than fourteen thousand eight
15. hundred dollars, I think.

16. Q. Well, in the article that I have here of October, 1978,
17. it says this, and see if you concur in it: "The Board
18. also indicated it would not have approved the rezoning
19. of Deer Run if the apartment complex had been intended
20. for families rather than the elderly because of the im-
21. pact on the school system."

22. A. As I recall, Mr. Cogar, the Board's position was such
23. that it wanted to be assured that the facilities would
24. also accommodate the elderly.

1. Q. Well, at that time did not the Rockingham Supervisors,
2. in October of 1978, and I quote from the newspaper, "Unan-
3. imously adopt a resolution opposing all low income housing
4. projects other than for the elderly." Now, I'm talking
5. about a resolution adopted by the Board of Supervisors.

6. A. I believe that is correct.

7. Q. You spoke of a forty cubic yard container which you
8. distinguished from a Dempsey Dumpster which you're going
9. to place around the County, and I got the impression from
10. the way it was presented, and perhaps wrongly so, that
11. this somehow is considerably larger than a Dempsey Dump-
12. ster.

13. A. Well, a Dempsey Dumpster, I believe, is a brand name.
14. These types of dumpsters I think that I testified to
15. come in various sizes. You can get them in four yards,
16. six yards, all the way up.

17. Q. This is forty cubic yards?

18. A. My recollection is that it's in that neighborhood. It's
19. somewhat larger, considerably larger than the green box
20. type of container.

21. Q. All right, sir. Would you accept this math, or if you
22. won't you can compute it for yourself. A forty cubic
23. yard container could have these dimensions. Ten feet
24. long, six feet wide, and six feet deep.

1. A. I won't dispute that.

2. Q. Now, how much smaller are these green boxes that you're
3. speaking of?

4. A. If you had a forty cubic yard container and a four cubic
5. yard container, I would say the four cubic yard container
6. would be about ten percent of the size of the forty cubic
7. yard container.

8. Q. Well, if I have a brown poke I could barely get anything
9. in it too, but that doesn't really tell me what I'm try-
10. ing to find out. Compare in size, or contrast, if you
11. will, this container from the green boxes. What size
12. are these green boxes that you referred to?

13. A. I think I answered that question.

14. Q. They can be any size?

15. A. Normally they run from four to six cubic yards. When I
16. was in Warren County we operated the green box system,
17. and I believe the containers used were four yard contain-
18. ers. And the amount of refuse you can handle in a system
19. depends on how often you empty the boxes.

20. Q. Is there any plans to provide any public works, any solid
21. waste collection, in the urban areas in the future? Do
22. you have any at this time?

23. A. We have no plans to initiate house-to-house pickup, no
24. sir.

1. Q. In any area?
2. A. In any area.
3. Q. Again in public works, do you have a storm drainage pro-
4. gram?
5. A. No sir.
6. Q. Do you have a street lighting program?
7. A. Only insofar as the Park View Sanitary District.
8. Q. Is that something that the Sanitary District initiated?
9. A. I don't know.
10. Q. Well, did the County initiate it?
11. A. Well, I consider the Sanitary District and the County to
12. be very similar. The governing body of the Sanitary Dis-
13. trict is the Board of Supervisors.
14. Q. You have no plans at all for leaf collection in any of
15. the urban areas?
16. A. No sir. People can take their leaves to the containers.
17. Q. The Park View Sanitary District was formed when?
18. A. I'm not sure when it was formed, when the order was en-
19. tered, but I believe in 1959 or 1960.
20. Q. And at the time of its formation, bonds were issued which
21. paid for the improvements in Park View, water and sewer.
22. A. Yes sir.
23. Q. And the revenues generated from the customers in that
24. area have retired that debt?

1. A. Yes sir.
2. Q. And that Sanitary District is still in existence?
3. A. Yes sir.
4. Q. And the County has no contribution to any of the water
5. or sewer lines in that area.
6. A. No sir, it's all been handled by the Sanitary District.
7. Q. And at the present time the County has, has it not, a
8. fund which it administers which represents the excess
9. of collections over its expenditures in that area for
10. maintenance.
11. A. Well, what we by law are required to do is segregate those
12. funds, and we have a Park View Sanitary District operat-
13. ing fund in which all revenues within the District are
14. deposited.
15. Q. And do you maintain in that fund money for replacements?
16. A. Replacement and maintenance, yes sir.
17. Q. Maintenance and replacement?
18. A. Yes sir.
19. Q. And how much is that fund at this time?
20. A. I would think in the neighborhood of fifty thousand
21. dollars, but I'm not sure.
22. Q. Is there somebody that could get that information for
23. you?
24. A. Yes sir.

1. Virginia site was their primary site.

2. Q. But you're saying that so far as you're concerned, as far
3. as you know, to your knowledge, they have never stated
4. their expressed intention to locate here, conditioned
5. or otherwise.

6. A. That is correct.

7. Q. I hand you this letter and ask you to look at it.

8. A. (Witness examines letter)

9. Q. I have handed you a letter under date of June 26, 1979,
10. on the stationery of Adolph Coors Company, which bears
11. a signature which isn't particularly legible to me, but
12. it appears to be the signature of W. F. Moses. Have you
13. ever seen that letter before?

14. A. Yes sir, I have.

15. Q. All right, sir. I hand you another letter under date of
16. June 26, 1979 addressed to Mr. William G. O'Brien over
17. the signature of Henry C. Clark. Mr. Clark has been the
18. attorney for Coors in this area, has he not?

19. A. Yes sir.

20. Q. Have you seen that letter before?

21. A. Yes sir.

22. Q. All right, sir. Will you read the letter of Henry C.
23. Clark, the June 26, 1979 letter.

24. A. This is a letter addressed to me as County Administrator.

1. "Dear Mr. O'Brien: In further response to item three of
2. your memorandum of June 12, 1979 to the Board of Super-
3. visors and Planning Commission, I have this date receiv-
4. ed the attached letter from the Adolph Coors Company
5. which indicates their intention to locate in Virginia
6. upon obtaining the necessary permits and subject to eco-
7. nomic conditions."

8. Q. All right, sir, now will you read Mr. Moses' letter of
9. June 26, 1979.

10. A. A letter addressed to Mr. Henry C. Clark, "Dear Henry:
11. This is in response to your request that the Board of
12. Directors . . . "

13. Q. Would you read it slowly, Mr. O'Brien?

14. A. Yes sir.

15. MR. FITZGERALD: You're going to introduce
16. this into evidence, aren't you?

17. MR. COGAR: Yes, I am.

18. A. "This is in response to your request that the Board of
19. Directors of our Company issue a statement to the effect
20. that if 'all factors prove favorable our Company will
21. consider the Virginia site as the primary site for the
22. location of a second brewery facility if a second facil-
23. ity is constructed at a future time'. The purpose of
24. your request, as you have explained, is to assure the

1. Planning Commission members and the Board of Supervisors
2. that if they agree to the proposed rezoning it will not
3. have been without real purpose. As you are aware, our
4. Board of Directors has not yet authorized construction
5. of a second brewery facility. A decision to construct
6. such a facility must be based upon a variety of consid-
7. erations, including the determination of the eventual
8. need for such a facility and its economic justification.
9. Please be advised, however, that it is the current in-
10. tention of Adolph Coors Company to proceed with the pro-
11. ject in Virginia based upon our ability to obtain proper
12. zoning, to obtain satisfactory environmental and construc-
13. tion permits, and subject to economic conditions warrant-
14. ing the establishment of a second brewery facility. We
15. trust that the foregoing satisfactorily answers your
16. question on this subject and that your request has been
17. suitably addressed. Sincerely yours," and I believe it
18. was signed by Mr. W. F. Moses.

19. Q. All right, so regarding the question which I asked you,
20. are you aware of any request ever made of Coors or any
21. representative of Coors to give an assurance to Rocking-
22. ham County that in the event it was rezoned that the
23. industry would build here, however conditioned, and
24. you answered to that . . .

1. A. (Witness examines documents) That's correct, these show
2. May and June.

3. Q. As a matter of fact, in this one it went to press so
4. early that in the heading here it was advertised as a
5. completed budget . . .

6. A. That was a typographical error by the newspaper. If you
7. check the copy that we sent down there at that time, it
8. said contemplated.

9. Q. All the others say contemplated.

10. A. Our records all say contemplated. That was a mistake
11. at the newspaper office. The budget cannot be completed
12. when it is advertised. The law requires that the Board
13. of Supervisors hold a public hearing and they cannot
14. adopt a budget within seven days of that hearing.

15. Q. You have heard Mr. Fitzgerald either in the form of a
16. question or in his argument at the conclusion of the City's
17. case speak of this annexation stripping the City of its
18. commercial growth, stripping it of its commercial areas,
19. taking its prime commercial properties, that sort of
20. statement, have you not?

21. A. Stripping the City?

22. Q. The County.

23. A. I believe I've heard that mentioned.

24. Q. It's a fact, is it not, that there is substantial indus-

1. trial and commercial growth in the County beyond the
2. annexation area.

3. A. There is growth, yes sir.

4. Q. And there are numerous employers in the towns beyond the
5. annexation area and within the County and without the
6. towns beyond the annexation area. Is that correct?

7. A. There are a number. I know recently that number has
8. dwindled some with the closing of Metro Pants which op-
9. erated a major facility in the Town of Bridgewater.

10. Q. That operated a major facility in the City of Harrison-
11. burg too, didn't it?

12. A. Yes.

13. Q. Do you have any exhibit which shows other major employ-
14. ers in the County?

15. A. Exhibit 64.

16. Q. This is Exhibit 64 in your book and shows employers in
17. the annexation area. Is that correct?

18. A. Yes sir, that's correct.

19. Q. Do you have anything to show the Court employers beyond
20. the annexation area?

21. A. I don't believe there is such an exhibit in the book, Mr.
22. Cogar.

23. Q. Well, as principal executive officer of the County, who
24. administers the revenues received from the industries

1. within the County, you are generally familiar with the
2. others in the County, are you not?

3. A. Yes sir.

4. Q. I would like for you to look at City Exhibit H-33. If
5. you would step up there, please. Identify on that list
6. those that you would regard as major employers beyond
7. the annexation area out in the County.

8. A. Well, the first one that comes to mind would be the
9. R. R. Donnelley Plant, which the City has requested
10. to be included in the area to be annexed. Rockingham
11. Poultry in the Timberville area.

12. Q. That's quite a substantial employer, is it not?

13. A. I know it's a fairly large concern. I don't know what
14. their employment is. Merck and Company located in east
15. Rockingham is a large employer, approximately 700 employ-
16. ees.

17. Q. Well, let me ask you, do you see anything on this exhibit
18. that's inaccurate?

19. A. Well, to testify to that I would have to go and check
20. every number on this ledger against the numbers on the
21. map.

22. Q. But you do recognize the names, do you not?

23. A. Yes sir.

24. Q. And they are all out there, are they not?

1. A. Yes sir.

2. Q. Now, . . .

3. JUDGE ARTHUR: Just a minute, Mr. Cogar.

4. Mr. O'Brien, what is the industry that's to the right
5. and just slightly below Donnelley?

6. A. They show that as W.K.C.Y., which is a radio station.

7. Q. It is your perception and that of your Board of Super-
8. visors that Rockingham County is an agricultural commun-
9. ity, is it not?

10. A. Primarily. Rockingham County, as has been testified to,
11. is the leading agricultural county in the Commonwealth
12. of Virginia. It also is diversified. We also have a
13. mix of industrial and commercial.

14. Q. Given the significance of the agricultural industry to
15. Rockingham County, do you make it your business as the
16. chief executive officer of the County to ascertain what
17. sort of incomes are derived in this area from the agri-
18. cultural industry?

19. A. Well, I have had numerous discussions with the unit chair-
20. man of the Extension Service, and he has indicated to me
21. the significance of our agricultural community.

22. Q. It was and has been for some years the premier County
23. in Virginia in terms of total value of agricultural pro-
24. ducts sold, is that not correct?

1. A. It's been a leading agricultural county in the State,
2. yes sir.

3. Q. And in 1978 it was reported by the Census of Agriculture
4. the County of Rockingham farmers received a hundred and
5. fifty-four million dollars for their products, is that
6. correct?

7. A. I've heard that figure and I believe it is correct, Mr.
8. Cogar. I believe it's more than twice the amount of the
9. next county, leading agricultural county in the state.

10. Q. Considerably more than twice.

11. A. Considerably more than twice. And I hope the drought
12. conditions don't affect that too significantly.

13. Q. I hope so too or that the frost doesn't either. As a
14. matter of fact, the second ranked jurisdiction in the
15. State of Virginia in terms of agricultural operations
16. produced only forty-five million in 1978.

17. A. I'm familiar with that, yes sir.

18. Q. You stated before the Commission on Local Government in
19. the transcript on page 224, "We are an agricultural com-
20. munity." Do you recall that?

21. A. There's no doubt about it.

22. Q. Do you also recall saying or agreeing that agricultural
23. land is the best land for development?

24. A. I don't specifically recall saying that, but I can agree

1. with that.

2. Q. You agree with that.

3. A. Yes sir.

4. Q. As a result of that it comes as no surprise that the
5. prime agricultural land in and around the urban areas
6. of the County are going at a relatively rapid pace into
7. development.

8. A. There are a number of economic pressures on that land,
9. yes sir, that is causing it to develop.

10. Q. And the economic pressures which are on the land in the
11. vicinity of Harrisonburg are reflected in the kinds of
12. numbers that you testified to yesterday on Route 33,
13. two hundred thousand dollars an acre.

14. A. Yes sir. And we hope to maintain and retain that area
15. that's sought to be annexed so that our farmers can con-
16. tinue to farm.

17. Q. At the same time under the land use plan that you have
18. adopted you have set aside the land in and around Harri-
19. sonburg and in and around the towns of the County of Rock-
20. ingham for future commercial and industrial growth, have
21. you not?

22. A. Yes sir, they have been identified as growth areas.

23. Q. Now, you are familiar without reference to the map with
24. the water and sewer services in the annexation area?

1. A. Yes sir.

2. Q. Would you tell the Court of all the water and sewer lines
3. in the area owned or operated by the County, how many
4. were there prior to the adoption of the annexation ordi-
5. nance in May of 1975?

6. A. Regarding the sewer systems or the water systems? In
7. the Park View area there has been central water and sewer
8. services since . . . well, some of the sewer lines I've
9. testified to were installed back in the thirties. The
10. Sanitary District was formed in the sixties, 1959 or 1960,
11. and has developed over the years. I think these inter-
12. ceptors with the Sewer Authority were constructed about
13. that time. I'm not sure when.

14. Q. Well, I'm asking what County facilities . . .

15. A. County facilities.

16. Q. Were in place prior to the adoption of the annexation
17. ordinance in 1975.

18. A. In place? Park View and I believe that's it. I'm not
19. sure, but I believe that's it.

20. Q. All right, would you put up the water map. Would you
21. tell the Court from your Exhibit 67 what water facilities
22. were in place, what water facilities of the County were
23. in place in the annexation area prior to the adoption
24. of the annexation ordinance in May of 1975.

1. A. Again, Mr. Cogar, this water system in the Park View San-
2. itary District, and the water system in Ashby Heights was
3. in place, but I couldn't testify as to whether or not the
4. County purchased that system before or after the City
5. adopted its annexation ordinance.

6. Q. That was a private system at the time of the adoption
7. of the ordinance, was it not?

8. MR. FITZGERALD: He just got through saying
9. he couldn't testify to that.

10. Q. It is a private system that you purchased?

11. A. It's a public system now. We purchased it from the
12. developer of that subdivision.

13. Q. Now, can you point out to the Court the Authority lines
14. F, G and H.

15. A. Not specifically. I don't refer to them by those num-
16. bers. I can tell you we have what's referred to as the
17. Hillandale interceptor.

18. Q. All right, would you accept that as being--just for the
19. purposes of this discussion--I believe the testimony in-
20. dicates as you move from west to east they are F, G and
21. H. We can go through the mechanics of putting other de-
22. signations on them, but if you will accept the fact that
23. the one to the left, the Hillandale, is F, the next one
24. over is G and the next one is H. It's a fact, is it not,

1. that at the time the County participated with the City
2. in a contribution towards the installation of that line
3. it was agreed that in the event that that was annexed
4. that the City would reimburse the County for what the
5. County had in it, which is some one hundred and sixty
6. thousand dollars.

7. A. Yes sir. The agreement is such that the County and the
8. City shared fifty/fifty in the local share of some of
9. the interceptors. And, . . .

10. Q. And the local share was what, twenty-five . . .

11. MR. FITZGERALD: Let him finish his answer.

12. MR. COGAR: Excuse me, I'm sorry.

13. A. And in the event of annexation, any portion of those
14. lines that would be included in the City, the County
15. would be reimbursed for its local share of that. And
16. if they remain in the County, the City would be reimburs-
17. ed for their local share.

18. Q. And that's true of line G, the one to the right of that
19. along 11, is that correct?

20. A. Yes sir.

21. Q. The same agreement?

22. A. Yes sir.

23. Q. And the local share shared by the City and the County
24. was what percent of the total cost?

1. A. I don't recall right now. There was a formula set up
2. by the federal government and the State Water Control
3. Board; there was state, federal and local money involved.
4. And that arrangement was worked out prior to my coming
5. here as County Administrator.

6. Q. Well, from your knowledge of those kinds of arrangements
7. is it fair to assume it's in the magnitude of twenty-five
8. percent?

9. A. Yes sir.

10. Q. So, you have twelve and a half percent in the line, if
11. that's correct, and the City has twelve and a half per-
12. cent.

13. A. If that is correct, yes sir.

14. Q. At the time the Authority desired to extend those inter-
15. ceptors southward from the City boundary, F and G, to
16. the outer edges of what is now the annexation area and
17. on beyond, the County initially declined to participate,
18. did they not?

19. A. There was some controversy over that. And, again, I
20. would hesitate to testify to the events that took place
21. then, because I was not in the County's employ at that
22. time.

23. Q. Now, Mr. O'Brien, don't you know that they declined
24. and would not participate until the ordinance of annexa-

1. tion was filed, and immediately thereafter they agreed to
2. participate in those lines.

3. A. No sir, I don't know that.

4. Q. You don't know that?

5. A. I don't know what the schedule is. I don't know when
6. they agreed and when they declined.

7. Q. Well, you know they balked at one time and later agreed,
8. you know that, don't you?

9. A. Yes sir, I know that.

10. Q. Now, with respect to the line coming out of Ashby Heights,
11. you talked at some length about that yesterday. Will you
12. walk over there and talk about that line? That's H,
13. isn't it?

14. A. This is the Ashby Heights interceptor.

15. Q. Yes sir. And the City agreed to put that in, didn't
16. they?

17. A. Again, Mr. Cogar, that all transpired prior to my being
18. employed as County Administrator. I cannot of my own
19. knowledge testify to what transpired at that time.

20. Q. You testified to a lot of history here, Mr. O'Brien. Is
21. this just not part of the history that you're familiar
22. with?

23. A. I testified to my knowledge, Mr. Cogar.

24. Q. Well, when you went back to . . .

1. JUDGE MOON: Well, don't you have some records
2. to indicate this? I mean, you have testified to lots of
3. things that took place, all of these witnesses have,
4. testified to things that took place that are matters of
5. common knowledge to the people in your agency or the
6. City's agency which are not common knowledge to the
7. Court. And if it is a matter of common knowledge, just
8. go ahead and say so. If you don't know about it, all
9. right, but this is not earth-shaking testimony that this
10. case hinges on. As we move along just be as forthcoming
11. as you can.

12. Q. All right, sir, what is your best recollection about that
13. line?

14. A. The best recollection about that line is I know the
15. County paid the local share of that line, and it may
16. have been that the City agreed or made an offer to par-
17. ticipate in the funding of that line, but I can't say
18. for sure.

19. Q. All right, now, exactly what is it that you seem to be
20. upset or complaining about with respect to the connection
21. of that line to a City line which then flows back into a
22. County line? What was the point you were making right
23. here on Exhibit 68.

24. A. Well, my point, Mr. Cogar, was at that time, and that

1. was about the time that the City learned of our plan to
2. provide water and sewer services to the East 33 corridor,
3. that our plans were to bring the sewer back over to the
4. Ashby Heights system which would flow into this line.
5. And we got into a controversy over this line flowing
6. into the City's line. And it was our feeling that the
7. City was attempting to block us from using this line to
8. serve Massanetta Springs and Sunnyside, to frustrate our
9. effort to provide water and sewer service to this area.

10. Q. All right, sir, you don't show where this line connects
11. to the City line, the green line, do you?

12. A. No sir.

13. Q. And after you finally made the decision to participate
14. in the funding of this line and brought it over and
15. connected with the City, a City-owned line, the City
16. insisted that if it was going to be connected that they
17. be paid for the transportation of that sewerage through
18. that portion of their line to where it connected with
19. the Authority line. Is that correct?

20. A. No sir. You said that we brought that line over, we did
21. not bring this line over. We paid the local share to the
22. Authority and they did that.

23. Q. All right, sir, and after it was brought over and con-
24. nected to the City's sewer line shown in green, which

1. then empties into the Authority line, the City insisted,
2. requested, that they be paid transportation charges for
3. sewerage transported through lines owned by them. Is
4. that correct?

5. A. When that was connected, we had no knowledge that that
6. was connected to a City line. We were dealing with the
7. Authority.

8. Q. Yes sir. The City made it clear to you that you were
9. connecting to a City line though, didn't they?

10. A. They made it very clear to the Authority after the
11. connection had been made.

12. Q. Do you see any problem or any fault, after everything
13. that you recited yesterday, with the City requesting that
14. they be paid transportation charges for sewerage that was
15. transported through their lines?

16. A. No sir. I think that it should have been resolved prior
17. to the connection being made, just as the County sold to
18. the Authority the crossing under Interstate 81.

19. Q. It could have been simply resolved by somebody agreeing
20. to pay them for the use of their line, couldn't it?

21. A. Well, it was attempted to be resolved by the City making
22. Massanetta Springs and Sunnyside a customer of the City.
23. And we didn't see that that was a satisfactory resolution
24. of the problem.

1. Q. That has consistently been the position of the City
2. since you came here, that wherever improvements have
3. been put in, they've offered--water and sewer--they have
4. offered to do it, have they not?

5. A. Yes.

6. Q. Every water and sewer improvement that has been installed
7. within the annexation area since May of 1975 to the pre-
8. sent, the City was willing, ready and able to install,
9. were they not?

10. A. My knowledge is, Mr. Cogar, that the County has attempted
11. over the years to enter into cooperative agreements with
12. the City to buy water and sewer services on a wholesale
13. basis and those attempts have been turned aside by the
14. City.

15. Q. Did you buy water over at the Mall area?

16. A. Yes sir.

17. Q. All right, sir. Who do you buy that from?

18. A. The City of Harrisonburg.

19. Q. At what rate?

20. A. I believe we're paying fifty-four cents a thousand.

21. Q. An extremely favorable rate, is that not correct?

22. A. A rate that the City agreed to.

23. Q. It is an extremely favorable rate, is it not?

24. A. We have no problem with it.

1. Q. And you make a substantial profit off the resale of that
2. water.

3. A. I wouldn't say a substantial profit. We're carrying our
4. water and sewer operations.

5. Q. That Mall would not and did not commence construction un-
6. til you had a water contract with the City, is that a
7. fact?

8. A. I know that . . .

9. Q. Isn't that what you testified to before the Commission?

10. MR. FITZGERALD: Will you let him answer one
11. question at a time, please, sir?

12. A. The County, as I testified to yesterday, had contacts
13. from the landowner and the County had indicated its will-
14. ingness to provide water and sewer services to the Mall
15. independent of the City because of what I just have tes-
16. tified to, that we have not been able to get any coop-
17. eration from the City in the past to sell water and sewer
18. in that area.

19. Q. And you had a plan, and your plan was to provide water
20. to the Mall through wells. Is that correct?

21. A. That's correct.

22. Q. In the Beekmantown geological area, is it not?

23. A. I'm not familiar with the geology.

24. Q. It's the same geological strata that the well down to the

1. south is in.
2. A. I'm not . . . I can't testify to the geology of the area.
3. Q. In four years you haven't gotten the one in the south
4. in operation, have you?
5. A. We've had no need to.
6. Q. Well, why did you submit an application for a health
7. permit a year ago?
8. A. Because we are developing that project.
9. Q. When is it going to be finished?
10. A. As I testified earlier, the latter part of this year.
11. Q. After you came here as Manager, in what year?
12. A. County Administrator, in 1977.
13. Q. In 1977. Some month . . . in May of that year? What
14. month did you come here?
15. A. May.
16. Q. In the summer, June or July of that year, you went to the
17. office of the City Manager, Mr. Marvin Milam, did you
18. not, and did you not tell him that you were not going to
19. permit the City to install any more water or sewer lines
20. within the annexation area?
21. A. I don't recall that statement.
22. Q. Do you deny it?
23. A. I don't recall the statement, Mr. Cogar.
24. Q. Well, that's a statement of some significance that a per-

1. son would likely remember if it had been made, wouldn't
2. he, Mr. O'Brien?
3. A. Apparently somebody remembered it if it was made. I
4. don't remember making it.
5. Q. You don't deny making it, because you don't remember
6. making it.
7. A. I don't remember it.
8. Q. So we have at the Mall area the City was willing to pro-
9. vide the service, they did, and they sold you the water.
10. Correct?
11. A. We negotiated a contract, yes sir.
12. Q. At Donnelley they offered to provide the service, you
13. declined it, and they made the water available to you,
14. didn't they?
15. A. After some problems that we encountered, yes sir.
16. Q. You got it from them. And that sewerage flows through
17. the City, does it not?
18. A. Yes sir. We had to initiate litigation to get them to
19. agree.
20. Q. All right, let's talk about that. In the contract that
21. you entered into with the City, they agreed to provide
22. water and sewer to you "at the end of the line", right?
23. A. At the end of the line at the corporate limits.
24. Q. All right. It was right there, wasn't it? That's where

1. the end of the line was.

2. A. We didn't know that. As I testified to, Mr. Cogar, our
3. information had it that the end of the line was at the
4. corporate limits here. And the City had extended that
5. sewer line in the same ditch as the water line to that
6. point.

7. Q. What you found out after you entered into the contract,
8. which is what you're telling the Court, is that the end
9. of the line turned out to be here and not here where you
10. wanted the connection. Correct?

11. A. Yes sir.

12. Q. But the end of the line was actually here.

13. A. Yes sir.

14. Q. That's where it was, you entered into the contract.

15. A. At the corporate limits.

16. Q. Yes sir. And when you sought the sewer connection the
17. City said, "You may have it at the end of the line as
18. the contract provides here." At the location I'm point-
19. ing to. That's what they said, isn't it?

20. A. And we would have had to install a pump station and a
21. force main which would have increased our cost when the
22. logical way to go was to follow the drainage.

23. Q. Never mind the logic for the purpose of my question.
24. They were willing to provide you with water and sewer

1. here as the contract provided, were they not?

2. A. Well, Mr. Cogar, as I just . . .

3. Q. Just answer my question.

4. JUDGE MOON: Well, that question can be answer-
5. ed without any argument or any explanation. That is a
6. yes or no question. It doesn't require a bit of explana-
7. tion. Where that line is I take it's a fact . . .

8. A. Yes sir, it's there.

9. Q. They offered to provide it to you right there, did they
10. not?

11. A. Yes sir.

12. Q. And the contract provided they would serve up to thirty
13. thousand gallons a day for Donnelley period, is that
14. correct?

15. A. Water.

16. Q. Water. Is that right?

17. A. Yes sir.

18. Q. You desired to bring it down this way so that you could
19. provide service needed in this area.

20. A. That is correct.

21. Q. They desired, because of the annexation, to provide that
22. service according to their own engineering plan.

23. A. Well, the line was located in Rockingham County, so the
24. placement of that line is not up to the City, it's up to

1. the County.

2. Q. And finally provided it before you went to Court was your
3. testimony.

4. A. Yes sir.

5. Q. As a matter of fact, you know you went to Court and you
6. got thrown out.

7. A. No, I don't know that.

8. MR. COGAR: I have no further questions.

9.
10. Re-Direct Examination by Mr. Fitzgerald:

11. Q. Do you have a copy of that contract that Mr. Cogar has
12. questioned you about, about the Mall?

13. A. Yes sir. This is the contract for water.

14. Q. All right.

15. A. And this is the contract for sewer.

16. MR. FITZGERALD: We would like to introduce
17. these into evidence. The water contract will be County
18. Exhibit 125 and the sewer contract will be 126.

19. JUDGE ARTHUR: May I ask a question, Mr. Fitz-
20. gerald? Mr. O'Brien, does the City sell the water--talk-
21. ing about the Donnelley Plant--does the City sell the
22. water to the County and the County sells it in turn to
23. Donnelley, or does the City sell directly to Donnelley?

24. A. Sells it to the County first.

1. this fund over the years because of the high rates we had
2. to pay to the City.

3. Q. On the Donnelley water and sewer lines, you said they
4. cost eight hundred thousand dollars?

5. A. Approximately.

6. Q. And from what funds were those paid?

7. A. I would have to check, Mr. Cogar. It may have been a
8. combination of revenue sharing funds and general funds.
9. I'm not sure.

10. Q. You're not able to say at this time what amount of that
11. is local funds?

12. A. No sir, because we are funding our capital improvements
13. budget from both the general fund and the revenue sharing
14. fund.

15. Q. And one other area. On the water that the City sells to
16. you for Donnelley, it's sold to you at the most favorable
17. rate the City sells bulk water, is that not correct?

18. A. No sir, I don't believe so. I believe it's sold to us
19. at a higher rate than what we pay on the east side of the
20. City. I believe we're paying three different rates to
21. the City. We pay one rate for the Park View Sanitary
22. District for water, we pay another rate for Donnelley,
23. and we pay another rate for the contract on the east
24. side of the City.

1. Q. All right, sir, which is the least rate you pay?
2. A. The least rate would be the one on the east side.
3. Q. That's the Mall area?
4. A. Yes sir.
5. Q. And the next rate?
6. A. Would be the Donnelley rate.
7. Q. And the other is to . . .
8. A. The Park View Sanitary District.
9. Q. And that's double the City rate?
10. A. I can't testify to that. I know that within the City's
11. rate structure they set out a rate which they identify
12. to the Park View Sanitary District.
13. Q. And you do make a profit off the resale of water to
14. Donnelley, do you not?
15. A. From the standpoint of operating our system, yes sir, we
16. make money.

17. MR. COGAR: That's all I have.

18.

19. Re-Direct Examination by Mr. Fitzgerald:

20. Q. Do you have a copy of the Donnelley contract with you?
21. Since we've gotten into this detail we might as well put
22. the contract in.
23. A. No sir, I don't.
24. MR. FITZGERALD: Judge, I would like to reserve

1. the right to submit them later.

2. JUDGE MOON: All right.

3. JUDGE TRABUE: Mr. O'Brien, would you take a
4. look at the County's financial exhibits book.

5. A. Yes sir.

6. JUDGE TRABUE: And specifically County Exhibit
7. 111, sheet three.

8. A. Sheet three?

9. JUDGE TRABUE: Yes sir.

10. A. Yes sir.

11. JUDGE TRABUE: Item 7, parks, recreation and
12. culture.

13. A. Yes sir.

14. JUDGE TRABUE: It appears that under 04.,
15. athletic events and programs, that there was about a
16. thirty-four or thirty-five thousand dollar increase from
17. the 1980 budget to 1981. Do you know what that thirty-
18. four or thirty-five thousand dollar increase was?

19. A. No sir, Your Honor. Specifically without going back in
20. my budget worksheets, I couldn't tell you.

21. JUDGE TRABUE: Well, for example, in 1979 it
22. was sixteen thousand six hundred and thirty-three dollars.
23. Then in 1980 it jumped to eighty-three, then in 1981 to
24. a hundred and seventeen.

1. A. Well, Your Honor, I think I can explain that large jump.
2. Prior to the changeover from the old system of public
3. accounts to the new uniform system of public accounts,
4. we had a category for CETA Administration and CETA pro-
5. grams. And all expenditures for payroll in the CETA pro-
6. gram were identified within that budget or within that
7. category. With the new uniform accounting system we were
8. required to identify those costs back to the department
9. in which they were being spent. So, we had to take all
10. of those figures and then cost them back into the depart-
11. ment where those CETA employees were working.

12. JUDGE TRABUE: So, that's the reason for the
13. reduction then in the CETA wages on the next page, sheet
14. four?

15. A. Yes sir. Well, that plus another factor too, that there
16. has been significant cuts in the CETA program, and we
17. have gone from, for example, the Title 2 and Title 6 pro-
18. grams from a hundred and fifty to a hundred and eighty
19. employees in that program to none.

20. JUDGE TRABUE: Then maybe you can tell me
21. under the operating budget projected for 1982, why is it
22. that such a small amount is reduced because of the annex-
23. ation area? Is that relatively proportionate to the
24. overall budget? Is that the only proportion of that

1. overall budget within the annexed area?

2. A. Where specifically are you at, Your Honor?

3. JUDGE TRABUE: Under your operating budget
4. 1982, you show without annexation, cost for athletic
5. events and programs, and I gather now that that partly
6. is CETA. You show a reduction due to the annexation
7. of forty-eight hundred, which is a very small part of
8. that. I was wondering whether that was really propor-
9. tionate, a proportionate reduction.

10. A. Your Honor, I didn't prepare this exhibit, and I couldn't
11. really testify as to why that figure is in there.

12. JUDGE TRABUE: Did you participate in the
13. preparation of the budget that was presented to the
14. Board of Supervisors for adoption?

15. A. Yes sir. Now, the budget . . . of course, this is . . .

16. JUDGE TRABUE: I understand, that's an '82
17. budget which you have not addressed yet.

18. A. Well, yes sir, we have adopted our budget.

19. JUDGE TRABUE: That is the one you adopted?

20. A. We have adopted the 1982 budget, but we have not in
21. adopting that budget made any reductions in it for annex-
22. ation.

23. JUDGE TRABUE: So, you don't know what propor-
24. tion was used or what formula was used in order to show

1. the amount of your actual budget that would be reduced
2. in the event of annexation. You're not familiar with
3. that.

4. A. Not specifically, Your Honor. I believe Mr. Robinson
5. testified to that.

6. JUDGE TRABUE: Okay. Turn to the next page,
7. if you would, please. You notice at the bottom of the
8. page, total operating expenses for 1980 was 19.6 million?

9. A. Yes sir.

10. JUDGE TRABUE: Then there's a jump in 1981
11. to twenty-four million, which is what, about a twenty-
12. five percent increase?

13. A. Yes sir.

14. JUDGE TRABUE: Up in the . . . well, then over
15. under the operating budget for 1982, you've got the pro-
16. posed reductions of nine hundred and ninety-one thousand
17. dollars, which is less than a million dollars. Now, I
18. wonder if you could help me to understand, in light of
19. Mr. Robinson's testimony yesterday, if you'll recall he
20. said that the assessables ratio of fourteen percent was
21. really not equitable; that the figures would show it to
22. be closer, I believe he said, to twenty-four percent.

23. A. Yes sir.

24. JUDGE TRABUE: The savings in the event of

1. annexation attributed to the annexation area, from these
2. figures is one-twenty-sixth. And I wonder if you could
3. perhaps help me to understand why if the annexation area
4. represents twenty percent of the revenues or the income
5. that the savings in the event of annexation to that same
6. area is less than one-twenty-sixth.

7. A. Well, Your Honor, I believe it's because of the fact that
8. while there is a reduction in revenues, we do not have a
9. proportionate reduction in expenditures because there are
10. certain fixed costs that we will be required to maintain,
11. schools being one. We have school facilities, there is
12. the operational costs of operating those schools, and
13. they will not show a reduction proportionately.

14. JUDGE TRABUE: All right, look at the fixed
15. charges under your schools on line g. It looks like there
16. is an increase between the years 1980 to 1981 from eight
17. hundred and forty-one thousand to 2.2 million; then it
18. goes up to 1982, 3.3 million. The only amount that is
19. reduced by annexation is sixty-four thousand. I wonder
20. if you could help us understand that.

21. A. No sir, but Mr. Dishner, the Superintendent of Schools,
22. will be testifying. And I believe he could help you with
23. that.

24. JUDGE TRABUE: All right, we'll ask him.

RYLAND DISHNER,

having been duly sworn, testified as follows:

Direct Examination by Mr. Smith:

Q. What is your name, sir?

A. Ryland Dishner.

Q. What is your official position with Rockingham County?

A. Division Superintendent of Schools.

Q. Directing your attention, Mr. Dishner, to the County financial exhibits, Exhibit 111, page 4, I would like for you to respond to Judge Trabue's question asked to Mr. O'Brien concerning the reductions in the school budget as compared to the total budget.

A. Reduction in the school budget as compared to the total budget?

Q. The total school budget. The reductions caused by annexation.

A. Oh, the nine hundred and ninety-one thousand dollars. Is that what you're talking about?

Q. It's four hundred and ninety thousand, I believe, the line above that.

A. Four hundred and ninety thousand. I believe at the time that we did those we went through the total budget and tried to determine with Mr. Robinson what effects would exist in the County in terms of teaching personnel, buses,

1. and those sorts of things. And those are the deductions
2. that we could have made in the School Board budget, as
3. I understand it.

4. Q. Why is it such a small amount?

5. A. Well, you can't reduce . . . for example, we have . . .

6. JUDGE TRABUE: Let me clarify my own question.

7. A. Okay.

8. JUDGE TRABUE: My question was, you started
9. with a 1980 fixed charge budget of eight hundred and
10. forty-one thousand. You then increased to 2.218 million.
11. And then went to 3.3 million, and then only took off
12. sixty-four thousand.

13. A. Right. Okay, in the previous budget, the eight hundred
14. and forty-one thousand dollars, the State of Virginia
15. had been paying the V.S.R.S. and the F.I.C.A for teach-
16. ing personnel, instructional personnel, from the state
17. treasury. Beginning with that one year they then told
18. us that they would send it to us and we would pay direct-
19. ly to the V.S.R.S., the F.I.C.A. and the insurance pro-
20. gram. So, those were catalogued in as revenue and out
21. again as . . . in as receipts and out again as expendi-
22. tures; an in and out type of fund from the state. A
23. change of procedure with the state funding, in other
24. words. Do you follow what I'm . . .

1. JUDGE TRABUE: I follow your explanation.

2. MR. SMITH: Does that satisfy you?

3. JUDGE TRABUE: I'm not sure I understand it,
4. but I heard the explanation.

5. A. Well, actually . . .

6. JUDGE TRABUE: It's those fixed charges.

7. A. Yes, that's in fixed charges. The retirement of all the
8. people, the F.I.C.A. of all people, and the state life
9. insurance of all personnel previously had been paid by
10. check directly from the State Treasurer to the V.S.R.S.
11. And in that particular year they changed and said we're
12. going to send you the check, but you pay the V.S.R.S.

13. JUDGE TRABUE: But that portion of those
14. expenses in the annexed area, which I would think would
15. be related to numbers of teachers in the annexed area
16. versus the whole County . . .

17. A. That's right.

18. JUDGE TRABUE: Is in proportion of sixty-four
19. thousand to 3.3 million.

20. A. Well, you see, actually we don't pay locally, or we did
21. not pay locally a whole lot of the V.S.R.S. and of the
22. F.I.C.A. payments. The state paid for instructional per-
23. sonnel up to a certain salary. They paid fifty-four of
24. the employees out of whatever it was we had. So, our

1. portion in that would have been very small.

2. JUDGE MOON: But still in 1981, the 1981 bud-
3. get, you spent 2.2 million for fixed charges. And even
4. with annexation you're going to jump to 3.2 million.

5. A. All right, there's another point there. Back when we
6. were preparing this budget, we were considering paying
7. the employees' share of the V.S.R.S. and life insurance
8. from this fund. That meant that if we paid that rather
9. than pay them salary, this would have increased as a sal-
10. ary. Subsequent to that they decided they didn't want to
11. do that. That has now been put back in salaries, so that
12. figure isn't right.

13. JUDGE MOON: You say that figure isn't right?

14. A. It isn't right at the present time because we took it,
15. the School Board actually took the salary that they had
16. included in that figure, put it back in the areas where
17. the salary should be. They changed their mind on it.

18. JUDGE TRABUE: But following that through, tak-
19. ing your operations budget for 1982, you show fixed charg-
20. es of 3.3 million, and a reduction due to annexation of
21. sixty-four thousand, which six three hundred and thirtieths.
22. And one would think then that the proportion of your sal-
23. ary, F.I.C.A. charges and fringe benefits in the annexa-
24. tion area would represent six three hundred and thirtieths

1. of the entire County. And I don't understand that.

2. A. Dan maybe can explain that, I don't know.

3. Q. Let's approach it this way, Mr. Dishner. What is being
4. reduced, do you know what that is?

5. A. What is being reduced?

6. Q. Yes.

7. A. We would reduce, we had projected, about seven or eight
8. teaching personnel and three or four bus drivers, some-
9. thing of this nature.

10. Q. Why can't you reduce your budget proportionately to the
11. loss of the County's . . .

12. A. Is that the question?

13. Q. Yes.

14. A. Why can't I reduce my budget in proportion to the . . .
15. well, the students that Harrisonburg would be getting
16. from this annexation are scattered in eight or ten dif-
17. ferent schools. And even if they are scattered in eight
18. or ten different schools, if I have two pupils in this
19. grade and two pupils in that grade and two pupils in that
20. grade, I can't cut the cost of the school building, the
21. gas and oil or the teacher, I can't cut that. You can
22. only cut a teacher when you come down to a unit of in-
23. struction. And when you come down in enrollment, you will
24. always lag behind in your expenses. When it gets to the

1. point, when that finally gets . . . if it ever does, to
2. a point whereby you can close a school or reduce your
3. teachers, then your expenses begin to reduce at a greater
4. rate. But there's no way under God's sun that I can keep
5. from running the buses over the same roads . . .

6. JUDGE TRABUE: But buses are in a different
7. line though.

8. A. Yes, but the teachers are the same thing.

9. JUDGE MOON: But what I can't understand is,
10. you are increasing your fixed expenses by fifty percent
11. with annexation. It looks like you don't have . . .

12. A. No, no, no. Reducing the fixed expenses by that, but it
13. came out of instructional costs.

14. JUDGE MOON: But it's not reducing, it shows
15. an increase.

16. A. I mean increasing it. But those increases would have
17. been under instructional cost. If you'll look under in-
18. structional cost you'll see only a six percent increase
19. this year, or less. So, you have to level the thing out
20. and go back and say this was part of the salary package
21. that the School Board proposed to the employees.

22. JUDGE MOON: Well, what percentage of the
23. students are you losing?

24. A. Only about five percent. There is no way . . . we fin-

1. ally got the point across to the General Assembly, that
2. you can't cut expenses by the same ratio that you cut
3. pupils.

4. JUDGE MOON: But I gather you are saying that
5. down the road somewhere you will be able to not build a
6. school . . . maybe it's ten, fifteen, twenty years, some-
7. where you will . . .

8. A. That's right. Down the road somewhere eventually. It
9. happens down that way, just the same as you go up with
10. your instructional costs in a growing school system. You
11. can take a few here and you can take a few there that
12. don't cost you anything. But when you go down you get
13. the same lag of direction that you had in going up in
14. terms of costs and expenditures.

15. JUDGE TRABUE: Let me ask it another way.
16. What was the major reason for a twenty-five percent in-
17. crease in the school budget from 1980 to 1981?

18. A. Most of it was that state payment of F.I.C.A. and V.S.R.S.
19. See, that was three million dollars.

20. JUDGE MOON: But that's not real expense to
21. the County.

22. A. No, it's an in and out.

23. JUDGE MOON: It's a bookkeeping expense.

24. A. It's an in and out.

1. JUDGE MOON: And I take it that in and out is
2. shown on or corresponds with some other exhibit?

3. A. Yes, it would. But, you see, it shows a twenty-five per-
4. cent increase in the total budget.

5. Q. The revenues increased too.

6. A. That's right. The revenues would increase similarly,
7. you see.

8. Q. All right, Mr. Dishner, how long have you served as
9. Division Superintendent of Schools?

10. A. In this Division?

11. Q. Yes sir.

12. A. This is the fourth year.

13. Q. And what are the duties and responsibilities of the
14. Division Superintendent?

15. A. Well, the Division Superintendent is executive officer
16. of the School Board. Also he works at the direction and
17. under the authority of the State Superintendent of Public
18. Instruction, the State Board of Education. Of course he
19. sees that the laws and regulations of the State Board are
20. enforced and of the local Board.

21. Q. And do you answer to the local School Board?

22. A. The local School Board, yes sir.

23. Q. Directing your attention to Exhibit 5 in the regular ex-
24. hibit book.

1. A. What page is that on? You said five . . .

2. Q. Exhibit 5.

3. JUDGE ARTHUR: If you'll look up at the top of
4. each sheet you'll see a stamp or a County exhibit number
5. so-and-so.

6. A. Right.

7. Q. Does that accurately set forth your professional quali-
8. fications?

9. A. Yes sir.

10. Q. I note that you have served as Assistant State Superin-
11. tendent of Public Instruction?

12. A. Yes sir.

13. Q. What were your duties in that job?

14. A. Oh, gee, I don't even know . . . there was about probably
15. eight or ten departments under my supervision, between
16. me and the Superintendent of Public Instruction, being
17. transportation, school buildings, teachers certification,
18. grievance procedures, et cetera, so on and so on.

19. Q. You have also been Division Superintendent of Fauquier
20. County?

21. A. Yes sir.

22. Q. From 1968 to 1973?

23. A. Yes sir.

24. Q. And Pittsylvania County from 1973 to 1974?

1. A. Yes sir.

2. Q. Would you move on then to Exhibit 16, and I would ask
3. you if that is the organizational chart of the Rockingham
4. County Schools?

5. A. Yes sir, it is.

6. Q. Would you tell the Court the duties of the director of
7. special projects?

8. A. The director of special projects writes and administers
9. all of the federal programs. He keeps up with the fed-
10. eral laws and regulations and sees to it that he keeps
11. the Superintendent out of jail most of the time, I reck-
12. on.

13. Q. All right, sir. You also have a director of transporta-
14. tion.

15. A. Yes sir.

16. Q. What are his functions?

17. A. He supervises the function of our transportation system,
18. employs bus drivers, mechanics, supervises the garage,
19. does the routing and that sort of thing, and a lot of
20. trouble-shooting with disciplinary problems on the buses.

21. Q. How many people are employed in the school system of
22. Rockingham County?

23. A. Last count I believe I gave you was 961 full-time employ-
24. ees. If we ran to part-time employees we'd go to twelve

1. hundred, twelve hundred and fifty, something like that.
2. Q. All right, sir. Are the County schools accredited by
3. the State of Virginia?
4. A. Yes sir.
5. Q. And are all of your teachers certified in the areas in
6. which they teach?
7. A. Yes sir.
8. Q. How many teaching personnel does the system have?
9. A. Six hundred and four.
10. Q. Are any of the County schools accredited by the Southern
11. Association of Schools?
12. A. Yes sir, all of the high schools, senior high schools,
13. and all of the intermediate schools are accredited.
14. Q. And all of your programs are approved by the State Depart-
15. ment of Education?
16. A. Yes sir.
17. Q. How many students are there in actual attendance in the
18. County schools?
19. A. Our A.D.M. as of March 31st was 10,131.
20. Q. All right, sir. Now, would you turn over please to Ex-
21. hibit 27. That exhibit purports to show the school en-
22. rollment in Rockingham County for 1969 through 1980?
23. A. Yes sir.
24. Q. I notice Elkton and Montevideo High School there. They

1. are no longer serving as high schools, is that correct?
2. A. That's correct. They are now intermediate schools. The
3. high school, grades ten through twelve, were moved into
4. a new Spotswood Senior High School this past fall.
5. Q. Are all of these schools under capacity at the present
6. time?
7. A. Most all of them, yes.
8. Q. And your chart shows very little variance in that period
9. of time. Does that indicate a stable school population?
10. A. You mean from 1969-70 to 1979-80?
11. Q. Yes sir.
12. A. Well, there is a variance in some areas. As you know
13. we're losing about 250 to 300 pupils a year already.
14. Q. Do you look for that situation to continue?
15. A. Yes, it will continue for the next three to four years,
16. and probably then level off and probably go the other
17. way from the other end about 1985.
18. Q. How many students are affected by the proposed annexation?
19. A. Four hundred and ninety-three.
20. Q. Would you turn over to County Exhibit 28?
21. A. Yes sir.
22. Q. And what is displayed by that exhibit?
23. A. That is the Broadway High School, the vocational educa-
24. tion courses that we have there in Broadway and at Elk-

1. ton, we did have at Elkton.

2. Q. Which high school serves the majority of the high school
3. students in the annexation area?

4. A. Turner Ashby.

5. Q. Is that their vocational program shown on page two?

6. A. Yes sir, page two, part four.

7. Q. I notice that a substantial number of agricultural courses
8. are offered to those students?

9. A. Yes sir.

10. Q. Are they offered to students on all high school levels?

11. A. Yes. We offer agricultural courses not only at the high
12. school level but at the intermediate level, even so far
13. down as the eighth grade. We have some seventh graders
14. that take agriculture, exploratory work.

15. Q. All right, sir. I notice that among the offerings at
16. Turner Ashby are distributive education. Would you brief-
17. ly explain what that is.

18. A. Oh, that's a program in which the student comes to school
19. half a day in general academics and also one course in
20. distributive education, but then they are trained on the
21. job in the distribution of products and that sort of
22. thing in the afternoon. It's a work/study type of pro-
23. gram.

24. Q. And vocational courses are also offered in your inter-

1. mediate schools, are they not?

2. A. Yes sir.

3. Q. Could you step up to the Map Exhibit 29 and explain the
4. elementary school districts of Rockingham County?

5. A. These are the elementary districts. Evidently we have
6. thirteen of them, I believe. Mt. Clinton bordering here,
7. Dayton, Ottobine, Bridgewater, Pleasant Valley. This
8. is the one, of course, that the proposed annexation will
9. affect the most. Port Republic, McGaheysville, Elkton,
10. Keezletown, Linville-Edom, Plains, Fulks Run, Bergton.
11. The school affected here (indicating on map) would be
12. Keezletown, Linville-Edom some, Mt. Clinton some, Dayton
13. would be and then Bridgewater some.

14. Q. Let's turn to Exhibit 31, what is shown by that exhibit?

15. A. Thirty-one shows the intermediate school boundaries or
16. attendance areas, attendance zones. There is John Way-
17. land, Montevideo, Elkton, and John C. Myers. We have
18. four of these. The school most affected by annexation
19. would be John Wayland.

20. Q. If we could back up a minute, Mr. Dishner. On the other
21. map over here would you point out what is depicted by
22. Exhibit 30? Does that show the impact of the proposed
23. annexation on the elementary school districts?

24. A. Yes, it does. We've got Pleasant Valley, this is the

1. annexation line there. You have Pleasant Valley all the
2. way in the annexation line. You have Dayton which would
3. have quite a number of pupils. Of course the Pleasant
4. Valley attendance area runs all the way across Harrison-
5. burg on the west side of Harrisonburg, over in this area
6. (indicating on map). Here is Keezletown, we've got a
7. few going out Port Road; Mt. Clinton isn't affected very
8. much. Linville-Edom would be affected in school enroll-
9. ment just a little bit.

10. Q. All right, sir. If we can move on to 32. Can you tell
11. us whether or not that one shows the impact of the pro-
12. posed annexation on the intermediate school districts?

13. A. Yes, John Wayland being the most affected, in this area
14. here, and Montevideo being affected some, and a few up
15. in John Myers in Broadway.

16. Q. All right, sir, let's go back and look at the high
17. schools. Does Exhibit 33 show the high school attendance
18. areas?

19. A. Yes. And as you can see here the high school most
20. affected is the Turner Ashby High School.

21. Q. Turner Ashby is right outside the proposed annexation
22. area?

23. A. Yes, Turner Ashby is right here (indicating on map).
24. There would be a few youngsters affected in here, this

1. territory. Broadway would be affected very minimally.

2. Q. Do you have another exhibit showing the details of the
3. impact of the proposed annexation on the high school
4. districts?

5. A. Well, again, it would be Turner Ashby that would be af-
6. fected in here. Broadway would be up in these areas and
7. Spotswood in these. They would be the areas affected.

8. Q. The Pleasant Valley School is located in the area sought
9. for annexation?

10. A. Yes sir.

11. Q. Has the School Board taken a position concerning their
12. desire to keep that school?

13. A. Yes sir, they passed a resolution to that effect back
14. sometime ago, I think prior to the Commission's hearing.

15. Q. Do you have that resolution?

16. A. I think I have a copy of it here. Yes sir.

17. Q. Would you read that into the record, Mr. Dishner.

18. A. This is to whom it may concern. "The following is an
19. excerpt from the minutes of the October 16, 1980 meeting
20. of the County School Board of Rockingham County. On mo-
21. tion of Trustee Kelly and seconded by Trustee Wenger,
22. the Board unanimously adopted the request that the Plea-
23. sant Valley Elementary School be retained by the Board
24. of Supervisors as County property if this area should be

1. in the area annexed by the City of Harrisonburg." Signed
2. by me as Clerk.

3. Q. That resolution was presented to the Commission on
4. Local Government?

5. A. Yes, it was.

6. MR. SMITH: I would like to introduce this
7. into evidence, Your Honor, on behalf of the County as
8. the exhibit next numbered.

9. Q. Mr. Dishner, would you tell the Court the reason that
10. the Rockingham County School Board took the position
11. that they wanted to keep Pleasant Valley?

12. A. Well, primarily because we would have I believe it's
13. 420 youngsters left, even if the annexation would take
14. I think it's 205 out of that school. We would have no
15. immediate place to put them, and it so happens that on
16. the east side of the town limits as it would be if an-
17. nexation occurred there are about 220 pupils and on the
18. west side of the town there are 220 pupils. So, we get
19. into the problem of moving them all in either direction
20. without additional transportation. And also it leaves
21. the County the possibility or the potential down the
22. road of using the Pleasant Valley School as a swing type
23. of school of changing the enrollments from the Spotswood
24. area, for example, to the Turner Ashby area should one of

1. those schools fill up; this sort of thing.

2. Q. You mentioned Spotswood. That's a high school, is it not?

3. A. Yes sir.

4. Q. Is it relatively new?

5. A. Yes sir, it's new. We opened it last fall, this past
6. fall.

7. Q. The fall of 1980?

8. A. Yes sir.

9. Q. How much did that school cost to construct?

10. A. Construction costs were 8.2 million.

11. Q. What was the time between the time you started to construct
12. the school until the time you got it finished and opened?

13. A. Oh, it was between . . . by the time we started, it was
14. just when I came here . . . about three years.

15. Q. What is the capacity of that school?

16. A. Twelve hundred and thirty-nine students.

17. Q. Are all of your school plants in relatively good condi-
18. tion?

19. A. They are all physically sound. We have some school
20. buildings that we need to consider replacing, or if the
21. enrollment keeps decreasing and this occurs, we've then
22. got to come up with some sort of a plan to reorganize
23. and regroup all of our schools, to see whether we can
24. close any or whether we will have to replace some of the

1. older ones. I'm thinking about the Dayton and Bridge-
2. water schools, the Grottoes school, which have some age
3. to them. We need to make some plans as soon as we find
4. out what will be happening in this area.

5. Q. Is that planning process ready to begin?

6. A. It's already begun. We have had a Citizens Facilities
7. Committee now working on that for six or eight months.
8. They were appointed by the School Board and they are
9. ready now to report back their recommendations to the
10. School Board.

11. Q. Would you describe the curriculum and programs of the
12. County schools briefly?

13. A. Well, we have a very, very diversified program. We have
14. vocational programs that are extensive. And, in fact, our
15. vocational programs are as good as any in the state and
16. probably in the nation. We have about thirty-eight to
17. forty percent of our youngsters which we have to provide
18. college preparatory. When I'm talking about forty percent
19. of our graduates, it would be forty percent of maybe
20. seven or eight hundred graduates per year. That's quite
21. a number of them that we have to get ready for college.
22. We offer in our high schools just about anything that a
23. youngster would want or need to take to get into college
24. or get into technical school or whatever. As an example,

1. Turner Ashby, I believe, is the school most affected.

2. Turner Ashby has 142 offerings in it, a very extensive
3. program.

4. Q. Are there courses taught in the County schools that are
5. not taught in the City schools?

6. A. Yes sir, I think we made a list of them someplace. We
7. have in the intermediate schools, we have the explora-
8. tory agriculture, agriculture. The same thing at John
9. Wayland with agricultural science mechanics, agricultur-
10. al aid. At Spotswood Senior High School we have agricul-
11. ture, home economics, child development, marriage and
12. the family, sociology, economics. At Turner Ashby we
13. have various home economics courses that are not offer-
14. ed in the Harrisonburg program. And also the Agriculture
15. 1, 3, 4, and the work/study program in agriculture. Li-
16. brary assistance, stenographic block programs are not
17. offered at Harrisonburg, I.C.T. is not offered and calcu-
18. lus.

19. Q. What is I.C.T.?

20. A. That's Industrial Cooperative Training. That's another
21. work/study program. They are at school half a day and
22. out on the job half a day in industry.

23. Q. And you said that calculus is another subject that is
24. taught . . .

1. A. I don't see it on their list. We have it on ours. They
2. could be . . . some of their students could be going to
3. J.M.U. or somewhere for it. I don't know.

4. Q. Are there any business math and accounting courses taught
5. in County schools that are not taught in City schools?

6. A. We have quite an extensive business program, and the
7. City schools do not offer as extensive a program as we
8. do in business courses.

9. Q. You offer a variety of agricultural courses. Are there
10. various competitions throughout the state and the country
11. that these students participate in?

12. A. Yes sir, as I said before, we have one of the best pro-
13. grams in the state, as far as I'm concerned. Our young-
14. sters participate and win contests regionally, statewide
15. and on a national basis. We at the present time have had
16. several state presidents in the farm organizations and
17. in home economics. I can give you a few of them here.
18. In the past five, we've had eight state presidents in
19. last four years, five currently in F.F.A. and F.H.A.,
20. we have industrial arts clubs that compete nationwide
21. and are recognized nationwide. We also have two state
22. presidents in the Young Homemakers of Virginia, the Young
23. Farmers of Virginia, the F.F.A.'s have won poultry judg-
24. ing and stock and swine contests repeatedly on a national

1. and state basis. There are pages and pages of this, if
2. you want it.

3. Q. Does the Rockingham County school system have a special
4. education program?

5. A. Yes sir. We have an all-inclusive and extensive special
6. education program. I know of no youngsters that have
7. been identified as special education youngsters that are
8. not now being served by the program.

9. Q. You also have adult education programs?

10. A. Yes sir. Most of our adult education programs, of
11. course, are at the Vo-Tech School. We, of course, run
12. that in cooperation with the City of Harrisonburg. The
13. Vo-Tech School, we fund that I believe it's 84% to their
14. 16% at the present time. They have about sixty students
15. there, we have about 420 I believe it is. So, I think
16. they depend on us a little for that school.

17. Q. Do you also provide transportation from Harrisonburg High
18. School for the City students to the Vo-Tech School?

19. A. Yes, to my knowledge the buses that come from Turner
20. Ashby by Harrisonburg stop and pick up their vocational
21. students. Some of them may ride in cars.

22. Q. Do the schools also have summer programs?

23. A. Yes sir. Again, we last year combined our summer pro-
24. grams, but generally we have had summer programs in

1. particularly all the senior high schools. Most of our
2. summer programs are for remedial or catchup work; however
3. we will offer any course anytime that we can find enough
4. people interested in it, whether new or repeat type work.

5. Q. And the County has a kindergarten program?

6. A. Yes sir.

7. Q. Are there City students in the County schools?

8. A. Yes sir. I think before the Commission, I believe our
9. number that we counted and got the names and addresses,
10. I think there were forty-two of them.

11. Q. Forty-two of them?

12. A. I noticed Wayne said 211 in his, but when you think of
13. numbers you can't compare numbers in Rockingham with
14. numbers in Harrisonburg. We have 1.7% of Harrisonburg's
15. pupils, and they have 2.2% of ours, there's only four
16. tenths of one percent difference.

17. Q. Before we leave the subject of the curriculum, at my
18. request did you make a study of the students in the pro-
19. posed annexation area who are enrolled in subjects that
20. are not offered by the City schools?

21. A. Yes, I did.

22. Q. Let me show you this and ask if this represents the re-
23. sults of that study?

24. A. Yes sir, it's eighty-three of them.

1. Q. Some of these students taking courses not offered by the
2. City are taking courses other than agricultural courses,
3. are they not?

4. A. Oh, yes. Oh, yes.

5. Q. Would you just show us a few of the courses they are
6. taking?

7. A. Well, let's start from the bottom up. Two of them are
8. in calculus, three of them I.C.T., stenographic work
9. five, library assistance three, and then agriculture of
10. course. Then you get up into home economics, then eco-
11. nomics, sociology, some of those types of things.

12. MR. SMITH: I would like to offer this docu-
13. ment on behalf of the County.

14. Q. Tell us about the experience of the teachers in the
15. Rockingham County Schools.

16. A. Our teaching experience, seventy-five percent of our
17. teachers have five or more years of experience. Fifty
18. percent of them have ten or more years experience, and
19. thirty-five percent have fifteen or more years experience.
20. We have a rather experienced, stable staff at this time.
21. We have only about twenty-five or thirty probably attri-
22. tion each year now.

23. Q. The City of Harrisonburg in its Exhibit 14f has quoted
24. some statistics from Facing Up Magazine. You are famil-

1. iar with that magazine?

2. A. Yes sir.

3. Q. And we have gone over these statistics, have we not?

4. A. Yes sir.

5. Q. Can you tell me how the average salary of the County's
6. instructional personnel compares with that of the City?

7. A. Our average salary of instructional personnel is less
8. than that of the City. I think our average salary as of
9. this past report was \$13,138.00. I think it will show up
10. in that book, average salary of teachers \$12,520.00, I
11. think it is. But we're a little below in the average.
12. But this past year our top teachers salaries were better
13. than Harrisonburg's were. We were worse . . . we were
14. less at the bottom of the scale, the coming in scale,
15. but . . .

16. Q. So, your highest paid teachers, the most experienced I
17. assume . . .

18. A. Would receive more than Harrisonburg teachers.

19. Q. Do I understand that this Facing Up is not the most recent
20. one?

21. A. I'm not sure . . .

22. Q. This is January, 1980.

23. A. Yes, that's the most recent.

24. Q. And you're familiar with that?

1. A. Yes, sure.

2. Q. It indicates the percent of graduates who possess market-
3. able skills. Surprisingly the City has a hundred percent,
4. the County has eighty-seven percent.

5. A. Well, this is a little bit . . . it depends on the way
6. you interpret and write the report. I notice in the
7. one for the previous year the County had ninety-four
8. point four percent and the City had eighty-two point two
9. percent. So, it depends on the reporter there as to what
10. he's interpreting as salable skills, I guess.

11. Q. All right, sir. And there is also a section here dealing
12. with per pupil . . . ratio of pupils to classroom teach-
13. ing. And the County is just a little bit greater than
14. the City?

15. A. Yes. Our average was about 16.7. The state is about
16. 16.3. Now, we still, in the County pupil/teacher allot-
17. ment, we still . . . well, the standards of quality say
18. that you need forty-eight instructional positions per
19. thousand youngsters; fifty-four if you include vo-tech
20. subjects, if you include vocational subjects and special
21. education. Our number of instructional personnel in the
22. County is a little bit above fifty-nine. That means that
23. we have somewhere in the County trying to take care of
24. the needs of the students about fifty more teachers than

1. the quality of standards set by the State General Assem-
2. bly says we have to have. And they define that as a
3. quality educational program. Now, you can add all the
4. staff members that you have money to add, but there is
5. no evidence in anything that I've ever read in all the
6. years that I've been in education that will say that the
7. pupil/teacher ratio has any relationship or correlation
8. with pupil achievement. The same thing can be said with
9. Masters Degrees of teachers and the number of years that
10. teachers have taught. If I could tie any of those sta-
11. tistics into pupil achievement, I would write a book
12. and we'd all make a fortune. But it's never been done.

13. Q. The City also spends somewhat more in local funds for
14. education than the County?

15. A. Yes, they spend about four hundred dollars more per child
16. than we do in the County. Of course, my contention is
17. that a part of that factor is the size of your school
18. system. You can operate a ten thousand pupil school sys-
19. tem a little bit more efficient and economical than you
20. can a twenty-five hundred or a five hundred school system.
21. To give you an experience, I made that statement to the
22. Commission on Local Government sometime ago and they
23. wanted a study. Just as a curiosity to myself, I went
24. back and took all of the school divisions in the State of

1. Virginia from zero to twenty-five hundred enrollment,
2. averaged their per pupil expenditure against school divis-
3. ions that were from eight thousand to fifteen thousand,
4. and I really did come out with a difference of about
5. seventy-six dollars per pupil.

6. Q. All right, sir. But the County, what it spends, is well
7. above the state's standards of quality?

8. A. Yes. The standards of quality for this past year, which
9. is the only year we now have full records on, required an
10. expenditure of \$960.00. Our per pupil expenditure was
11. \$1,189.00, which was considerably in excess of the stan-
12. dard set by the General Assembly and the State Board.

13. Q. All right, sir. Let's move on to school transportation.
14. Will you tell the Court what the County's policy is
15. regarding that?

16. A. We transport any County child to any school in the County
17. that desires transportation. We not only run the school
18. buses over all the roads that we have children on or all
19. the roads that we can operate a bus on, but we go into
20. roads that we cannot operate buses on and bring those
21. children out or either pay their parents to bring them
22. out. So, it is a fairly all-inclusive type of transpor-
23. tation system.

24. Q. How many buses does the County have?

1. A. We own about 150, 151.
2. Q. How many of those are in operation each school day?
3. A. A hundred and thirty-one of them.
4. Q. Can you tell us approximately how many miles you trans-
5. ported students last year?
6. A. Somewhere between eight hundred and nine hundred thousand
7. miles. I believe it was eight hundred and fifty-some
8. thousand.
9. Q. Approximately how many of your school population do you
10. bus each day?
11. A. About eighty-two, eighty-one or eighty-two percent,
12. somewhere in there.
13. Q. All right, sir. How many bus drivers does the County
14. employ?
15. A. A hundred and thirty-one.
16. Q. Does the County also have or make provision for mainten-
17. ance and repair of the bus fleet?
18. A. Yes sir, we have a garage. It's fully equipped with I
19. believe it's eight or nine mechanics, a supervisor, a
20. director of transportation, a secretary, and that sort
21. of thing.
22. Q. Do you also have equipment in case a bus breaks down out
23. on the road someplace?
24. A. Yes sir, we have several of those vehicles. We have need

1. to go out when a bus breaks down with youngsters on it
2. on the road, and we need to go out to that bus and eith-
3. er get it moving or take another bus and replace it.

4. Q. So, you need to have spare buses?

5. A. Well, you can't operate without spare buses, because some
6. of them are bound to be down. So, you have to have . . .
7. I believe we've got fifteen or sixteen spare buses. Well,
8. it would be the difference between the 150 and the 131.
9. Those would be spare buses.

10. Q. Do you also need various repair vehicles?

11. A. Yes sir.

12. Q. Have you purchased any new buses recently?

13. A. We just received bids last week. We bid two ways, we
14. bid on the gasoline sixty-four passengers and the diesel
15. sixty-four passengers. We got a bid on the gasoline of
16. nineteen thousand eight hundred and thirty-eight dollars,
17. in that neighborhood somewhere. And on the diesels that
18. we're going to buy came in at about twenty-three, twenty-
19. four thousand.

20. Q. Did you hear Mr. King testify here several days ago?

21. A. Yes sir.

22. Q. And you heard him testify concerning what the school plan
23. of the City is to deal with these students that they seek
24. to annex?

1. A. Yes sir.

2. Q. Will the annexation of the students referred to have an
3. impact on the County of Rockingham's school system?

4. A. Oh, yes, very definitely.

5. Q. Would you tell these Judges what that impact will be?

6. A. The impact of the 493, is that what you're getting at?

7. Q. Yes sir.

8. A. Well, of course, there will be some loss in the state
9. funds, offset a little bit probably by the wealth factor.
0. But also you will have an affect of those pupils coming
1. out of schools which will reduce enrollments that are
2. already reducing. It will affect the transportation some,
3. the number of teachers some. Is that getting at what
4. you're asking?

5. Q. Will it require you to redistrict you attendance boundar-
6. ies?

7. A. Oh, I don't think there's any doubt. I think that we're
8. going to have to redistrict and reshuffle our school
9. attendance boundaries throughout the County. We would
0. have only about 400, 450 out at Pleasant Valley with a
1. capacity of about 700. We have an older school, as I
2. told you, at Grottoes that was built around 1925. We
3. need to get on with making the decision as to whether
4. we want to shift those up and fill in those spots or not.

1. All of these decisions will have to be made. As to wheth-
2. er we're going to leave the Bridgewater school there,
3. that's another 1925 vintage school, or whether we're go-
4. ing to shift all of these youngsters around to fit them
5. now into proper places or not so that we can more effi-
6. ciently operate. Of course, as Dan stated, the revenue
7. will be cut by fourteen or twenty-four percent, I don't
8. know which now; but with only five percent of the young-
9. sters gone and with fourteen to twenty-four percent of
10. the revenue gone, we're going to have to draw in our
11. belts and do some efficient operations in terms of build-
12. ing assignments and that sort of thing.

13. Q. You're aware that Mr. King's plan is to build twenty-four
14. additional classrooms at existing locations within the
15. City?

16. A. Yes.

17. Q. And he testified he thought he could do that from Janu-
18. ary until the opening of school in September. Do you
19. have a feeling concerning that time frame?

20. A. Well, I would not feel comfortable with it. In going
21. through the superintendencies that I have had and the
22. assistant superintendencies that I have had across the
23. state, you have to be awfully lucky to get the work done
24. in that time. Not only do you have to be awfully lucky,

1. it's probably going to cost you more because you're going
2. to have to put a time limit on it, on a contractor that
3. he doesn't want limited. When a contractor bids on a
4. project of that nature he generally wants 360, 365 days,
5. or two years to complete the project, so that he can sch-
6. edule it in with other projects he has. It can be done,
7. but I would not feel comfortable with that schedule.

8. Q. Are you aware that the City's plan also is to take on
9. the transportation of all the students in the City?

10. A. Yes.

11. Q. And to purchase eleven buses for a hundred and nineteen
12. thousand dollars for that purpose.

13. A. Yes sir.

14. Q. Do you feel that they have allowed enough money for that?

15. A. No sir, I don't think so, from what our bids were. Of
16. course, I don't know what Wayne has in mind, whether he
17. has fifty-four or sixty-four passenger buses. But in the
18. allocation of that sort of thing you just start your
19. troubles when you buy the buses. I wish he had mine.
20. But you have the expense of operating them, the drivers
21. and the disciplinary problems that somebody has to handle,
22. the gas. Our buses now, and according to state records
23. we are operating as efficiently as anybody else in the
24. state, and our buses are costing us a dollar everytime

1. they move them one mile. So, it's an expensive proposi-
2. tion, transportation, and going to get more so. I believe
3. that our budget for transportation is about a million
4. five, and if we are running that 131 buses, you see some-
5. where in the neighborhood it's going to cost you annual-
6. ly, or it's costing us, ten or eleven thousand dollars
7. a year per bus to run them, to operate the buses.

8. Q. Is the County self-insured or does it purchase insurance
9. on those buses?

10. A. Oh, no, we have to buy insurance, bus insurance. And it
11. is very expensive insurance for bus vehicles.

12. Q. Would the City have to have insurance on its buses?

13. A. Yes sir, they would. It's state required, state law,
14. that you have insurance on buses. I believe our bus
15. insurance this past year was sixty-five thousand dollars.

16. Q. You are also aware that the City of Harrisonburg proposes
17. to construct somewhere in the period of time between four
18. and seven years after annexation a new junior high school.

19. A. Yes sir.

20. Q. And they will phase out their present junior high school.

21. A. Yes sir.

22. Q. That's part of their plan. Will that be disruptive to
23. their system?

24. A. I think, if I recall, that I would have to agree with

1. Wayne, that it will be disruptive. There's no way in the
2. world that you can move those youngsters . . . I think at
3. the present time they're in the junior high school situa-
4. tion, and to move the seventh and eighth grades, if that
5. is what he has planned, out temporarily to elementary
6. schools, he's probably going to change his curriculum
7. pattern. There are activities and so on at the junior
8. and senior high schools which probably they have gotten
9. accustomed to; they may not like to be moved back to an
10. elementary setting.

11. Q. In the City's plan which is shown on their Exhibit 26,
12. they state that three million dollars will be the cost
13. of the new junior high school. When you were Division
14. Superintendent of Fauquier County, did you build any new
15. schools there? .

16. A. Yes sir, we built several. Back in I believe it was 1973
17. or 1974 we completed two junior high schools.

18. Q. What was the capacity of those junior high schools?

19. A. They were under seven hundred. I don't have the data
20. with me, but one of those junior high schools at that
21. time, and that was 1973, 1974, cost two million four hun-
22. dred and ninety-five thousand. The other one cost two
23. million two hundred and one thousand. Now, the only
24. way, the way that we have projected costs in school build-

1. ings for the last fifteen or twenty years, is to take the
2. cost . . . we generally take the average state cost,
3. which is furnished to us by the State Department of Ed-
4. ucation annually, and upgrade that average cost of a par-
5. ticular school building by adding one percent per month
6. for inflation up until the time that you plan to build
7. your building. The current . . . not the current, but
8. the 1978-79 average cost in the State of Virginia for a
9. junior high school program was \$4,527.00.

10. Q. And what does that figure represent?

11. A. That represents the cost two years ago.

12. Q. I understand that, but . . .

13. A. That represents the per pupil cost . . . average state
14. per pupil cost of a school building. Okay, so that was
15. two years ago. You would have to add twenty-four per-
16. cent to that to get it up to date. Now, if you're going
17. to project four to seven years down the road, keep adding
18. one percent per month until you get there. I just as a
19. matter of curiosity, I came up with a basic cost of the
20. school building that he is proposing seven years down the
21. road . . . or five years down the road, I did it five
22. years down the road, for over eight million dollars basic
23. cost. Now, that doesn't include anything in it, that's
24. just basic cost. So, if you're going to cost a school

1. building out, there are other costs that you are not con-
2. sidering, and that's your debt service. You've got . . .
3. I'm assuming you've borrowed money. What I came up with
4. in costing Wayne's program out was fifteen million dol-
5. lars, and I dare you to build it for any less.

6. Q. On City Exhibit 33, as I understand it the City project-
7. ed its capital outlay for its program, for its plan,
8. which includes the elementary classrooms, the buses, the
9. site, architecture and engineering for the new junior
10. high school, for five million three hundred and sixty-
11. three thousand dollars.

12. A. There's no way it can be done, I don't think. As I say,
13. by the time you count in your construction cost, your
14. equipment cost, your architects and engineers costs,
15. your incidental costs, and add to that the cost project-
16. ed down the road, there's no way that you're going to
17. build those schools for that amount of money. Even if
18. you build them for that amount of money and if you bor-
19. row all you can from the literary loan at three percent
20. and all the rest from the State School Building Authority
21. at seven percent, even your debt service is going to fi-
22. nally amount up until you will have spent somewhere in
23. the neighborhood of fifteen to sixteen million dollars.

24. Q. In the event an annexation became effective on December

1. 31st of any given year, would you recommend to the School
2. Board that on a tuition basis you educate those students
3. until the end of that school year? I believe Mr. King
4. said that's how long it would take for him to have his
5. facilities ready.

6. A. Well, as we have stated before, somebody has to educate
7. them. We work cooperatively with Harrisonburg in several
8. programs; special education programs, vocational programs.
9. We would not want to take on the job of educating the
10. children, because as I stated a while ago we have some
11. responsibilities of our own that we're going to have to
12. look at, look to, very quickly to cut our expenditures
13. if we possibly can. We would not want to educate them
14. any longer than we absolutely had to.

15. JUDGE MOON: Well, are you saying you want
16. them out January 1, 1982?

17. A. No, no, no. I don't want them out in the middle of any
18. year. Let us plan our budgets because we've got to plan
19. those a year ahead of time, you see.

20. JUDGE TRABUE: What might happen to them then
21. between January 1st and the following school year?

22. A. Oh, I think we would make arrangements to do that sort
23. of thing. But unless they were definite about moving
24. them out the next year, I would have to know it that

1. January, so that I could plan the budget, get the per-
2. sonnel, and that sort of thing.

3. Q. You would educate them for the rest of the school year?

4. A. Sure, sure.

5. Q. And you heard Mr. King say he felt his facilities would
6. be ready for them in the fall.

7. A. Yes. But we would not want to obligate ourselves for
8. the next year unless we would know it January of the
9. year prior to that. We couldn't plan to do it.

10. JUDGE MOON: Well, as I understand though,
11. you say it doesn't cost you anything to educate these
12. people anyway. Why is it going to be so disruptive if
13. you have to go on a little longer? They're going to have
14. to pay you; you'll make money on it.

15. A. Who said it didn't . . .

16. JUDGE MOON: I take it the City would have to
17. pay you for anybody you educated, wouldn't they?

18. A. Yes, they would have to pay us for whoever we educate,
19. but what we're trying to get is some projected plan to
20. take care of County students. And I think we have now
21. more obligation to the County and those students, and I
22. think we need to plan for it. I don't think we want to
23. wait five years down the road to start some plan so that
24. we'll know what we're going to do with them, the County

1. youngsters.

2. JUDGE MOON: Well, the only thing that gets
3. me, on the one hand you say by losing them, you know, it
4. doesn't cost you anything to educate them. But then when
5. you look at it on the other hand, you're talking about
6. what a hardship it is to educate them.

7. A. The only hardship that I'm speaking of is planning effi-
8. ciently for what we have in the County. If we could
9. plan it efficiently and know what's going to happen to
10. them, it wouldn't be that much of a problem. But I
11. don't think that we would want to continue to do this
12. without knowing what the City of Harrisonburg wanted done
13. with them.

14. JUDGE TRABUE: You say you need to plan your
15. budget? You need to know to plan your budget.

16. A. Yes, plan on budgets and building. See, we're going to
17. have to make some decisions, as I stated before, on what
18. buildings we're going to close, what we're not going to
19. close.

20. JUDGE TRABUE: Well, there are school boards
21. throughout the state that have joint contracts for the
22. education of children.

23. A. Yes, I know of several that do.

24. JUDGE TRABUE: You're not foreclosing that as

1. a possibility, are you?

2. A. I'd rather not do it.

3. JUDGE TRABUE: Is there any reason why it
4. wouldn't work?

5. A. Well, I'd rather not, I'd rather not. I think they ought
6. to educate their own children if they possibly can. It
7. is expensive, I know; and I will make this statement,
8. that the 493 children if we kept the buildings we have
9. at the present time would not foster an enormous burden.
10. But it would in planning terms. I think they ought to
11. educate their own children and have the program first.
12. But it will be expensive to do so. To begin with it
13. will be forty thousand dollars a child, at least.

14. JUDGE ARTHUR: You don't anticipate closing
15. any schools, do you?

16. A. Yes sir.

17. JUDGE ARTHUR: If you lose 493 children?

18. A. No, not with the 493. With the combination of what we're
19. already losing.

20. JUDGE ARTHUR: You mean the trend toward di-
21. minishing school enrollment.

22. A. Yes.

23. JUDGE MOON: Well, is that reflected in your
24. projected budgets, these projected extensions?

1. A. That hasn't been . . . any closings of schools is not
2. reflected in this. There are some lower costs in here.
3. For example, this year we have already let seven teachers
4. go, I believe it was, because of the reducing enrollment
5. already. The year before last we let five or six addi-
6. tional teachers go, but the special ed. laws were such
7. that we had to hire more back. So, we ended up with more
8. than we started with. But we are at the present time be-
9. ginning to reduce the staff.

10. JUDGE ARTHUR: How long do the experts say
11. this trend will continue?

12. A. According to our enrollment, it looks as if we have three
13. more high school years to get the crop out, the big crop.
14. And at the end of that it looks like we'll start to level
15. off some. It won't be as drastic as it has been.

16. Q. There is a difference between the amount you can reduce
17. the budget and the cost of educating a student.

18. A. Oh, yes, that's what we've been talking about to begin
19. with.

20. Q. All right, sir. Do you think the financial exhibits,
21. of which you have made yourself familiar, presented by
22. the County in the case accurately reflect the financial
23. thrust that the proposed annexation will have on the
24. County school operation?

1. A. Well, the County school operation used to be eighty per-
2. cent. I don't know whether it is now or not. I don't
3. know whether it's eighty or seventy-five percent. It's
4. the biggest part of the County's budget. And of course
5. you're going to have a dramatic effect on the school pro-
6. gram. I don't know how many of you folks have ever work-
7. ed to try to get a school budget passed, but it ain't
8. easy--forgive my language--to do so. And the more reve-
9. nue you take away the harder it gets.

10. Q. Do you feel that the County's financial exhibits correct-
11. ly reflect that impact?

12. A. I think so, yes.

13. JUDGE ARTHUR: Well, is it really annexation
14. that's your big problem, or the general down trend in
15. student enrollment?

16. A. No, we're not talking about that, we're talking about the
17. annexation of the loss of revenues. That's what would
18. affect you. As long as the locality has the revenue or
19. the resources from which to draw, the necessary funds to
20. fund a program, you have no problem. But it's the loss
21. of revenue. And I don't care where it has been, whether
22. I've been to the General Assembly for money or to the
23. Board of Supervisors here, they only have so much that
24. they can give you. And when they get to that "so much",

1. and it's rated on how much they have, that's all you can
2. get for education. And that's understandable; we don't
3. have any problem with that.

4. JUDGE TRABUE: What I hear you and Mr. King
5. both saying is that due to the financial impacts on both
6. the County system and the City system, the City schools
7. is fifteen million on just one school alone . . .

8. A. No, no, no, I didn't say one school. That's both schools.

9. JUDGE TRABUE: That's the total building.
10. Well, considering that and considering the impact on your
11. schools, it just all relates to revenues and it seems
12. like you and Mr. King are both making a good case for
13. consolidation of the school systems regardless of the
14. status of the governmental entity.

15. A. Well, I'm not . . . if you're going to consolidate the . . .
16. we'll annex Harrisonburg. We can run their school system
17. cheaper than they can.

18. JUDGE TRABUE: I'm not talking about . . .
19. I'm talking about schools, not the government.

20. A. Sure, I don't see any problem with coming together. You
21. can run both systems cheaper than you can run them to-
22. gether . . . cheaper than you can run one of them.

23. Q. To do that you would have to consolidate the governments,
24. wouldn't you?

1. A. Yes, yes, I think that's right.

2. Q. Is the County school system's programs providing the
3. necessary education for the students in the area sought
4. to be annexed?

5. A. Yes. We offer anything in our school program that they
6. express a desire to take.

7. Q. In your opinion can the County provide the educational
8. needs for those students as well or better than the City?

9. A. No doubt about it. I think we can provide anything any-
10. body else can provide in the way of an education.

11. JUDGE MOON: Let me ask you one question. How
12. important is it--not just your opinion, but what is the
13. general opinion of educators and people similarly situat-
14. ed to you as to the value of the junior high school sys-
15. tem?

16. A. In my frank judgment of it, I don't know that any grade
17. structure has any effect on a pupil's achievement; some
18. like this and some like that. Some communities like to
19. call their junior high schools intermediate schools, some
20. like to call them middle schools, some like to call them
21. junior high schools. There's no evidence that I know of
22. anywhere that proves that one is any better than the
23. other.

24. JUDGE MOON: Is it easier to administer or

1. something?

2. A. The major part of the school systems of the nation ar-
3. range their grade structure so that the economic factor
4. of the facility is met. And if you want to go, and you
5. are all enthused to go to a K-5, 6-8 program, and the
6. community thinks that's great and they've got the funds
7. and the money to do it, fine, let them go that way; but
8. it won't get them anymore achievement than any other or-
9. ganization.

10. JUDGE MOON: All right.

11.

12. Cross Examination by Mr. Glass:

13. Q. Mr. Dishner, you mentioned that you had worked coopera-
14. tively with the City school system over the years.

15. Could you describe some of the cooperative programs?

16. A. Yes, of course, we jointly operate the vo-tech center.

17. Mr. King operates out there as administrative head one
18. year and I as administrative head two years. We have

19. other joint programs. We have some of Mr. King's special
20. education programs out at Simms, we have students there.

21. He has alternative programs out there, we have students

22. there. We have alternative programs out in the Dale En-

23. terprise, and he has some students there. We also work

24. cooperatively in the matter of professional services to

1. teachers, the training of teachers. Joint programs in
2. several of these things.

3. Q. Other than from the planning standpoint, as long as you
4. are given sufficient time, you don't really anticipate
5. much of a problem in working out an arrangement with the
6. City school system to temporarily continue educating those
7. students in the annexation area.

8. A. Not forever.

9. Q. Temporarily.

10. A. Temporarily. We have no problem with the six months fea-
11. ture of the thing, and we have no major problem if we
12. would know for six months in advance. But we would not
13. want to continue that pattern.

14. Q. You mentioned that you have an agricultural education
15. program, you have a very good program, don't you?

16. A. Yes sir.

17. Q. The City does not offer one, is that correct?

18. A. That's correct.

19. Q. Do you have any idea why the City school system doesn't
20. offer one?

21. A. Well, I would imagine that there aren't many children
22. in the City that probably need the program, that would
23. elect to take the program at the present time.

24. Q. That's generally true, isn't it, of urban or urbanizing

1. areas?

2. A. Yes. But also in a school system the size of Harrison-
3. burg, it would be very, very expensive to operate a vo-
4. cational education program; the same as it would be for
5. Harrisonburg to operate a separate vocational-technical
6. center. It would be almost impossible.

7. Q. Did you mention the specific number of students present-
8. ly residing in the proposed annexation area who are en-
9. rolled just in the agricultural education programs?

10. A. Fifty-seven I believe it was.

11. Q. Did you recently meet with Mr. King and talk about your
12. agricultural education program? A couple of weeks ago?

13. A. Well, it wasn't a meeting. I think we were walking down
14. the street and he wanted to know how many it was in agri-
15. culture, and I told him I thought we had fifty-seven.
16. And as I recall he said something to effect of what am
17. I going to do with them, and I said, well, you can't very
18. well afford to have a program for them, can you. So,
19. that's about the extent of the conversation.

20. Q. You indicated, didn't you, that you didn't anticipate
21. much of a problem in permitting those students to contin-
22. ue in your agricultural education program on a tuition
23. basis.

24. A. Well, again, I think we want to have joint programs,

1. but I think eventually he ought to be able to take care
2. of those programs himself, if those students continue to
3. want agriculture. Maybe they won't, maybe they'll phase
4. out. I don't know.

5. Q. If this annexation is granted, you will actually receive
6. increased state aid per pupil from the state because of
7. the immediate loss in taxable wealth, won't you?

8. A. Well, who knows? We will lose, we will drop from .43 to
9. .39 in our composite index, but also we will drop in other
10. enrollment. And as a result of that we will get I be-
11. lieve it was seventy-two thousand additional state funds,
12. which is a drop in the bucket. But when we reverse it
13. and lose enrollment in the other direction, we're going
14. to show up with a minus on the side of state basic aid.
15. Do you follow me?

16. Q. Yes, but the per pupil amount under the state formula
17. will actually increase.

18. A. It will actually increase. Now, it would be nice if that
19. per pupil amount were somewhere reasonably the same cost
20. that it costs us to operate.

21. Q. Your system presently has a variety of grades assigned
22. to different elementary schools and to the intermediate
23. schools and to the high schools, doesn't it?

24. A. Yes sir.

1. Q. In fact, you have a couple high schools with grades nine
2. to twelve, don't you, and one with ten to twelve?
3. A. Yes sir.
4. Q. And intermediate schools, you have a couple with grades
5. six to nine?
6. A. Yes sir.
7. Q. One with six to eight?
8. A. Yes.
9. Q. And one seven to eight.
10. A. Right.
11. Q. And you've got your elementary schools, some with K-5
12. and some with K-6?
13. A. Right.
14. Q. When was the last time you made a change as to assign-
15. ment of grades within any one of these schools?
16. A. With the opening of the Spotswood last fall. We changed
17. and moved some grades.
18. Q. And how about prior to that?
19. A. It probably was Myers school. We probably changed those
20. up there when the building was finished up there at Myers.
21. Q. You've done it fairly often, haven't you? Reassigned
22. grades to particular schools?
23. A. Yes. I think it occurs often. We probably will do it
24. again next year. We probably would move the ninth grade

1. back to Spotswood next year.

2. Q. There will actually be some advantages to the children
3. now living in the annexation area coming about by reason
4. of attending the City schools if annexation is granted,
5. won't there be?

6. A. I don't know.

7. Q. For example, if you'll turn to County Exhibit 33 . . .

8. A. As I say, it's not the advantages of those that I'm both-
9. ered about, it's what you're doing to the others. Exhib-
10. it 33?

11. Q. Yes sir, labeled high school districts.

12. A. Oh, yes.

13. Q. There are some children now in the proposed annexation
14. area who go to the Broadway High School, are there not?

15. A. Very few, yes.

16. Q. And there will be a considerable shortening of travel
17. distance for those students, won't there, in attending
18. the City high schools?

19. A. Possibly so, yes.

20. Q. Possibly, or can you tell me from looking at that map?

21. A. Well, it looks pretty obvious that it would.

22. Q. And how about in the Spotswood attendance district?

23. Is there going to be a considerable shortening of the
24. travel distance there?

1. A. Well, I suppose it's obvious that some of them would
2. be shorter in. But, to answer your question, you're go-
3. ing to have that in every school in every county in every
4. country in the world. It's going to be shorter somewhere
5. than it is somewhere else.

6. JUDGE TRABUE: Mr. Glass, is there an exhibit
7. that tells us how many students we're talking about in
8. each of the areas you are inquiring upon?

9. MR. GLASS: I don't think there has been an
10. exhibit filed with the Court; we have not filed one.

11. A. I believe we did.

12. JUDGE TRABUE: How many people will be taken
13. out of Broadway?

14. Q. Do you know how many, Mr. Dishner, would be affected at
15. Broadway?

16. A. Out of Broadway, yes, seventeen.

17. JUDGE TRABUE: Pardon me? Seventeen?

18. A. No, wait a minute, two youngsters out of Broadway.

19. Q. How many out of Spotswood?

20. A. Spotswood, seventeen.

21. Q. From your personal observations can you tell me where the
22. greatest concentrations of residential development are
23. within the proposed annexation area?

24. A. It would be around the Pleasant Valley school area.

1. Q. Pleasant Valley has a greater residential concentration
2. than does the Ashby Heights area?

3. A. Well, that would be included in the same thing. The
4. Ashby Heights area is in the Pleasant Valley school at-
5. tendance area.

6. Q. You're referring to the district now?

7. A. I'm referring to the school attendance area, is what I am
8. referring to.

9. Q. I'm asking you just within the entire proposed annexation
10. area, where are the residential subdivisions containing
11. the greatest concentration of students generally?

12. A. I really don't know. I know where the most concentrated
13. subdivisions are, but I don't know that we made any analy-
14. sis of how many children live in those areas.

15. Q. Can you point out where most of the larger subdivisions
16. would be?

17. A. I would imagine they would be Ashby Heights and Fairway
18. Hills, those types of areas.

19. Q. Park View?

20. A. Park View, yes.

21. Q. And aren't those three that you just mentioned going to
22. be closer to the existing City high school than Turner
23. Ashby?

24. A. Possibly so.

1. Q. Would you turn also to County Exhibit 31?

2. A. Okay.

3. Q. Isn't generally there going to be a savings in travel
4. distances for children in the proposed annexation area
5. who attend your intermediate schools?

6. A. With the possible exception of Wayland, and the reverse
7. will occur there.

8. Q. You were present when Mr. King testified to the general
9. location of the proposed new junior high school south
10. of the present City and west of Route 11?

11. A. But it would appear to me that John Wayland would be
12. closer to the City children than it is to the County
13. children, the City schools.

14. Q. You're familiar with the location of the proposed junior
15. high, and you're saying that John Wayland would be clos-
16. er than would that proposed location to Park View, to
17. Fairway Hills, to Forest Hills, to Ashby Heights?

18. A. What location are you talking about, the site the City
19. was going to build his junior high school on?

20. Q. The site which he described, yes sir.

21. A. No, I didn't see that, no.

22. Q. He testified that it would be immediately south of the
23. existing corporate boundaries, to the west of Route 11.

24. A. Okay, it could be.

1. Q. Do you know how many children reside in the proposed an-
2. nexation area who require special education because of a
3. handicap of some sort.

4. A. The only way that we can come about that is to take ten
5. percent of the enrollment. We have about ten percent of
6. the County children enrolled in special education, and we
7. took ten percent of 493. That's the only way you could
8. possibly arrive at it.

9. Q. For those children in that area who require special edu-
10. cation, there might be some advantage to them in attend-
11. ing the City programs for that type of education, won't
12. there be?

13. A. It could be either way.

14. Q. I believe you mentioned that there were no eligible han-
15. dicapped children who are not receiving education in the
16. County?

17. A. As far as I know.

18. Q. As recently as last year, however, the State of Virginia
19. found that all eligible handicapped children were not
20. receiving services in the County, isn't that correct?

21. A. That's right. That's right. They found the same with
22. Harrisonburg.

23. Q. You're saying they found the same in Harrisonburg?

24. A. Sure they found the same.

1. Q. Have you seen the Harrisonburg report?

2. A. That's the general pattern.

3. Q. Mr. Dishner, I show you a report which is entitled
4. "Program Report on Special Education, School Division
5. Harrisonburg City". You've seen this you say?

6. A. I think I have.

7. Q. It's dated 1980. Would you read line one there for me?

8. A. What's a FAPE?

9. Q. I assume you have the same report, so perhaps you could
10. tell the Court.

11. A. It says, "All eligible children, handicapped children,
12. are receiving FAPE." There are so many of those, I don't
13. know what . . . does anybody in here know? I don't know
14. what they mean. Do you know what they mean by that?

15. Q. No sir. You indicated you had seen the report and it
16. indicated that all eligible children were not receiv-
17. ing . . .

18. A. Well, is that what that says?

19. Q. You have a similar report, . . .

20. A. Yes.

21. Q. But you don't know what it stands for though?

22. A. No, not that group of letters I don't.

23. Q. Could you point out anywhere in the report where it in-
24. dicates that all eligible handicapped children in Harri-

1. sonburg are not receiving service?

2. A. (Witness reads report) Well, maybe they were receiving
3. services, some of these other things, screening and book-
4. keeping procedures.

5. Q. Yes sir, I asked about . . .

6. A. What I more or less was referring to, that they had known
7. they weren't in substantial compliance as well as we did.

8. Q. Yes sir, but I just asked . . .

9. A. Do you have a copy of our report?

10. Q. Yes sir.

11. A. Now, there it says it in plain English, doesn't it.

12. It says, "All eligible handicapped children are receiv-
13. ing services, no."

14. Q. And which report is this?

15. A. That is our report. But they are receiving services now.
16. We corrected that.

17. Q. Mr. Dishner, you indicated that generally there was a
18. surplus of capacity in your facilities.

19. A. Well, there is a surplus of space as determined by the
20. way school buildings have been built in the past. Some
21. years ago in elementary schools you used to use as a
22. classroom capacity thirty. Later we used twenty-five,
23. which these school buildings are based on. Now with the
24. special education and small class programs, you use a

1. 23 probably, or a 22. With our current buildings we
2. have surplus space, yes; but we are using those spaces
3. for small reading programs and these sorts of things.

4. Q. The two principal schools that will be affected by the
5. proposed annexation will be Pleasant Valley Elementary
6. School and your Turner Ashby High School?

7. A. Right.

8. Q. You actually have somewhat of a crowding problem at those
9. two, don't you?

10. A. Not insofar as capacities are concerned. Sometimes I
11. have a little argument with the principals on the manage-
12. ment of the school. There's a difference. And it de-
13. pends on how you manage the school as to whether you
14. have a problem.

15. Q. You don't have, for example, one of your classrooms out
16. at Pleasant Valley which has an abnormally large number
17. of students because of the lack of space out there?

18. A. Not to my knowledge. There is a limit on the number of
19. students that you can have in any one class, and that
20. limit is imposed not only by the State Board of Educa-
21. tion but by the Southern Association. And to my know-
22. ledge no class in the County is over those limits.

23. Q. What is that limit?

24. A. From grades four through seven, I think it's thirty-five.

1. And the grade K, of course, is twenty-five. And the
2. only other requirement on the state on grades one through
3. three is an average count of twenty-one youngsters, with
4. not more than thirty in the classroom.
5. Q. How many mobile classrooms do you have out at Pleasant
6. Valley and out at Turner Ashby?
7. A. I think we have three at Pleasant Valley.
8. Q. How about at Turner Ashby High School?
9. A. We have three or four there.
10. Q. Are those being used, all of those being used?
11. A. Oh, yes. We're talking about different . . . we're
12. talking about pears and apples or apples and oranges
13. though when you get into that sort of thing.
14. Q. You just indicated that there were approximately fifty-
15. six, I think, special education students in the annexa-
16. tion area?
17. A. I'm guessing. My guess is it's somewhere around fifty,
18. forty-nine.
19. Q. You took an average of the whole County?
20. A. Yes, that's the only way I know to determine it.
21. Q. And was that the same figure you mentioned before the
22. Commission on Local Government?
23. A. No, we had some misunderstanding there. It was my under-
24. standing that under the Commission on Local Government we

1. were talking about special education youngsters that
2. were assigned to private schools paid for by the County.
3. Then we were talking about one or two, I don't recall
4. what it was at that time.

5. Q. I believe you stated, didn't you, that there were five
6. or six special education students in the whole area?

7. A. Yes, I think so, yes. At the present time I don't recall
8. exactly how many we have in that area that we are paying
9. tuition to private schools for.

10. Q. As recently as last year your County School Board heard
11. a request for eight additional special education teach-
12. ers, did it not?

13. A. Yes.

14. Q. And you actually made a statement at that time that you
15. were receiving more requests for special education ser-
16. vices than the County could provide.

17. A. I don't have any recollection of that. We requested
18. eight teachers and the Board provided us with eight addi-
19. tional teachers.

20. Q. You said that all of your school facilities were in good
21. shape?

22. A. They are sound, but not . . . some of them are old. They
23. are clean, they are safe, they are sanitary, but there
24. are some old ones.

1. Q. Do you have a County Building Superintendent by the name
2. of Bob May?

3. A. Yes sir.

4. Q. Did he publicly comment that the Dayton, Grottoes and
5. Bridgewater schools all rank as zeroes in terms of ade-
6. quacy?

7. A. Well, they are not adequate for an up-to-date program.
8. They are old schools. They do a good job with academic
9. students and the teachers there. The facilities need to
10. be adjusted. That's what we're talking about in future
11. plans for those schools. They are fifty, sixty years
12. old. They could be improved. We don't want to keep them
13. forty more years, in other words.

14. Q. You've had some requests to go ahead and rebuild a new
15. school in the Dayton area?

16. A. No sir, not to date.

17. Q. You've had no requests by members of the public to build
18. a new school in the Dayton area?

19. A. Not I nor the School Board. The School Facilities Com-
20. mittee maybe may have that went out to listen to those
21. groups. But the School Facilities Committee has not tech-
22. nically made its report to the School Board or to me.

23. Q. Actually removing this fairly large number of students
24. from Turner Ashby and from Pleasant Valley will actually

1. help your school system in terms of space requirements,
2. will it not?
3. A. I don't see how it can help us any. We are going to
4. lose a considerable number of students from Turner Ashby
5. by the enrollment decreases anyway. So, the annexation
6. wouldn't help us any. It just helps us get lower faster.
7. Q. How many people do you have in Turner Ashby right now?
8. A. I think it's nine hundred and some.
9. Q. Is that the thousand and seventy-four shown on your
10. Exhibit 27?
11. A. Turner Ashby, this year we had a thousand three. The
12. capacity there at the building is 1,095.
13. Q. It was originally built to house 700, but you've had
14. some additional classrooms constructed since that time?
15. A. I suppose so, I'm not sure.
16. Q. However, your service areas, such as cafeterias, librar-
17. ies, gymnasiums and offices, have not been expanded suf-
18. ficiently to handle that number of students.
19. A. That's a matter of opinion, sir.
20. Q. How many mobile classrooms do you have at your other
21. schools around the County?
22. A. I believe we have nineteen in all. I haven't gone back
23. to recount them, but I think it was nineteen.
24. Q. You had a report from a School Facilities Committee back

1. in 1975, did you not, concerning your physical facilities
2. in the County?

3. A. I think so. However, I'm not familiar with it. I don't
4. know that I've read it; except the state report that
5. came out in 1972, I believe.

6. Q. Would you be familiar with it?

7. A. I have some familiarity with it, yes sir.

8. Q. Would you recognize it if you saw it?

9. A. Yes, I think so.

10. Q. Do you recall that it indicated that an addition should
11. be made to Turner Ashby High School?

12. A. Yes sir, I sure do.

13. Q. To allow program expansion and to relieve overcrowding.

14. A. Yes sir, I sure do. You'll remember when that report
15. was made--well, you don't remember though, I don't sup-
16. pose, we had a growing enrollment; a terrific growing
17. enrollment.

18. Q. In 1975 you had a growing enrollment? Could you look
19. at your Exhibit 27, please.

20. A. As far as I know they had a growing enrollment. 1975?

21. Q. Yes.

22. A. In 1974-75, 10,673 as 10,414 the year before. In fact,
23. before that we had a larger enrollment.

24. Q. Your County Exhibit 110 shows that you sold some school

1. bonds in 1976, three million dollars in 1976, another
2. three million in 1976, you borrowed five hundred thousand
3. for the John Myers School in 1976, a hundred thousand
4. for the Fulks Run Elementary School in 1975, and seven
5. hundred and fifty thousand dollars in 1979. Could you
6. explain why those additional capital improvements were
7. necessary?

8. A. Yes. Yes, of course the state requirement for kinder-
9. garten came into effect in . . . I believe the require-
10. ment ended in 1976. And if you'll notice, in those en-
11. rollments there we added the kindergarten program, some-
12. where in the neighborhood of eight hundred youngsters.
13. So to move youngsters around and put those kindergarten
14. children in, we had to have additional space; switching
15. youngsters from school to school to get them in the pro-
16. per places.

17. Q. When did you add most of your mobile classrooms at the
18. various sites?

19. A. Probably in 1976 when the kindergarten came in.

20. Q. I believe I asked you previously before the Commission
21. on Local Government what you thought your actual per
22. pupil cost would be for the current fiscal year in edu-
23. cating your students.

24. A. What I thought this current year would be?

1. Q. Yes sir. Do you recall what that figure is?
2. A. Well, last year our per pupil cost was \$1,423.00. If
3. you add about thirteen percent to that you ought to come
4. close to it. That's about all I can tell you.
5. Q. I think you mentioned in the neighborhood of fifteen
6. hundred dollars per pupil. Does that sound correct?
7. A. Somewhere around that.
8. Q. Could you tell me what the per pupil expenditure, what
9. is listed in your current budget for per pupil expendi-
10. tures?
11. A. For next year?
12. Q. No sir, for the current year.
13. A. For the current year? No, that's what I was guessing
14. at.
15. Q. The budget though, what's in the budget as opposed to
16. your . . . I asked you first for your estimate of the
17. actual per pupil expenditure.
18. A. Lord, I don't know how we can get to an actual cost un-
19. til I finish the year out.
20. Q. I thought you were estimating the actual cost.
21. A. Well, I'm saying we can approximate; add twelve and a
22. half percent to the one from last year, if you wish.
23. That will get you an approximate figure. That's about
24. as good as you can do.

1. Q. Didn't you just indicate that your approximate actual
2. per pupil expenditure for the current fiscal year was
3. in the neighborhood of fifteen hundred dollars?

4. A. I would say somewhere in the neighborhood of fifteen
5. hundred dollars. That's a rough guess is all I can tell
6. you.

7. Q. So what does your budget show as the per pupil allotment
8. for the current year?

9. A. For the current year?

10. Q. The difference between what's budgeted and what your
11. estimate of the actual expenditures will be?

12. A. Well, there are all different ways of figuring per pupil
13. cost. What do you want to do, figure it for . . .

14. JUDGE MOON: Figure it the same way you figur-
15. ed the fifteen hundred dollars. Do it on fifteen hun-
16. dred or whatever it is.

17. A. Okay, look at the budget and take the operational cost,
18. the total instructional cost, leaving out capital outlay
19. and debt service, and divide it by 11,131.

20. Q. It's actually \$1,824.00 per pupil this year, isn't it?

21. A. It may be up there.

22. Q. Yes sir. And you estimated your actual expenditures
23. would be about fifteen hundred?

24. A. I'm not telling you I'm going to spend all that money.

1. A. Yes.

2. Q. And you did just indicate that you may not spend all the
3. money which has been appropriated for your budget this
4. year.

5. A. That's right. You hardly ever would dare to spend all
6. of it.

7. Q. And to spend it all it would involve an increase from
8. fourteen hundred last year to eighteen hundred per pupil
9. this year.

10. A. Well, there's another facet to it too, and don't forget
11. that. Maybe I won't get all the revenues I'm projecting.
12. So, I don't have all that budget.

13. Q. In the future you are going to have additional building
14. needs, are you not? At some point in the future?

15. A. At some point in the future we will, yes.

16. Q. Are the rising costs of construction costs going to pre-
17. vent you from building necessary schools?

18. A. Not if it has to be done. It may slow us down a little.
19. We have to look at the practicality of it and the funds
20. available to do it, and find that that is in the final
21. analysis the decision that is made.

22. Q. Are you aware that the City is not seeking to acquire
23. Pleasant Valley School?

24. A. I'm aware of that.

1. Q. Are you aware that in many cities around the state count-
2. ies continue to operate schools which are within the en-
3. larged city?

4. MR. SMITH: I object to this. This has no
5. application to this case whatsoever. How would he have
6. any way of knowing about that?

7. Q. Mr. Dishner, do you foresee any problem in operating
8. the Pleasant Valley School if this annexation is granted,
9. operating it within the enlarged City?

10. A. No, we might get charged for it. I don't know, they
11. might make a service charge. They do that, I think, for
12. some services they provide. But it's minimal, so I don't
13. see any major problems with it.

14. JUDGE TRABUE: Mr. Dishner, if the County were
15. to retain Pleasant Valley School, I'm not clear, is it
16. your intention or is it the County's intention then to
17. continue to educate those children in the annexed areas
18. that now go to that school on a permanent basis?

19. A. No, that has not been our position.

20. JUDGE ARTHUR: I think we can assure you
21. you're not going to be charged any service charge for
22. operating your own school, if that's what you just said
23. a minute ago.

24. Q. Mr. Dishner, do you know approximately how many snow

1. days you have per winter compared to the City school sys-
2. tem?

3. A. We average generally in the neighborhood of eight. The
4. year before last it was fifteen, this year it was none.

5. Q. How does that compare to the City school system?

6. A. The City school system doesn't miss near as many snow
7. days as we do.

8. Q. What is a snow day?

9. A. A snow day is one we figure we can't run the buses safely
10. on the roads.

11. Q. And in what situations would that occur?

12. A. Well, when there are conditions on the road which I deter-
13. mine is either slick or covered with snow or covered with
14. ice, that may be a hazard. It could occur with water;
15. it never has with us. It's mostly with snow.

16. Q. It's usually snow and ice?

17. A. Snow and ice. Sometimes power.

18. MR. GLASS: No further questions.

19. JUDGE MOON: All right then, we'll recess
20. until about 2:05.

21. (Luncheon Recess)

22.

23.

24.

E. B. CRAUN,

having been duly sworn, testified as follows:

Direct Examination by Mr. Smith:

Q. Will you tell the Court your name, sir?

A. My name is E. B. Craun.

Q. What is your occupation?

A. I work as an Extension Agent for the Cooperative Extension Service administered through V.P.I.

Q. And do you work in Rockingham County?

A. Yes. My responsibility is within Rockingham County.

Q. How long have you served in Rockingham County in that capacity?

A. Since September of 1965.

Q. You are a graduate of Virginia Tech?

A. That's right.

Q. And you've had experience in other counties besides Rockingham?

A. I worked for nearly a year in Franklin County after finishing college. Then I worked two years in Rockbridge County and a little less than a year in Craig County.

Q. What are the functions and responsibilities of the Agricultural Extension Office?

A. We extend information, research, information, in the field of agriculture. Also recommendations on home economics,

1. home management, in fields of nutrition, to families on
2. an informal educational program throughout the County,
3. and organized groups.

4. Q. Do you have various programs, information programs, for
5. farmers that you put out through your service?

6. A. Yes, we have periodical newsletters that go to them on
7. commodity subject matter, we also coordinate organized
8. association sales, market expansion groups. We also
9. coordinate the work of performance testing on the part
10. of dairy testing and beef cattle testing programs. And
11. these are quite extensive in Rockingham County, because
12. there is a sizeable amount of production in each of the
13. different agricultural areas.

14. Q. And how many people are employed in the Agricultural Ex-
15. tension Office?

16. A. In our Rockingham County Extension Unit there are five
17. agents, there is a half-time position shared in farm
18. management with Augusta County; five professional workers
19. and one half-time farm management person.

20. Q. Can you tell us the approximate budget of your office?

21. A. Our approximate budget for the year ending last July was
22. about a hundred and sixty-eight . . . between a hundred
23. and sixty-eight and a hundred and sixty-nine thousand dol-
24. lars.

1. Q. And how is that funded?

2. A. Of that budget, thirty percent of it was shared by Rock-
3. ingham County, the remainder coming from . . . adminis-
4. tered through V.P.I. and Virginia funds.

5. Q. Does the City of Harrisonburg contribute anything to
6. your operating budget?

7. A. No sir, they don't.

8. Q. Does your office provide any services to the citizens of
9. Harrisonburg?

10. A. We provide the services of homemakers and home grounds
11. calls and requests for particularly home garden calls,
12. home grounds calls, on help on ornamental horticulture
13. type calls, of plant tests, weed control problems, this
14. type of problem, we get calls. Occasionally housing
15. calls. Some of those persons have requested when the
16. computer home energy program was offered, they got analy-
17. sis on installation costs for their homes. So, they are
18. not turned down, no, on a request basis.

19. Q. Now, you said that Rockingham County is a substantial
20. agricultural county?

21. A. Yes.

22. Q. How many acres of agricultural land are there in the
23. County?

24. A. A quarter of a million acres; just slightly over two hun-

1. dred and fifty thousand acres in Rockingham County.

2. Q. Have you checked on the number of commercial farms in
3. the County of Rockingham?

4. A. Yes, according to the 1978 Census of Agriculture, all
5. farms by the definition of one thousand dollars gross in-
6. come and above was 1,874 farms. Commercial farms, as
7. described by the Census Bureau, of being farms of great-
8. er than twenty-five hundred dollars income, there are
9. 380 farms less than that, or nearly 1,500; a little less
10. than fifteen hundred commercial farms in Rockingham
11. County.

12. Q. Basically what products are produced in Rockingham County?

13. A. Basically poultry, dairy, beef cattle, hogs and sheep,
14. and some fruit. I can give you a breakdown of that.
15. By major farms, major types of commercial farms, those
16. farms held for livestock production was 41.7% of the farms;
17. for poultry and eggs, 28% of the farms; for dairy, some
18. 19.3% of the farms. Now, when you look at it on major
19. sources of income for commercial farms, it's as follows:
20. for poultry, 63.9% of the farm income in Rockingham
21. County is from poultry, or 98.6 million dollars; for
22. dairy, 16.5% of the income on commercial farms is from
23. dairying, or 25.5 million; for livestock, 14.5%, or 22.4
24. million; the remainder, or 5.1%, is about 7.8 million

1. dollars.

2. Q. All right, sir. Now, what does the 1978 Census of Agri-
3. culture refer to as the gross income from agriculture in
4. Rockingham County? Can you give us that figure?

5. A. That figure is \$154,421,000.00 for gross agricultural
6. income. And, incidentally, that leads Virginia. The
7. second largest agricultural income in Virginia is Pitts-
8. ylvania County with forty-four million; a hundred and ten
9. million dollars less than Rockingham County.

10. Q. Did you go back and check those statistics, what they
11. were twenty years ago?

12. A. Yes, I did. In 1958 agricultural income in this County
13. was about thirty-nine million dollars, in 1978 it was a
14. hundred and fifty-four million. So, when you put that
15. on the ten year period--I'm sorry, the twenty year per-
16. iod, 1958 to 1978, the two hundred and forty month per-
17. iod, that's slightly over a half a million growth in ag-
18. ricultural income per month, or slightly over seventeen
19. thousand dollars a day agricultural income growth per
20. day through that period of time.

21. Q. In the last twenty years.

22. A. In the last twenty years.

23. Q. And I believe you said that the hundred and fifty-four
24. million is the 1978 figure?

1. A. That is the 1978 figure. Which actually if you look at
2. the accelerated rate that agricultural income has grown,
3. the phenomenal growth during the past ten years or the
4. past decade in dairy production and poultry production
5. and livestock production as well, you'd be talking about
6. somewhere in the neighborhood of a million dollars a
7. month growth, particularly for the last twenty-four
8. months. The hundred and fifty-four million would for
9. 1980 be approaching a hundred and seventy-five to a hun-
10. dred and eighty million dollars for that year. That
11. would be the anticipated projected on us continuing for
12. the twenty year period.

13. Q. What have your observations been about the cost of agri-
14. culture as opposed to the income from it?

15. A. Costs have multiplied by factors six to eight times the
16. cost . . . you know, there are various ways of describing
17. it. We could talk at length about how costs have multi-
18. plied in all segments of production in this country,
19. whether it's manufacturing or whether it's farming; but
20. farming costs today to plant an acre of corn, for a farmer
21. to put out a corn crop, and we are a high animal produc-
22. tion county, we do produce a tremendous large number of
23. animal units in poultry, in livestock, and a lot of milk,
24. we're a high protein county; the cost to produce that acre

1. of corn, which we produce about forty thousand acres of,
2. we're not a cash crop county, we're a forage producing
3. county, we produce that corn and eighty percent of it
4. goes up for corn silage. It costs more for a farmer
5. to put that corn out now than it cost to buy that farm,
6. actually to purchase that farm, in 1950.

7. Q. Where are the major stores or facilities that sell farm
8. equipment in Rockingham County? Where are they located?

9. A. I have a question on one of them, but I know five of them
10. are within the City limits.

11. Q. Dayton Farm Equipment Company . . .

12. A. Dayton Farm Equipment, I'm not sure on; Early equipment,
13. where the line is.

14. Q. The only one outside the City?

15. A. Right, the other five are within the City.

16. Q. You said that Rockingham was the leading County in the
17. state. What products is it the leader in?

18. A. It leads in poultry with about ninety-nine percent of the
19. turkeys produced in Virginia are produced in Rockingham
20. County. About two-thirds of the broilers. It leads in
21. dairy, it's twice as much dairying here as in any other
22. county, with in excess of twenty thousand dairy cows on
23. 311 Grade A dairies. It also has a total cattle inven-
24. tory, when you look at all beef cattle, dairy cattle, all

1. numbers of about 105,000 head of total cattle. Beef cat-
2. tle-wise, in finishing cattle for slaughter there's only
3. about a hundred thousand, slightly over a hundred thou-
4. sand steers finished in Virginia, and Rockingham County
5. finishes about twelve thousand or slightly more than ten
6. percent of the cattle finished in Virginia.

7. Q. Does Rockingham County also produce hogs and sheep?

8. A. Yes, we're about the fourth largest hog county in Virgin-
9. ia. We're behind about three southeastern counties. It
10. varies between third and fourth, and with two disastrous
11. years and a lot of washouts in that area of production,
12. we may be down to sixth. But we have been fourth or
13. fifth for a number of years, since about the mid-seventies.

14. Q. Does the Agriculture Census produce percentage figures
15. on protein produced?

16. A. No, it doesn't, but we did an interpretation. Being a
17. protein production area a couple of years ago we were
18. quite interested in what amount of protein was produced
19. here. Unlike cash crop areas, in cash crop areas you have
20. a combination of corn, peanuts and soybeans produced, gen-
21. erally as feed crops or as food crops. We have meat,
22. milk and eggs produced. We analyzed this, particularly
23. inasmuch as in the world today the greatest limiting
24. factor in human nutrition is protein production. That's

1. the one component of food that each person has to have
2. regularly in their diet each day. They can store certain
3. amounts of body fat, they can store certain amounts of
4. carbohydrates, but they can't store protein. So, the
5. justification for looking at protein and its significance,
6. in that each person requires an average of about fifty
7. grams of protein a day, this County produced enough to
8. provide more than forty percent of Virginia's annual
9. needs. Now, looked at another way, when we talk about
10. what each farmer, each producer in this County does, this
11. means that . . . we describe food production by the num-
12. ber of people that a farmer feeds. Oftentimes you see
13. in popular written articles that one farmer produces
14. enough for himself and seventy or eighty other people.
15. Put on a protein equivalent, each farmer in Rockingham
16. County produces enough for himself and two thousand other
17. people.

18. Q. You said that Rockingham had practically all of the tur-
19. keys in the state?

20. A. Yes.

21. Q. Can you tell us approximately how many turkeys there are
22. in Rockingham County?

23. A. About ten million.

24. Q. All right, sir, and how about broilers?

1. A. Something in excess of slightly over sixty million produc-
2. ed annually. These are annual production amounts.

3. Q. All right, sir. Are you familiar with the area the City
4. of Harrisonburg seeks to annex?

5. A. Yes, I am.

6. Q. Would you direct your attention to County Exhibit 65.
7. It's on the board here and also in the book. Would you
8. point out just generally what agricultural functions
9. go on in that area?

10. A. The agricultural area that's most intense is this area
11. of dairy and poultry and some livestock, there's a good
12. amount of livestock also in that area, south of Dayton
13. and east to 11. In other words, the area right in this
14. general area (indicating on map). There are also farms
15. up in this area, there's a poultry and dairy--I'm just
16. thinking of certain particular farms. On the northern
17. edge there's also farms, grazing farms. Even grazing
18. farms right here within, right in the edge, right along
19. close up to the current boundaries on each side.

20. Q. Are there also substantial orchard, apple and peach pro-
21. ducing orchards in the annexation area?

22. A. Yes, there is one particularly. About a third of Tip
23. Top Fruit Farm is in that proposed area. And being a
24. newer block of established trees, it represents between

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1. forty and fifty percent of that proprietor's ownership.
2. Q. Can you point out where that is?
3. A. (Witness indicates on map)
4. Q. Roughly across from Ashby Heights?
5. A. Right. Right down in this area.
6. Q. Have you made any observations as to the size of the farms
7. in the annexation area?
8. A. We looked at 1975 aerial photos to identify how many of
9. these farms were farms and what type of farms they were
10. to get some type of handle on what we were trying to es-
11. timate.
12. Q. Direct your attention to County Exhibit 66.
13. A. All right.
14. Q. Does that purport to show the productivity of the active
15. farms in the annexation area?
16. A. Yes. This is what came from looking at the aerial photos.
17. The most readily identified farms would, of course, be
18. the poultry operations. There were eight poultry opera-
19. tions that a 1980 income averages had a gross income of
20. a little over one and a quarter million, as indicated in
21. this exhibit. Those eight farms included 611 acres or
22. 76.4 acres per farm. The ten dairies that are listed
23. there are 148 acre farms. That incidentally is larger
24. than the average size farm in Rockingham County, which

1. is 135 acres. Each of these commercial farms in this
2. area are large from the standpoint of production and
3. income of dollars. We are talking about sizeable income
4. producing units.

5. Q. You listed there at the top of the exhibit general live-
6. stock. What do you mean by that?

7. A. We identified 110 farms, according to that 1975 aerial
8. photo. Sixteen of those we dropped out because we
9. couldn't be sure that there was still agricultural pro-
10. duction there. We knew that likely it had changed be-
11. cause of the size of those units. So, taking the ninety-
12. four and looking at the fifty-two acre livestock units,
13. we applied the average figures for Rockingham County in
14. livestock, hog and sheep production figures to those
15. seventy-six units within that area.

16. Q. The seventy-six general livestock farms?

17. A. Yes, averaging fifty-two acres.

18. Q. All right, and you said that their total farm gate in-
19. come, would you tell us what farm gate income is?

20. A. That means gross income by live animals sold; that's
21. gross income.

22. Q. All right. For those farms it totaled to be what?

23. A. Just slightly over two million dollars. These figures
24. are average figures, very conservative figures.

1. Q. And then you found the number of dairy farms in the area?

2. A. Yes sir. These are the ten that average 148 acres. And
3. in that area, I'd like to add too, that in the particu-
4. larly south of Harrisonburg toward Dayton, we have an
5. ethnic area of Rockingham County where many Mennonite
6. people live. And many of those dairy farms, or family
7. dairies in that area, have very small acreages of seventy
8. and eighty acres of land where they milk eighty and nine-
9. ty cows on those farms. So, using County figures of
10. about seventy-five cows per farm, and 15,000 average milk
11. production rolling herd average, and \$12.66 for an aver-
12. age state price of milk last year, we gave you a very
13. conservative figure. These figures are conservative.
14. Actually when you look at livestock figures and using
15. the average prices for 1980, they are like twenty percent
16. under 1979 beef cattle prices. So, you see, we didn't
17. go back and run an average of prices, we just used what
18. the average 1980 prices were, because we had those most
19. readily available.

20. Q. And your survey then shows there are about ninety-four
21. farms in the area sought for annexation?

22. A. Right.

23. Q. Producing \$5,266,910.00 in farm income per year.

24. A. That's what we were able to identify from the aerial

1. photos, yes.

2. Q. Did you make any computation as to the percentage of the
3. Virginia aggregate agricultural income in Rockingham
4. County?

5. A. Yes, I did. There was about one and a quarter billion
6. dollars income in Virginia. That came out to be . . .
7. well, the ag. income in this proposed area is 3.4% of
8. the agricultural income in Virginia. I'm sorry, it's
9. 3.4% of the ag. income of Rockingham County; .4% of Vir-
10. ginia. I'm sorry, I said it initially wrong.

11. Q. The percent of the Rockingham income . . .

12. A. Rockingham of Virginia is 12%; 12% of the agricultural
13. income of the state.

14. Q. All right, sir. The County is 12% of the agricultural
15. income of the state.

16. A. The annexed area, the proposed annexed area is about
17. 3.4% of Rockingham County.

18. Q. Didn't you have another computation for that, 4.1%?

19. A. On commercial farms it would be 4.1%; on commercial farms,
20. farms above twenty-five hundred dollars income. Right.
21. 3.4% on all farms and 4.1% on commercial farms.

22. Q. And the percentage of all of Virginia's agricultural pro-
23. duction within this area is how much?

24. A. .4%, almost a half a percent.

1. JUDGE ARTHUR: Before you leave this exhibit,
2. sir, what is the average acreage requirement for a poul-
3. try farm? Is there such a thing as purely a poultry
4. operation, they don't have other farming operations too?

5. A. Oh, yes.

6. JUDGE ARTHUR: Or do they have a little bit
7. of everything.

8. A. The 1978 Census shows 204 or 202 poultry operations in
9. this County. I don't know that there is a requirement;
10. I've never been told that there's a requirement.

11. JUDGE ARTHUR: Well, as an expert in the area,
12. I assume you don't need a lot of acreage, is that right?

13. A. That's right.

14. JUDGE ARTHUR: They hardly get their feet
15. dirty, do they

16. A. When you cover ten acres with houses, that houses a lot
17. of birds.

18. JUDGE ARTHUR: Ten acres with houses on it?

19. A. That's a lot of birds. You can be pretty small, the unit
20. can be small acreage-wise.

21. Q. There are a number, as you said, of poultry operations
22. within this area, both turkeys and broilers.

23. A. Yes, there is eight. We identified eight poultry opera-
24. tions and ten dairies.

1. Q. How do those farmers dispose of their manure from these
2. fowl?

3. A. They use it primarily to recycle through crop nutrients,
4. through the application to land to be recycled as fertil-
5. izer.

6. Q. That means they spread it on the ground, doesn't it?

7. A. Right.

8. Q. And there's a certain odor associated with that for a
9. period of time?

10. A. Yes.

11. Q. You told us about the orchard production in the east end
12. or right across from the Ashby Heights Subdivision. Is
13. there a substantial spraying required to make those trees
14. productive of apples and peaches?

15. A. Yes, there is eight or ten sprays that go on them a year
16. to keep them productive.

17. Q. Is there a certain toxic effect to that spray?

18. A. I'm not sure how toxic, because it depends on materials
19. used, and more recently less toxic sprays have been used.
20. Many of the old more toxic sprays like lead arsenate and
21. all have outlived their usefulness and have been replac-
22. ed by less toxic. So, you know, you're talking degrees
23. a bit. They would be toxic to some living organisms
24. that they are designed to get rid of, like fungi and

1. blight organisms and insects.

2. Q. All right, sir. Are these things like spraying those
3. trees and spreading manure on the ground, are they com-
4. patible with City governmental regulations?

5. A. I would think they would be compatible. I don't think
6. it's a real non-compatible relationship there.

7. Q. Well, it wouldn't be very compatible to the neighbors
8. in the subdivision across the street, would it?

9. A. No, not something that's bordering that's right close up
10. it wouldn't be compatible, particularly if they didn't
11. like an occasional odor.

12. Q. Based on your knowledge of the farming operations in the
13. annexation area and the farmers who operate these facil-
14. ities in there, what do you feel would be the effect on
15. them if they are annexed to the City of Harrisonburg?

16. A. Their land values would change. And this, as I under-
17. stand it currently, Harrisonburg does not have a land use
18. tax assessment. This would dramatically increase, of
19. course, their taxes. We talked a few minutes ago about
20. the fact that there had been dramatic increases in food
21. production in this County, and this was allowed to be
22. brought about because this County managed to implement
23. land use taxation. And as taxes went up, they didn't go
24. up quite as fast for people who were producing food.

1. They continued to increase over the years, but not at as
2. rapid a rate. You know, in my opinion, that would be that
3. land is not annexed to produce food, so therefore in my
4. opinion the taxes would be prohibitive for that continu-
5. ing production unit to exist. That's what's happened in
6. other annexed areas in the past history of Virginia, as
7. I understand it. The operations have been taxed off the
8. land.

9. MR. SMITH: Your witness.

10. JUDGE MOON: Could I ask you a question?

11. How is land say for dairy farms taxed? Is there an across
12. the board tax on all dairy farm land with the land use
13. tax, or does it vary throughout the County?

14. A. You're asking about how land use taxation is set up?

15. JUDGE MOON: Well, do all dairy farmers pay
16. the same? Is their property assessed for land tax pur-
17. poses at the same value per acre?

18. A. I couldn't answer that directly, because I know that the
19. taxation structure is not set by dairy farms. It's set
20. on eight classifications by the soils map, by your pro-
21. gressive soils survey. It's not identified by dairy farms
22. or by poultry farms or by . . . now, when you're talking
23. about appraisal values, you may have some relationship of
24. appraisals to units of production. But land use taxation

1. is from the potential of what that land will produce as
2. to how it's been mapped as a soil.

3. JUDGE MOON: Can you just give me an example
4. of any particular category of what the . . .

5. A. No, I can't.

6. JUDGE ARTHUR: They aren't taxed by categor-
7. ies, are they? They are taxed by the value of the land
8. for agricultural purposes.

9. A. Right.

10. JUDGE ARTHUR: Isn't that the way it works?

11. A. Right.

12. JUDGE ARTHUR: I might have land that's worth
13. a thousand dollars an acre and Judge Moon might have an
14. old run-down farm worth twenty-five dollars an acre. But
15. it would be assessed as agricultural land and not commer-
16. cial or industrial.

17. A. Right, your eight classifications, group one and group
18. two soils; as I mentioned earlier, this County has a
19. quarter of a million acres in farm land in this County
20. that's privately owned as farms. It has . . . we men-
21. tioned, you know, about forty percent of it, about forty
22. thousand acres of it grows corn. Only about seventeen
23. percent of our land area in this County is in the group
24. one, group two soils, which is in that high taxation

1. group. In other words, that's your inner vales and your
2. creek bottoms and your second river bottom, and your very
3. best soil types.

4. JUDGE MOON: And you don't know what that's
5. assessed at per acre insofar as . . .

6. A. You'd have to ask the taxation office here. I think
7. the maximum goes to seven or eight hundred dollars an
8. acre.

9. JUDGE MOON: If you were of a mind to become
10. a farmer now and had enough land, is there any rule of
11. thumb as to how much you can pay for your acreage and
12. still hope to make it a reasonably profit-going operation.

13. A. That depends on what you put on the acreage. The debt
14. service, how you capitalize it, you would have to . . .
15. there are some rules of thumb from the standpoint of
16. dairying or a poultry operation, as to what percent of
17. the income can service debt. Generally on a dairy opera-
18. tion this has ranged up to as high as thirty or thirty-
19. one percent of the income. This varies, you don't have
20. absolutes as to the productivity . . .

21. JUDGE MOON: Well, I'm not asking about abso-
22. lutes, just ranges. I mean, you couldn't say pay two
23. hundred thousand dollars an acre and hope to make a pro-
24. fit on a farm. I mean, I take it you've got to pay at

1. least twenty-five dollars an acre. But is there some
2. range like eight hundred to a thousand or five hundred
3. to nine hundred dollars, something like that?

4. A. You have land that a person could pay a thousand or fif-
5. teen hundred dollars an acre for and not be able to pay
6. for it. You have farm land that adjoins or is close to
7. an already established farm that will be bought for three
8. or four thousand dollars an acre and continue to be farm-
9. ed because that man, basically, is already established,
10. he's paid--his farm is largely paid for, the additional
11. investment debt is spread back on the land that he's al-
12. ready on. But for a new man starting out, you can't go
13. out and make the initial investment, and I believe that's
14. kind of what your question is leading to. If a person
15. goes in to start out, it's virtually impossible. Farm
16. debt in this country has quadrupled in the last twenty
17. years, and we saw a fifty percent increase since last
18. March in interest. So, this is really where the concern
19. on annexation . . . it may not be as much the 5.2 million
20. dollars lost in agricultural income as it is to what it
21. does to the balance of what is left out there, the other
22. hundred and seventy million income, and to the relation-
23. ship of what's happening when you pull the tax base away,
24. the tax sharing base away, from agriculture and expect it

1. to carry the services that the County will continue to
2. render. That's where the real danger of what's happen-
3. ing to agriculture and what the end result will be. Be-
4. cause agriculture hasn't fared too well from some of the
5. things that Mike was asking here, from the standpoint of
6. odors, and the conditions that have been implemented over
7. the past twenty years, it's been attempted to be kept
8. at an arm's length. And for those reasons and the tax
9. reasons, annexed land area--don't anybody fool themselves,
10. it won't be kept in farming. It won't be maintained as
11. agricultural land. Some parts of the country have done
12. that, but this part of the country hasn't.

13. JUDGE TRABUE: Why is changing the yellow line
14. going to change what a farmer . . . whether he's going
15. to sell or not.

16. A. Say that again.

17. JUDGE TRABUE: Why is changing the yellow
18. line on a map going to change a farmer's decision as to
19. whether he's going to remain a farmer or sell. If he's
20. got the farm there.

21. A. Because of the tax burden.

22. JUDGE TRABUE: Well, you're assuming then that
23. the tax burden would not be equalized by annexation or
24. that no consideration would be made for it.

1. A. Right. I'm assuming that it wouldn't be balanced. It
2. may be level, and I didn't get to hear the discussion
3. yesterday, but it may be level for a period of whatever,
4. three years or four years or five years; but, in time it
5. will come. And with the other spiraling costs that farm-
6. ers are faced with, particularly energy . . . you know,
7. the efficiency of agriculture has been phenomenal in this
8. country. One way to describe American agriculture is a
9. little formula that goes like this. Two plus three plus
10. fourteen equals thirty-eight. And what that means is,
11. that two percent of the people in the United States farm,
12. plus three percent of the energy used in the United States,
13. plus fourteen percent of the arable land in the world,
14. equals thirty-eight percent of the world's food produc-
15. tion. The efficiency of American agriculture is phenome-
16. nal. It's only been phenomenal because it's been allowed
17. to produce, it hasn't been discouraged or hasn't been
18. taxed off the land. In many localities throughout this
19. country in the past twenty-five, particularly the last
20. thirty years, tremendous amounts of it has been taken
21. for development, urban sprawl, and what-have-you. So,
22. it has meant that what agriculture has had to do is be-
23. come increasingly efficient to keep up. But we know we
24. someday are going to reach that point, and in many in-

stances we already have, in most counties, this county being one exception, where they have turned the other way and are reducing annually the amount of agricultural production from that unit or from that county.

JUDGE MOON: All right, Mr. Cogar.

Cross Examination by Mr. Cogar:

Q. I'm sorry, sir, I didn't get your name.

A. Craun; E. B. Craun.

Q. C-r-o . . .

A. C-r-a-u-n.

Q. In your conversation with Counsel for the County prior to giving your testimony here or any other time, were you not made aware of the fact that the Manager, City Manager Milam, has testified that he will recommend the adoption of an agricultural land use assessment for the farm land sought within the annexation area? Were you not previously aware of that?

A. I believe I heard that that had been recommended. But a recommendation doesn't mean that that's going to be an absolute, does it?

Q. No sir, it does not. But are you aware of the power of this Court to require it as a term and condition of annexation?

1. A. No, I'm not aware of that.

2. Q. So, if you'll assume for the moment that the Court does
3. order that the farm lands within the annexation area
4. which presently are the beneficiaries of the land use
5. agricultural tax, if you assume that into the future,
6. then is there anything that will cause that to come into
7. development any less rapidly than the farm land has dur-
8. ing the time you have been here?

9. A. Would you restate your question?

10. Q. All right, sir. Assume that after this annexation the
11. land use tax continues. All right, sir, on all the
12. farm land.

13. A. All right.

14. Q. In what way will the farmers in that area be adversely
15. affected by the annexation?

16. MR. FITZGERALD: Are you also assuming that
17. the tax rate will remain the same?

18. A. They will be affected because currently their tax rates
19. would be different. If that changes, you know, as of
20. July 1, their tax rate is different now. That already
21. places them in a significantly higher tax rate on real
22. estate. Yes, that's how it would affect them. It would
23. not just be land use, it would be that they're already
24. into a higher rate.

1. Q. A higher rate?

2. A. Yes.

3. Q. What is the tax rate in the County?

4. A. I don't know exactly, except it's lower than the City's.

5. Q. Do you live in the County?

6. A. Yes sir. It's fifty-one or fifty-two cents Joe or some-
7. body told me.

8. Q. The current effective tax rate within the City is, ac-
9. cording to . . . within the County, according to the
10. County's evidence, is sixty-nine cents; that's the rate.

11. A. Say that again, I didn't understand it.

12. Q. The current effective tax rate in Rockingham County . . .
13. effective. Now, let me explain to you what they mean
14. by that. They have taken the real estate tax and the
15. other taxes, motor vehicle and the like, and added them
16. all together, and on a pro rata basis they arrived at
17. the effective tax rate that's imposed on the citizens.

18. A. All right.

19. Q. They say that's sixty-nine cents in Rockingham County,
20. the effective tax rate.

21. MR. SMITH: Did he testify to this on direct?
22. I don't think your cross . . .

23. MR. COGAR: No sir, no sir. He brought up the
24. matter of taxation and I want to ask his opinion on some-

1. thing.

2. Q. Now, Mr. Craun, what in your opinion would be the effect
3. on this farm land if the current effective tax rate im-
4. posed in the County would continue without annexation
5. and would increase in 1982 to seventy-four cents. Would
6. you write these figures down? For 1980 . . . no, excuse
7. me, for 1981 it would be sixty-nine cents. 1982, seventy-
8. four cents. 1983, eighty-five cents. 1984, ninety-six
9. cents. 1985, \$1.09. 1986, \$1.22. 1987, \$1.37. Now,
10. in your professional opinion, if that's the tax rate that
11. is going to be imposed on this agricultural land, if the
12. tax rates of the County increase at that rate, what ef-
13. fect is that going to have on the agricultural uses in
14. that area?

15. A. Well, I wouldn't give a professional opinion on that un-
16. less you give me the comparison as to what the projection
17. would be for the City. Because, there is no comparison.
18. That's kind of like when you're talking about inflation
19. or other things that's come before, relative to what?

20. Q. Well, sir, if I gave you the tax rate in Denver, Colora-
21. do . . .

22. A. You give it for Harrisonburg.

23. Q. That's not going to help you . . .

24. A. Yeah, you give it for Harrisonburg, that would be a com-

1. parison. I have no opinion on that unless you give me a
2. tax rate for Harrisonburg.

3. Q. Well, this all assumes that Harrisonburg isn't going to
4. have anything to do with that land. All right, sir? So,
5. you don't need the Harrisonburg tax rate. You just tell
6. me what is going to happen to that farm land in Rockingham
7. County with this sort of tax rate increase?

8. A. I can't give an opinion on that, because I'd have to go
9. back and see what's occurred in the last number of years.

10. MR. FITZGERALD: I would like to object to
11. the question. It is a question that requires or calls
12. for an opinion without giving him the full range of
13. assumptions that anybody would have to have as to what
14. that is. You would have to know what the cost of living
15. is, what the cost of everything is, the cost of produc-
16. tion is, what the inflation rate is, everything in the
17. world, to compare it with to know what would happen.

18. MR. SMITH: You would have to know the assess-
19. ments.

20. MR. COGAR: Well, I think we've had some
21. rather broad assumptions based on some fairly limited
22. data.

23. JUDGE MOON: I think he's answered though that
24. he can't answer it unless he knows . . . he can't express

1. an opinion unless he has these other factors.

2. Q. What other factors would you need to have?

3. A. You'd have to look at what inflation has done, what the
4. income of the farmer, how much it is increasing, what
5. his whole situation is as to how he can service taxes,
6. how he can service debt, how he can service his whole--
7. you know, his whole relationship to management. You have
8. to look at it so you can tell how much taxes he can pay.
9. You didn't give anything as to whether his assessment is
10. going to stay the same; you know, that's just going to be
11. the rate increase. Assuming that his assessments were
12. going to remain the same or increasing at the inflation
13. rate.

14. Q. There is just a whole range of data that you would need
15. before you could form an opinion on that, correct?

16. A. Yes, that's right, that's the way I see it. Because we
17. know what effect it has been in the past, it has been
18. detrimental for the past twenty-five years. It has been
19. very serious for agriculture.

20. Q. What effect, where?

21. A. Well, basically in the United States you're not produc-
22. ing--you're not staying that much ahead in food produc-
23. tion, ahead of population increases and export demand.
24. In other words, the potential to expand through produc-

1. tion is called for by the increased cost of energy, and
2. the only way our balance of payments has occurred is in
3. our increased export foods, which has called for more
4. production. The potential is being reduced.

5. Q. All right, sir.

6. A. It's how it affects not just Rockingham, but how it af-
7. fects Virginia and how it affects the Country.

8. Q. You have, I think, expressed the opinion or at least im-
9. plied that if this land is annexed by Harrisonburg, with-
10. out more, that the farmers are going to be unable to con-
11. tinue to operate the agricultural lands in this area.
12. Are you telling the Court that? Or do you need a whole
13. range of information similar to that which you needed
14. for the last assumption I asked you to make, before you
15. can make that conclusion?

16. MR. SMITH: He already told the Court that.

17. A. I've already explained that, yes. It's based on previous
18. history in Virginia, as to what's happened.

19. Q. Well, what previous history and where?

20. A. Of when land is annexed. Is it annexed for agricultural
21. purposes?

22. Q. Do you know of any jurisdiction within the State of Vir-
23. ginia where farm land has been annexed where the City
24. annexing it has been required by a Court to continue a

1. land use tax assessment?
2. A. Virginia Beach, I think is one locality, or they have
3. continued it.
4. Q. They have continued what?
5. A. Land use assessments, taxation.
6. Q. There wasn't such a thing as a land use tax assessment
7. when Virginia Beach became Virginia Beach, the city.
8. A. Virginia Beach was one of the southeastern counties.
9. Q. There wasn't any annexation down there, was it?
10. A. It was a merger, or whatever it was. They continued
11. within the city area.
12. Q. Well, that was where a bunch of small communities got
13. together to form a city to avoid being annexed. Are you
14. saying something adverse happened in Virginia Beach?
15. Did something bad happen to the agricultural production
16. at Virginia Beach?
17. A. There's a lot of agriculture that left, a lot of agri-
18. culture quit.
19. Q. Do you know why?
20. A. Because it was urbanized.
21. Q. The eastern seaboard corridor is urbanizing at a very
22. rapid rate, is it not?
23. A. True, so is the Valley.
24. Q. And if you drew a line around Virginia Beach and west of

1. Richmond and up around Fredericksburg and behind Fairfax
2. County, you've got about eighty to eighty-five percent
3. of the population in the State of Virginia in that corri-
4. dor. Do you know that?

5. A. Yes.

6. MR. SMITH: Your Honor, I am reluctant to ob-
7. ject to Counsel's questions, but if he could confine it
8. to the Shenandoah Valley. If he slips over into Shenan-
9. doah or Augusta County a little bit, that's all right;
10. but I don't think this case has any relationship to what
11. happens in Virginia Beach.

12. MR. COGAR: I wasn't the one that motored down
13. to Virginia Beach. He went down there first.

14. JUDGE MOON: Well, overruled. He's talked
15. about what's happened as a result of other annexations.

16. Q. And that's not an annexation, is it?

17. A. That may not be an annexation. I stand corrected, that's
18. not an annexation. But I know very well with Vago Farms
19. and those areas that have gone, the farms that are no
20. longer there, I am aware of that. I've visited that
21. area over a period of years, and I'm aware of what has
22. taken place. And I know that in my opinion, and I thought
23. that the only opinion that I had expressed, was that the
24. home development needs have not been compatible with ag-

1. riculture. And I think that was the opinion that I have
2. been expressing. Whether it's throughout the County or
3. whether it's right here within that annexation area.

4. I don't think I made any differentiation on that when I
5. said that. But you were asking questions what within the
6. annexation area would be the change, and that's why I re-
7. lated to it that way.

8. Q. How long have you been in Rockingham County?

9. A. Fifteen years.

10. Q. What have you seen occurring within that annexation line
11. since you've been here? If you'll look over on that map
12. between the red and the green, what's occurred in the
13. fifteen years that you've been here?

14. A. What part?

15. Q. In all of it. What has the trend been?

16. A. Well, I guess there has been different things. I don't
17. know that I have really analyzed it to give an opinion.

18. Q. Well, let me just see if I can cut through it. Increas-
19. ingly year by year more and more of that farm land is go-
20. ing into residential and commercial and industrial uses,
21. is it not?

22. A. Yeah, that's true. Because you have particularly the
23. residential areas that have developed. You know, there's
24. an interest to get out of the City and go out and build

1. a home in the County. And that has occurred up until
2. 1962 until the five acres thing came in. There's a lot
3. of that just on small lots. And, you know, I've seen
4. factories built, I've seen small industries come in and
5. large industries come in.

6. Q. The answer to my question is you have seen it increasing-
7. ly go from agricultural into residential, commercial and
8. industrial use.

9. A. Some parts of it, some parts of it. But why should that
10. be the determining factor on all of it? Why should all
11. of it?

12. Q. I'm just asking you a question, what you have observed.
13. And you are observing that continuing to happen daily,
14. are you not?

15. A. Not at the pace it did for awhile. You've got more of
16. the condominium types and not the sprawl, which is saving
17. land.

18. Q. Well, there's growth and construction going on out there
19. right now, is there not?

20. A. I'm not denying that. I'm saying it's a little bit more
21. objective than it had been.

22. Q. And is there any land within that entire area that can
23. be bought for an agricultural use at the top range or
24. figure that I heard you mention, twenty-five hundred to

1. five thousand dollars?

2. A. I'm not aware that there is or isn't.

3. Q. Are you aware of where the prime agricultural land is in
4. this annexation area?

5. A. Yes, I think so. I haven't studied the soils map exten-
6. sively on it, but I know where some of the most intensive
7. farming is and I know where, you know, some of the best
8. farms are. And some of the best operators sometimes take
9. less than prime agricultural land and make very efficient
10. operations out of it.

11. Q. Are you aware of the significant amount of the prime ag-
12. ricultural land within that annexation area that has
13. already been developed or rezoned for residential, com-
14. mercial or industrial uses by the County?

15. A. No, I'm not aware of it.

16. Q. You've made no study of that?

17. A. I've not made a study of it.

18. Q. There is an exhibit that's been introduced into evidence,
19. Mr. Craun, and the green that you can see here is the
20. prime agricultural land, according to the evidence in
21. this case, within the annexation area. What you see
22. beneath it within the boundary of the annexation line,
23. everything that you see colored is what the County has
24. zoned for the various uses which you see down here. All

1. those colors are for uses other than agriculture. What
2. effect do you think that's going to have without annexa-
3. tion?

4. A. I think it will have a similar effect to what we're des-
5. cribing, and yet at a slower rate.

6. Q. Well, let me ask you this. If the County had seen fit
7. in their zoning ordinance to hold that forever in agri-
8. cultural zoning, this industrial could never have devel-
9. oped, could it?

10. A. That would be a true statement.

11. Q. To the extent that they continue to rezone it into uses
12. that can be used for a higher, better or more expensive
13. purpose than agricultural land, that's likely to tend to
14. force the values of that land up and into development,
15. isn't that true?

16. A. What's your definition of prime agricultural land as de-
17. fined on that map?

18. Q. I think we got that from the Soil Conservation people.

19. A. I have some questions about some land that's located up
20. in here. It's called prime agricultural land on top here
21. as versus this land right in here. We ought to have some
22. explanation as to why that's colored like it is. You've
23. got some very rough rock outcrop areas over in there
24. that you've got prime agricultural land colored on, and

1. down in here is this area going out towards Dayton that
2. you have practically no prime agricultural land shown in.

3. Q. All right, sir. Are you familiar with the Soil Conserva-
4. tion Commission?

5. A. Oh, I certainly am, yes.

6. Q. Are you going to be around here next week?

7. A. I plan to be.

8. Q. Well, I'll ask you to do something. You go over to the
9. Soil Conservation Office if you have any question . . .

10. A. I didn't prepare that.

11. Q. I know, but if you have any questions about it whatso-
12. ever, I will ask you to go to the Soil Conservation Com-
13. mission and get from them their mapping of the prime ag-
14. ricultural land in this area. And if you find that it
15. varies in any respect whatsoever from what is shown on
16. this map, will you present yourself back here Tuesday
17. with the data, and I'm sure the Court would like to hear
18. it. Would you do that, sir?

19. A. I'll do it if I have time, but I'm not sure I'll be here
20. Tuesday.

21. MR. FITZGERALD: Are you making him your ex-
22. pert?

23. JUDGE MOON: I wouldn't do it unless Mr. Fitz-
24. gerald asked you to.

1. MR. SMITH: Are you going to subpoena that
2. information?

3. JUDGE MOON: We're on his time now.

4. Q. There's farm land in the City, isn't it?

5. A. Oh, yes.

6. Q. It has continued to survive, has it not?

7. A. Yes, it has continued to survive. In 1976 over half of
8. all farm income became non-farm income, so you know your
9. example isn't all that good really. I mean, it has con-
10. tinued to survive, yes, but what are the conditions.
11. In 1976 the average farm income in the United States was
12. something in excess of twenty-five thousand. In that year
13. non-farm income to farmers went over twelve thousand five
14. hundred. So, that's not a very good example.

15. Q. Well, I wasn't giving you an example, I was asking a
16. question. The question is, are there not agricultural
17. uses that continue to endure within the corporate limits
18. of the City of Harrisonburg? If they were brought in by
19. the last annexation in 1962, the annexation didn't dry
20. them up, did it? It didn't put them out of business,
21. even without an agricultural land use tax. They're still
22. there.

23. A. Yes.

24. Q. Now, these programs that you operate . . . what about

1. this manure thing? I wasn't sure what you thought about
2. that. People spread manure in cities all the time,
3. don't they?

4. A. Yes, I'll agree with that.

5. Q. I spread a lot of it in my backyard and I live in the
6. city. There's nothing wrong with that, is there?

7. A. Did I say there was anything wrong with it?

8. Q. Well, you seemed to have gone one way or the other on it.
9. I'm not sure. You don't see anything wrong with it?

10. Is that what you're saying?

11. A. It's all in the hands of the beholder.

12. Q. In the nose of the beholder. On the matter of the poul-
13. try industry and following up on a question that was
14. asked you by the Court, from incubation to the grocery
15. store, what is the cycle? How long does it take to raise
16. a chicken until it's marketable?

17. A. Well, your incubation period is about three weeks and
18. then it's five to seven weeks, depending on the size of
19. the bird. These different companies will produce a dif-
20. ferent size bird. So, you're talking about three plus
21. five or three plus seven weeks.

22. Q. All right. And that is done within enclosures?

23. A. Yes.

24. Q. And the birds never see the light of day.

1. A. No.

2. Q. And I've heard a figure that one man can manage fifty
3. thousand chickens, is that . . .

4. A. Eighty or ninety thousand; a hundred and ten thousand
5. under new conditions, broilers. Not turkeys, broilers.

6. Q. How many people are employed in agriculture in Rockingham
7. County?

8. A. I don't have those figures right before me. I don't have
9. those figures, but your processing plants have employed,
10. in processing and distribution, have employed over three
11. thousand people. Now, I don't have that. I'm sorry,
12. but I don't have that.

13. Q. On Exhibit 66 you show down here total farm gate income
14. in proposed annexation area, of \$5,266,000.00. Correct?

15. A. Yes.

16. Q. That's what's called gate income, the County does not . .
17. there's no tax, state or local tax on that income to the
18. farmer, is it?

19. A. You pay a state income tax on that. That's income tax.
20. That's gross income.

21. Q. But there's no local tax imposed by city, county or town
22. on that income to the farmer?

23. A. If it was within the City it would be a tax on it,
24. wouldn't there? It would be a licensing tax.

1. Q. But I'm asking you, the tax on the income, do you know
2. of any state, city . . .

3. A. Well, I'm trying to answer your question. If it was in
4. the City, yes, there would be a tax on it, as I under-
5. stand it.

6. Q. All right, what tax would that be?

7. A. It would be the licensing tax.

8. Q. What kind of a licensing tax?

9. A. Business and professional sales license . . . I don't
10. know the exact terminology.

11. Q. You don't know, do you?

12. A. I don't know the exact terminology, but I know about it,
13. I know it exists. I know I've heard farmers talk about
14. it, heard people discuss it.

15. Q. I'm talking about farm gate income. When the farmer
16. receives money when he sells his produce, his product,
17. he is not taxed on the amount of that sale.

18. A. Not in the County.

19. MR. FITZGERALD: Are you talking about a
20. sales tax?

21. MR. COGAR: Sales tax.

22. A. Yes, some of them do pay sales tax, yes.

23. Q. Is this not deemed to be a wholesale transaction?

24. A. Some of them sell a slaughter animal directly to a per-

1. son, they go directly to slaughter, and that animal has
2. to be paid a sales tax on. If they buy it from a local
3. livestock market, which there is two in this town, they
4. have to pay a sales tax on it.

5. Q. Are you talking about at the slaughterhouse?

6. A. No, you pay it at point of purchase.

7. JUDGE MOON: The person that buys it though
8. pays the sales tax, they add it to the price. The farm-
9. er doesn't pay it.

10. A. Right. The person buying it pays it. Now, if you're
11. talking about what taxes . . . I'm not sure that I un-
12. derstand what you're talking about on the taxes.

13. Q. Well, you're not an expert in taxation.

14. A. No sir, I'm not.

15. Q. All right. Did you prepare this exhibit?

16. A. Yes. I helped prepare it or helped see to it that it
17. was prepared, yes.

18. Q. Of the total employment in Rockingham County, what per-
19. centage is in agricultural as opposed to agricultural
20. processing?

21. A. Your fifteen hundred commercial farms would employ on the
22. average about two persons per farm. It may be slightly
23. higher than that, maybe slightly over three thousand
24. people. I don't have the exact figure.

1. Q. Would you look at Exhibit 24, page one.

2. A. All right, sir.

3. Q. Read the first sentence of the second paragraph.

4. A. "There were approximately 33,650 individuals employed in
5. Rockingham County in 1977, with 3,210 employed in agri-
6. culture, 31,440 in non-agriculture."

7. Q. Do you think that that's the approximate ratio of agri-
8. cultural employees and non-agricultural employees in the
9. County today? Do you have any reason to believe it's not?

10. A. That wouldn't take . . . that would be production agri-
11. culture. That wouldn't be anything of processing or dis-
12. tribution.

13. Q. Did you make any effort to ascertain within the annexa-
14. tion area the location of the farms, the ninety-four
15. farms shown?

16. A. Those that I felt didn't relate to an average, particu-
17. larly where we looked at poultry, yes, we looked as to
18. where they were located and particularly as to dairies;
19. those being the somewhat larger commercial farms. We
20. didn't necessarily look at the location, but we looked
21. at size. We didn't try to identify any other character-
22. istics about them except to get as reasonable and as best
23. an estimate as we could.

24. Q. Can you at that map, by any approach to it that you want

1. to, try to give the Court some idea as to where the most
2. of them are concentrated?

3. A. Yes, I can give you where a good many of them are concen-
4. trated. In here west of town you come down and you start
5. with the poultry, poultry and dairy coming in this area,
6. and this . . .

7. Q. Would you stand to the side so that the Court can see?

8. A. Excuse me. The west side down in this major area here,
9. and yet there is poultry and dairy and some livestock up
10. in this area. The fruit is over here. But poultry and
11. dairy and livestock, particularly livestock, is over on
12. this side. But there's dairies right down 42, the cross-
13. over between Route 42 and 11.

14. Q. Now, in that area, is that where you have the large con-
15. centration of large farms?

16. A. Those ten dairies are located in that area, and they
17. average 148 acres.

18. Q. Is this the Mennonite community you spoke of?

19. A. Well, it fringes on it. A couple of these poultry opera-
20. tions, yes, and a couple of these dairy operations are
21. Mennonite farms.

22. Q. Where is the orchard?

23. A. Right here.

24. Q. And you had something up there . . . if you go up there

1. on 33 . . .
2. A. You're talking about poultry and dairy up in this area.
3. Q. Now, go up to the top of the map there, just to the east
4. of 81 at the top of the City . . . to the west of 81,
5. excuse me. The green area, right there. What's in
6. there?
7. A. That's interstate, isn't it?
8. Q. Yes.
9. A. This is Old Furnace Road coming across. Well, that's
10. pasture and some crop land; that's farm land.
11. Q. Do you know who owns that?
12. A. No sir, I don't.
13. Q. Mr. Blose, do you know Mr. Blose?
14. A. Bill Blose.
15. Q. Do you know whether he owns that?
16. A. I'm not absolutely sure. I know he owns some land in
17. that vicinity. I thought he owned land on closer in
18. here.
19. Q. Mr. Blose is a dairyman who is also engaged in land
20. development?
21. A. I don't know that.
22. Q. In terms of the programs which you put on and services
23. which you provide within this area, are those available
24. to anybody that . . . if you put on a program with re-

1. spect to some agricultural interest, is there any limita-
2. tion on who can attend?

3. A. No sir, there is not.

4. Q. And any literature that you publish is available to any
5. taxpayer, is it not?

6. A. Yes, it is.

7. Q. So, whatever services you render are available to citi-
8. zens of Virginia.

9. A. Right.

10. MR. COGAR: I have no further questions.

11. JUDGE MOON: Thank you, sir. We'll adjourn
12. then until Tuesday morning at 9:00.

13. (End of Day's Proceedings)

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24.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME VII

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 21st 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 22nd day of May, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

1. EDWARD LAWRENCE JENNINGS,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. Would you state your name, sir?

5. A. Edward Lawrence Jennings.

6. Q. Are you employed by the County of Rockingham?

7. A. I am employed by Rockingham County as Director of Plan-
8. ning for the County.

9. Q. How long have you held that position?

10. A. I've held that position for approximately three and a
11. half years.

12. Q. And were you a staff planner for the County prior to
13. becoming Director of Planning?

14. A. Yes, I was. I was a staff planner in the position of
15. senior planner for one year prior.

16. Q. How long has Rockingham County had a planning department?

17. A. Rockingham County has had a planning department since
18. June of 1974.

19. Q. All right, sir, if you would direct your attention to
20. Exhibit 4 in the County exhibit book. No doubt that
21. correctly shows your professional qualifications.

22. A. Yes sir, this is an accurate account of my professional
23. qualifications.

24. Q. I note that you have been employed as a planner for the

1. cities of Hickory, North Carolina and Rocky Mount, North
2. Carolina.

3. A. Yes sir. My experience has been some three years working
4. with city planning prior to coming to Rockingham County.
5. In 1973 I was employed by the City of Rocky Mount in
6. the Planning Department. I co-authored the land develop-
7. ment plan for the city. I prepared housing projections
8. for the city; various sections of that plan on land use
9. problems. I was the grant writer in the community de-
10. velopment and block grant program for the city. For the
11. City of Hickory I was block grant writer and administra-
12. tor.

13. Q. What are your present duties and responsibilities as
14. Director of Planning for the County?

15. A. As Director of Planning for the County I am responsible
16. for comprehensive planning, long-range planning. I am
17. the department head who oversees zoning in subdivisions.

18. Q. Do you have other responsibilities as well?

19. A. There are other responsibilities in that I serve as
20. advisor to the Planning Commission of the County and
21. the Board of Supervisors in matters relating to planning.
22. This is a wide gambit of procedures that we do as the
23. Planning Director with the Planning Commission and the
24. Board of Supervisors.

1. Q. Does the responsibilities of the Director of Planning
2. also entail revision of ordinances and dealing with
3. various citizens who have questions concerning land
4. use?

5. A. Yes sir. My responsibility does lie also with the
6. revision of the zoning ordinance and the revision of
7. the subdivision ordinance. And since I have been with
8. Rockingham County the responsibility of all amendments
9. that go to the Planning Commission and the Board of
10. Supervisors for public hearing for the amendment of
11. these ordinances has been prepared by myself.

12. Q. Does the County also provide planning services to the
13. towns located in the County?

14. A. The Planning Department does provide services to the
15. towns within the County. And this has been reflected
16. during our some five year period of experience with
17. the towns. We first started planning services to the
18. towns with the Town of Elkton in 1975-76. A consultant
19. planner was hired that year to prepare a comprehensive
20. plan for the Town of Elkton and for the community ser-
21. vice area of Elkton. In 1976-77, at which time I came
22. to Rockingham County, three staff planners were hired to
23. prepare comprehensive plans for five other community
24. service areas. And during those two years, while the

1. comprehensive plans were being prepared, we worked with
2. community groups, we worked with citizen advisory groups
3. who were made up of citizens from the towns and from the
4. surrounding areas. And ultimately at the end of those
5. two years, five plans had been prepared. After that
6. time, in the summer of 1977, I edited and collated the
7. five plans that had been prepared. And then in January
8. of 1978 I started working with the planning commissions
9. of these towns in reviewing their comprehensive plans
10. and then taking them to the town councils for adoption.
11. Since that time, since the adoption of those plans, I
12. have served the planning commissions of those towns when
13. called upon to do so.

14. Q. Do the towns with the exception of Dayton all have
15. approved plans?

16. A. All the towns in Rockingham County now have approved
17. plans except the Town of Dayton.

18. Q. And those plans are also approved by Rockingham County?

19. A. Those plans have been taken to public hearing, incorporat-
20. ed areas of those plans have been adopted by the Board
21. of Supervisors and amended to the County's Comprehensive
22. Plan.

23. Q. All right, sir, would you then direct your attention to
24. County Exhibit 15. I'd ask you if that is the organiza-

1. tional chart of the Planning Department?

2. A. Yes sir, that's correct.

3. Q. The County has a zoning administrator and subdivision
4. control officer?

5. A. We do have a full-time zoning administrator and subdi-
6. vision agent who serves as an agent for the Board of
7. Supervisors.

8. Q. What is the total number of people employed in the
9. Planning Department?

10. A. Including myself there are four full-time staff people
11. in the Planning Department.

12. Q. Do you know how many the City has?

13. A. I believe they have two.

14. Q. Would you look on then to County Exhibit 24. And I'd
15. ask you what information is shown by that exhibit.

16. A. This exhibit traces the history of the planning program
17. in Rockingham County. It was prepared in conjunction
18. with an application for a National Association of Counties
19. award. And incidentally, the award for the program was
20. cited by NACO and an award was granted for the program.
21. It traces the history of the program, the comprehensive
22. program, that being the creation of Volumes I, II and III
23. of the County Land Use Plan, and also the Joint County-
24. Town Planning Program whereby we established comprehen-

1. sive plans for the towns.

2. Q. Are there any corrections or updates you want to make on
3. that?

4. A. Yes, there is a correction I'd like to make. We have
5. heard several references to the employment figure that's
6. in this exhibit, on page 1 of 4 in Exhibit 24. The figure
7. that's printed here is 33,650; that should be 34,650.
8. And it's cited as employed in Rockingham County, it should
9. be employed in Harrisonburg and Rockingham County in 1977.

10. Q. The County does have a Comprehensive Land Use Plan?

11. A. The County does have an adopted Comprehensive Land Use
12. Plan adopted in May of 1977.

13. Q. Can you just briefly state some of the major policy
14. objectives of that plan?

15. A. In that plan there are twenty-six policy objectives.
16. There are three major points. I'm not going to cite any
17. particular policy objective, but in those policy ob-
18. jectives there are three points within those objectives
19. that should be considered. One is that the County in
20. its citizen group and ultimately the Board of Supervisors
21. in its adoption encouraged the development of balanced
22. communities and community service areas in the County.
23. And these were shown on the County's Land Use Plan. And
24. with the development of those balanced communities pro-

1. viding places of employment, housing, recreation, commun-
2. ity facilities, et cetera, that this at the same time
3. would produce another objective of the plan. And that
4. would be that productive agricultural land be preserved
5. for agricultural production as agriculture is a major
6. economic base of the County. That's the second approach,
7. the second policy. The third policy is that there be a
8. unification of government and cooperation among the
9. County and the towns. But particularly above that, an
10. overall unification of the total governments of Rockingham
11. County and the City of Harrisonburg.

12. Q. Has the County continually strived to update or amend
13. its Land Use Plan?

14. A. Yes, we have. For the last two years the Planning Com-
15. mission has taken a hard look at its Land Use Plan. And
16. realizing that there are other needs within the Plan, we
17. have considered an amendment of rural service centers
18. to the Plan.

19. Q. What is a rural service center?

20. A. A rural service center are communities of some three to
21. four hundred acres in size, low density. There are major
22. intersections in the County where there are communities
23. that exist now where there are rural businesses, such as
24. general stores, this kind of use. These are rural ser-

1. vice centers. We have designated nine on our County
2. Land Use Plan as an amendment. They are not yet amend-
3. ed, but we have looked at this for two years. The reason
4. we chose these areas is to provide very essential rural
5. businesses to outlying rural areas in keeping with the
6. gasoline prices, the cost of commuting to larger commun-
7. ity service areas to seek services.

8. Q. In the development of the Comprehensive Land Use Plan
9. you said that there was various input from citizen groups
10. in the County.

11. A. That's correct.

12. Q. And it's been said in the proceedings in this case that
13. one of the statements made at the time was that the County
14. was in the school business, the towns in the utility busi-
15. ness and the City provided the full range of urban ser-
16. vices. Was that the case when this plan was developed?

17. A. At the time that plan was developed, I believe that was
18. developed and written in--published in February of 1975.
19. The citizen groups were looking at existing conditions
20. of this jurisdiction in developing a plan for the future.
21. And in looking at the existing conditions they looked at
22. the budgets. And in that particular instance, in that
23. context, a statement was made, it was a summarization
24. that the majority of the budget at that time was towards

1. schools. However, I would like to point out that that
2. was written in summarization and in an historical trend.
3. The plan in existing conditions, it goes on further to
4. say on the very next page, and I think this is extremely
5. important in what we have been doing in our planning
6. program that we have been looking at, not only the past
7. trends but the future, in that we are providing places
8. in the future with our plan of all types of people and
9. that's through community service areas and rural areas.
10. The statement on the very next page reads, "Given a low
11. rural density, urban type services are generally not
12. required or demanded. However, a large majority of the
13. County population are urban rather than farm oriented
14. and the demand for services is increasing."

15. Q. All right, sir. Well, at that time the County had a
16. planner.

17. A. Yes sir, they did.

18. Q. They were providing that service as well as other ser-
19. vices.

20. A. We were providing other services, and planning was one
21. of those services that was being provided at that time.

22. Q. All right, sir, would you move on then to County Exhibit
23. 25 and tell us what is shown by that exhibit.

24. A. County Exhibit 25 traces by date the history and growth

1. of the Planning Department of Rockingham County. It
2. shows that on July 25, 1960 the Planning Commission of
3. Rockingham County was authorized and undertook its plan-
4. ning functions by the Code of Virginia. In April of 1962
5. a subdivision ordinance for the County was adopted. Octo-
6. ber 14, 1969 the zoning ordinance for the County was
7. adopted upon the recommendation of the Planning Commis-
8. sion. In November of 1972 a land use plan prepared by
9. the state was presented. In 1974 a citizens committee
10. was formed to review land use issues in the County. In
11. 1974, again in July, the County Planner position was
12. established. In February of 1975, Volume I or Phase I,
13. Existing Conditions of the Land Use Plan, was presented
14. to the Board of Supervisors. In December, Phase II,
15. Trends, Issues and Alternatives, was presented. And
16. then as I have previously cited, in fiscal year 1975-76
17. and 1976-77, contracts were prepared with five of the
18. seven towns in the County; comprehensive plans were being
19. prepared. And in 1976, Volume III, the Recommended
20. Policies of the Land Use Plan, was presented. In 1977,
21. in May, the Board adopted twenty-six policy objectives
22. of the Land Use Plan. And then during 1978, as I have
23. previously cited, the comprehensive plans were reviewed
24. by the Planning Commissions of the towns. And then in

1. that summer, July and August of 1978, public hearings
2. were held and the hearings were adopted except the plan
3. for Dayton. And then it traces to 1978, at which time a
4. land use survey was taken of some thousand miles of roads
5. in Rockingham County. We've been doing other things, of
6. course, since 1978. And as I mentioned, this exhibit
7. was written for a NACO award in 1978, so it does merit
8. some updating. Since 1978 we have reviewed the Land Use
9. Plan for other amendments. We have adopted and amended
10. incorporated areas of the comprehensive plans of the
11. towns. We have reviewed the zoning ordinance. Since
12. last summer we have been taking a strong look at our
13. zoning ordinance and we have presented a package of
14. zoning amendments to our Planning Commission and to our
15. Board of Supervisors.

16. Q. The County has had a zoning ordinance since October of
17. 1969, is that correct?

18. A. That's correct.

19. Q. Has that zoning ordinance been revised in some ways
20. since that time?

21. A. Okay, since that time other zoning districts have been
22. amended to the 1969 ordinance, yes.

23. Q. Is the County's zoning ordinance currently undergoing a
24. revision process?

1. A. It is undergoing a revision process. In October of last
2. year we presented a complete package of new districts to
3. our Planning Commission. Also in February we presented
4. a Site Plan ordinance to the Planning Commission. First
5. I'd like to review what we presented to the Planning
6. Commission in October. As written in the Land Use Plan,
7. there are strong policy objectives to preserve agricul-
8. tural land. And we have realized that there is a need
9. for our agricultural district to adhere to those policy
10. objectives of the Land Use Plan in order to implement
11. that plan. And by that we have established, we have
12. taken our existing agricultural zoning district and
13. broken it into three agricultural zoning districts. We
14. have established a prime agricultural zoning district
15. which would be drawn whereby agricultural uses would be
16. a use by right. These lines would be drawn along soil
17. capability classes, agricultural capability classes of
18. Class I and II, and they would be drawn for areas that
19. were primarily in agricultural use. Our second district
20. would be an A-2 district, would be a general agricultural
21. district. It would be a transitional district between
22. the prime agricultural district and the rural agricul-
23. tural community district. This would be general and it
24. would allow more special uses than the A-1 district; the

1. A-1 district would be a pure agricultural district. The
2. A-3 district would be drawn along the lines of the rural
3. service centers, as I have previously talked about, that
4. are being considered as an amendment to the Land Use
5. Plan. This would be an agricultural rural community
6. district. It would be to encourage agricultural commun-
7. ities that would be . . . that would permit the establish-
8. ment of community centers, churches, very low density
9. residential growth, as low density as presently in our
10. A-1 zoning district. It would allow for some rural ser-
11. vice businesses by the A-3 district. With that A-3 dis-
12. trict we would also consider a B-2 rural business district.
13. That would be for rural businesses for rural areas. And
14. as I said earlier, there would be nine of these shown
15. on the Land Use Plan if adopted, if these series of
16. districts were adopted. Also in this same package of
17. new zoning districts we are presenting a light indus-
18. trial zoning district. And this would be for enclosed
19. industrial operations, warehousing, these kinds of uses;
20. and it would be written to not exclude 70% of any lot
21. area.

22. Q. How many additional districts are contemplated under
23. the revisions?

24. A. Four are being contemplated.

1. Q. And the County already has a mobile home park district
2. in the current zoning ordinance?

3. A. Yes, we do. We have a mobile home park district which
4. was amended to the zoning ordinance in the early 1970's.
5. It sets forth a minimum of ten mobile homes for a mobile
6. home park district. It's a district whereby zoning would
7. occur through a preliminary plan of the mobile home park.

8. Q. Are mobile homes a form of low or moderate income housing,
9. do they satisfy a need for that?

10. A. Yes, they do. I believe that by the zoning ordinance of
11. Rockingham County in that mobile homes are permitted in
12. the A-1 zoning district and they are permitted by the
13. mobile home park district, this provides a means of
14. affordable housing to low and moderate income people
15. whereby they can purchase their own home and provide
16. their own means of housing.

17. Q. Does the County of Rockingham have a non-agricultural
18. rural population?

19. A. Other than the population for the Town of Bridgewater,
20. by the Bureau of Census the population of Rockingham
21. County is considered a non-agricultural rural popula-
22. tion, yes.

23. Q. Do you know what that criteria is?

24. A. The criteria . . . I can't explain to you exactly the

1. criteria. I know that it's other than what's considered
2. a town population, which Bridgewater is, by the standards
3. of the census at twenty-five hundred.

4. Q. Do these non-agricultural rural people require certain
5. urban services?

6. A. Yes, they do. I'd like to, as mentioned in Exhibit 24,
7. emphasize the amount of the population of Rockingham
8. County that is, first of all, classified by the Bureau
9. of the Census as non-agricultural rural population. It
10. is noted in this exhibit by the numbers of those employ-
11. ed in agriculture in Rockingham County in 1977 of 3,210,
12. and I believe according to the Farm Bureau approximately
13. 10% of the population is agricultural. So we do have a
14. vast majority of the people that are non-agricultural
15. people that still require services although they do
16. live and reside in a rural area.

17. Q. All right, sir. Would you move on then to County Exhib-
18. it 26 and tell the Court what that shows.

19. A. This particular exhibit was written by Bob Sullivan,
20. Planning Director for Harrisonburg, in a special report
21. to the home builders. And it shows that at that time,
22. as of August of 1979, according to the zoning in Harri-
23. sonburg, some 21% of the City's territory, or 803 acres,
24. was vacant. It also shows that during three decades,

1. the 1950's, the 1960's and 1970's, that Harrisonburg had
2. had a gradual trend of housing development, and it's been
3. predominantly single family up until the past decade.
4. They had some 720 units started in the 1950's, 847 new
5. units started in the 1960's, and then in the 1970's they
6. had some 1,879 housing starts. And it does show that the
7. majority of those housing starts were in multi-family,
8. an indication that they were meeting their market demands.

9. Q. Have you made a study of the recent housing developments
10. in the City of Harrisonburg?

11. A. Yes, I have. I've made a review of the recent residen-
12. tial developments in Harrisonburg, particularly in the
13. last five years. Some of the subdivisions, some of the
14. dates of recording go back to 1962, but through this
15. study there is an indication that some 486 residential
16. lots have been recorded in Harrisonburg for residential
17. development since January of 1975.

18. Q. Did your study include the location of those developments?

19. A. Yes, it did. I do know the location of these develop-
20. ments and we do have recorded dates or recorded plats
21. of each one of these developments and the number of lots
22. included.

23. Q. Do you want to give us the location of these developments
24. and the number of units.

1. A. Okay, the first development we looked at was Reherd
2. Acres. Reherd Acres is in this vicinity here off of
3. Old Furnace Road, and it's approximately 164 lots planned
4. for that development. And of those 164 planned some 40
5. single family have been developed in duplexes and in in-
6. dividual developments and 79 townhouses have been devel-
7. oped. And the plats have been recorded over a time frame
8. from May of 1974 to October of 1980.

9. JUDGE TRABUE: What exhibit is that? It
10. ought to be described for the record.

11. MR. SMITH: It's Exhibit 129.

12. Q. Mr. Jennings, can you mark in the number of units you
13. have shown for Reherd Acres.

14. A. Okay, for Reherd Acres there are 164 units planned there.

15. Q. What's the next . . .

16. A. The second development is University Court, with 48 town-
17. houses planned in University Court. These lots, they
18. are townhouses, they were recorded in 1977 and 1978.

19. The third development is Country Club Court. And some
20. of you may have noticed during the tour that it's shown
21. as located here at the interchange. There are 55 devel-
22. oped and 10 more planned. The next is Mosby Heights on
23. the south end of Harrisonburg, just south of Mosby Road,
24. with 112 units planned there.

1. Q. Are those the units we saw during the tour?

2. A. We saw this during the tour. And I believe, as Mr. Sulli-
3. van indicated, they are opening this spring for occupancy.

4. Q. What is the next one?

5. A. Preston Heights, this was started in 1962. In 1975 there
6. were four lots recorded, in 1978 there were nine lots
7. recorded. It has 73 lots, single family lots. The next
8. subdivision is called Holiday Hills. I believe the
9. Planning Commission approved plans for some 50 units.
10. I believe there were four apartment buildings at eight
11. units each and some eighteen other townhouse units. They
12. were approved last week by the Harrisonburg Planning
13. Commission. According to my figures there are ten single
14. family lots planned for Holiday Hills. It's located here
15. at the end of Waterman Drive and just south of Route 42,
16. it's on the northwest corner of Wolfe. Our next develop-
17. ment or residential development is Park Crest. We took
18. a stop near here during the tour. It's North Washington
19. Street. And there are 110 townhouse and duplex-like lots
20. planned for this development.

21. Q. And the total of that is 486 lots?

22. A. Four hundred and eighty-six lots since . . . that have
23. been recorded since January of 1975.

24. Q. Let's move on then to low or moderate income housing

1. developments in the County. Would you tell us what low
2. or moderate income housing the County has.

3. A. There is low or moderate income housing in the County.
4. In both instances it's Section 8 housing.

5. Q. What is Section 8 housing?

6. A. Section 8 housing was a program that was initiated in
7. conjunction with the community development program that
8. came into being in August of 1975. Section 8 housing
9. program was designed to encourage the private sector to
10. become involved in public housing. It is a rent subsi-
11. dies program ultimately.

12. Q. And it is constructed by the private sector?

13. A. It is constructed through private funds.

14. Q. What developments does the County have, would you locate
15. them on the map.

16. A. Okay. The two developments are Heritage Haven, which is
17. located in Park View, in this vicinity here. There are
18. 150 units at Heritage Haven. It was developed by the
19. Virginia Mennonite Home. It is a project for the elderly.
20. There are some 115 units occupied at this complex. The
21. other is the Deer Run project which is being developed
22. by Frahlen and Waldron Associates. It's 144 units and
23. it's located on the property here south of Port Republic
24. Road.

1. Q. This is for low and moderate income families, is it not?
2. A. Deer Run is a project for low and moderate income families.
3. Q. Are there other private homes for the elderly located
4. throughout Rockingham County?
5. A. There are other homes for the elderly that are provided,
6. receive assistance from churches. These are Sunnyside
7. and Bridgewater Home.
8. Q. Did you happen to hear Mr. Deskins testify about a
9. certain report dealing with substandard housing which
10. was made by the Central Shenandoah Planning Commission?
11. A. Yes, I did.
12. Q. Are you familiar with that report?
13. A. I am familiar with that report in that I sat on the same
14. committee with Mr. Deskins that reviewed the report, as
15. he had mentioned. I know that that report was prepared
16. as a compilation of housing data and housing needs for
17. the Central Shenandoah Planning District Commission. A
18. major purpose in its preparation was to give the juris-
19. dictions of the Planning District 6 an assessment of
20. their housing needs in order that they could prepare
21. housing assistance plans and qualify for federal grant
22. assistance for housing.
23. Q. And that was the purpose in the study?
24. A. Is the major purpose of the study, yes, it is.

1. Q. Was one of the purposes also to enable the locality to
2. make application for federal funds?

3. A. Yes, it would be to enable us to prepare federal grant
4. applications.

5. Q. Do you have knowledge as to whether or not a field study
6. was made in preparation of that report?

7. A. A windshield survey was not conducted in preparation of
8. the housing element of the comprehensive plan of the plan-
9. ning district. The housing element was based on the
10. 1970 Bureau of the Census figures. It was based on
11. figures prepared on population by the Department of
12. Planning and Budget for the state. It was based on
13. HUD formulas. The windshield survey was footnoted and
14. could be misleading, that it was utilized, but it was
15. not utilized; it was utilized in the land use element
16. of the comprehensive plan and they just continued to
17. footnote it into the housing element. I know that because
18. I also served on the land use committee for the planning
19. district plan.

20. Q. And you testified earlier that the County has provided a
21. zoning category for mobile homes in the County.

22. A. Yes, we do.

23. Q. Now, Mr. Jennings, there has been substantial testimony
24. by City witnesses concerning the need for the City to

1. recapture downtown. As a planner would you give us your
2. views on that statement?

3. A. As a planner I believe that downtown is still physically
4. located where it is and always has been. And by the
5. sheer recognition that Harrisonburg must recapture its
6. downtown, I feel that this is placing a stigma on down-
7. town in that it would lead toward a deterioration of
8. downtown. To recapture, so-call "recapture downtown"
9. is recognizing and supporting the sprawl of this area
10. and it's not giving an image toward downtown that it
11. would like to support it and to boost its viability. I
12. feel that downtown is viable. It's a strong employment
13. center. The County Courthouse is founded here. There
14. are a large number of employees that are located here.
15. They come here, there is a strong daytime population in
16. downtown Harrisonburg. These people come in . . . and I
17. know this from my own experience, many people come into
18. Harrisonburg to get building permits, to seek special
19. use permits, applications of various types from the
20. Treasurer's Office, from the Zoning Office. These
21. people come in, they seek the services of downtown. They
22. are people that come in and they say they have come into
23. town for the day. They'll come into the office, they'll
24. go out and go to the shops, they'll buy goods while

1. they're here. So, downtown is a strong employment center,
2. it brings in daytime population. And while these people
3. are here, there is a series of stores in downtown, there
4. is some seven anchor stores downtown that they can pur-
5. chase from. There's specialty shops downtown, there are
6. restaurants downtown. I think this is extremely impor-
7. tant, that downtown remain a viable center.

8. Q. You say there are seven anchor stores in the downtown
9. area?

10. A. There are seven stores; there are three furniture stores,
11. Grand Piano, Schewel's, Denton's; there's two clothing
12. stores, Joseph Ney's and Alfred Ney's; and two depart-
13. ment stores, Woolworth's and McCrory's.

14. Q. What time of night does the downtown area normally close?

15. A. Most of those stores, other than Thursdays, during the
16. weekdays close at five o'clock.

17. Q. Do you think that creates a bit of a problem for the
18. people to make purchases?

19. A. As I said, because of the number of people that are
20. employed here and seek services here, by these stores
21. closing at five o'clock, it's a time of the day that
22. they could continue to stay downtown and purchase goods
23. and services while they are here.

24. Q. Are there any parking problems downtown?

1. A. There is . . . by the parking decks that have been built
2. there is ample parking downtown. However, I feel that
3. the policy of the meters has been a great factor in en-
4. couraging people to drive to the Valley Mall. Because
5. shoppers as a whole, they want to shop freely, they do
6. not want to be concerned about having to return to their
7. meters. I think this is detrimental toward the encour-
8. agement of bringing shoppers downtown.

9. Q. And the City could do something about that?

10. A. I think this could be a policy decision that could con-
11. trol that.

12. Q. In addition to the downtown commercial area, the City
13. does have a number of shopping centers within the confines
14. of the City, does it not?

15. A. There are five shopping areas in all. I think three of
16. these you could call shopping centers.

17. Q. Is the Valley Plaza in fairly close proximity to downtown?

18. A. The Valley Plaza is several blocks from downtown. And I
19. believe . . . I may be mistaken, I believe it is present-
20. ly considered to be incorporated into the central busi-
21. ness district of the downtown.

22. Q. Are there major anchor stores located in the Valley Plaza?

23. A. In the Valley Plaza there are five stores. There's a
24. Peoples, Safeway, Roses, Firestone and Goodyear.

1. Q. Are all of those categorized as major anchor stores?
2. A. I would say so.
3. Q. Is there parking available?
4. A. There is parking available in the Valley Plaza.
5. Q. Is there also a shopping center called Cloverleaf in
6. Harrisonburg?
7. A. Cloverleaf is located off of East Market Street and it's
8. near Carlton Street. It contains A & P, Drug Fair and
9. Best Products, Incorporated.
10. Q. Where are the state Alcoholic Beverage Stores located
11. in these areas?
12. A. The two shopping areas that I previously mentioned, both
13. of these A.B.C. Stores are located in proximity to them.
14. One is in Cloverleaf and one is near Valley Plaza.
15. Q. They are both in the City, aren't they?
16. A. Both in the City of Harrisonburg.
17. Q. Is there also a shopping center in the City called the
18. Nichols shopping center?
19. A. Nichols shopping center is located adjacent to Mosby
20. Road and South Main. And recently they expanded in size
21. in taking over the square footage of the Grand Union
22. grocery store. There is also a very popular restaurant
23. there called Lloyd's. That has a seating capacity, a
24. total seating capacity of about three hundred and fifty.

1. Q. And you said that there were also two other smaller shop-
2. ping areas in the City.

3. A. There are two other smaller shopping areas, one being
4. the Red Front shopping area and . . .

5. Q. Is the other one Rolling Hills?

6. A. Okay, Rolling Hills. Rolling Hills has Miles Music and
7. Harvey's Warehouse. It's a different type of shopping
8. center. It has Service Press, which is a printer, Miles
9. Music, Harvey's Warehouse, and there's a figure salon
10. there at that shopping center. It's located at the
11. intersection of Hawkins Street and East Market Street.

12. Q. You are familiar with the area sought for annexation,
13. are you not?

14. A. Yes sir, I am.

15. Q. And you are familiar with the Valley Mall?

16. A. I am familiar with the Valley Mall.

17. Q. Does the County have any other shopping centers anywhere
18. within its borders that are comparable to Valley Mall?

19. A. No other.

20. Q. Is there a major food store located in the Mall area?

21. A. Kroger's is located in the Mall area.

22. Q. Is there any other store comparable to Kroger's located
23. anywhere in the County?

24. A. There is no other store comparable to Kroger's in Rock-

1. ingham County.

2. Q. And there's also a K-Mart department store out in the
3. Mall area?

4. A. That's true.

5. Q. Does the County have any other department store compar-
6. able to K-Mart?

7. A. No.

8. Q. Are there also major motels and hotels located in the
9. area sought for annexation?

10. A. There are four. There is Belle Meade on South 11, there
11. is the Howard Johnson's off of Port Road and I-81, there
12. is Econo-Travel and the Sheraton located on Spotswood
13. Trail.

14. Q. Is there any other motel comparable to those anywhere
15. in Rockingham County?

16. A. No, not of the magnitude of those.

17. Q. Did you hear Mr. Cofer testify here the other day?

18. A. Yes, I did.

19. Q. Mr. Cofer was somewhat critical of the County's zoning
20. ordinance. Do you have comments about that?

21. A. He was extremely critical of the County's zoning ordi-
22. nance. Some of the points that he was talking about with
23. the zoning ordinance, particularly the agricultural zon-
24. ing ordinance, as I have previously testified, we have been

1. aware of this and are looking at it and have presented--
2. therefore, we have presented a package of revisions to
3. the Planning Commission and plan to take those to public
4. hearing the middle of this year in order that our zoning
5. ordinance will be a more compatible zoning ordinance
6. with the County's Land Use Plan.

7. Q. You are familiar with the report of the Commission on
8. Local Government?

9. A. Yes, I am.

10. Q. And from a planner's point of view, what do you find
11. wrong with that report?

12. A. There are three points in that report that essentially
13. negate the County's Land Use Plan. There are instances
14. where they have overlooked the land use concept that
15. has been prepared and adopted by Rockingham County, par-
16. ticularly in the way of preservation of productive ag-
17. riculture lands and those lands that should be guided
18. for development. On the one hand they have recommended
19. that Study Area 3 not be included in the annexation area
20. in that its predominant land use is agriculture. They
21. have recommended that that be excluded because that
22. would adhere to policies of the General Assembly for
23. the preservation of agricultural lands. However, they
24. have gone on to recommend that the Route 11 South corri-

1. dor south of 679 down to Mt. Crawford be considered for
2. industrial sites. These areas are outside of any commun-
3. ity service area as shown on the County's Land Use Plan.
4. Working for the County and knowing that area, I know that
5. to be productive agricultural land. They have also en-
6. couraged us to develop, or that there is potential for
7. commercial development at Interchange 61 to Mt. Crawford.
8. Now, this particular interchange was zoned, once zoned
9. commercial, and the County Board of Supervisors at the
10. recommendation of the Planning Commission rezoned this
11. property back from commercial to agricultural other than
12. Stuckey's, which was there prior, because this particular
13. zoning district did not comply with the Land Use Plan of
14. the County. And it is agricultural land at that inter-
15. section. Although it is an intersection, it's agricul-
16. tural land. The County's Land Use Plan did not support
17. that zoning. The property was zoned back to agriculture.
18. And another instance, again where they have overlooked
19. our Land Use Plan and encouraged the development of
20. agricultural areas, is along Route 33 east of Chestnut
21. Ridge. And they have encouraged that this area be
22. developed commercially in order that . . . there was a
23. quote, that the merchants along Route 33 East would
24. have a "first chance" . . . it was quoted as first chance

1. to the tourists and shoppers. Again, an area, they were
2. encouraging commercial sprawl on an area that the County's
3. Land Use Plan does not support. I think this is very
4. essential, that the agricultural lands in those instances
5. and the County's Land Use Plan was overlooked in those
6. instances.

7. Q. Is it desirable for a county like Rockingham to have
8. both agricultural land and urban development?

9. A. Yes, it is.

10. Q. And the County would need its utility system in order
11. to provide that urban development, would it not?

12. A. That we will. I do think . . . may I add this though.
13. With the encouragement of what they have given us in
14. that Commission's report, in those three instances it
15. indicates an encouragement away from our community
16. service areas approach and agricultural lands approach
17. ultimately to the sprawling of the County. Because of
18. the loss of other alternative sites for development,
19. they are encouraging us to sprawl our areas that we
20. are saying that we would like to preserve.

21. Q. Are they also encouraging a sprawl of the City?

22. A. I would say so, yes.

23. Q. In your opinion who is better capable to provide the
24. planning services in the area sought for annexation,

1. the County or the City?

2. A. I feel in my particular capacity as planner that Rocking-
3. ham County has the capacity to serve this area and to
4. plan for this area; we've been doing it.

5. Q. Based on the County's experience?

6. A. Based on our own experience and our familiarity with the
7. area.

8. Q. During the City's presentation of its evidence one of
9. the City witnesses made the statement that the County
10. doesn't have the money or the personnel or the desire
11. to meet urban needs. What are your comments concerning
12. that?

13. A. I believe that's untrue, because we have been providing
14. the services to those areas, particularly in planning.
15. The County adopted a zoning ordinance in 1969, with that
16. adoption it rezoned some areas comprehensively, particu-
17. larly with an interest that those areas would be compat-
18. ible with the land use and the zoning of Harrisonburg.
19. Since 1969 we have reviewed each zoning as it occurs
20. in the Harrisonburg area for compatibility with our
21. Land Use Plan, for compatible land uses. Various things
22. go into our staff report, we have reviewed each one of
23. them individually to assure that the best land use
24. decision is made. Therefore, we are familiar with this

1. area. We have developed an intensive program for plan-
2. ning in Rockingham County and I know that we certainly
3. have the desire to continue serving that area.

4. Q. One more thing. The rural service areas you testified
5. to, they were established very recently, were they not?

6. A. Yes sir. As of last Thursday night rural service centers
7. was amended to the Land Use Plan.

8.

9. Cross Examination by Mr. Cogar:

10. Q. Mr. Jennings, just before you concluded your testimony
11. you made some observations concerning the reviews which
12. you made of rezoning requests and requests for subdivis-
13. ions and other types of zoning to assure that the best
14. use be made of the land. Is that correct?

15. A. Yes sir.

16. Q. Now, that's done in your Planning Department?

17. A. That's done--I am the one that writes the staff reports
18. that are presented at public hearings, yes. We hold a
19. staff meeting in the Planning Department with each re-
20. zoning request.

21. Q. And then after you have made your survey or study, you
22. make a recommendation to the planning board?

23. A. Yes, I do.

24. Q. Do they generally support you?

1. Q. I have an article here dated August 29, 1979 which says
2. that in five of the last seven rezonings not initiated
3. by the Rockingham Supervisors the Board has overruled
4. the Planning Commission's recommendation.

5. A. Okay, the Planning Commission and the Board have agreed
6. in 83% of the instances. Excuse me. The Planning
7. Commission's staff and Board have agreed in 63%, the
8. Planning Commission and Board have agreed in 87% of the
9. instances.

10. Q. The Planning Commission and the Board have agreed in . . .

11. A. Excuse me, 83%.

12. Q. Does that mean that the Board rejected the Planning Com-
13. mission's recommendations 17% of the time?

14. A. No, the way those percentages was figured I don't think
15. you could calculate on the number of rejections.

16. Q. Well, what's the significance of the 83%?

17. A. That they have agreed of the total that percentage of
18. times.

19. Q. Well, what happened the other 17% of the time?

20. A. Okay, there were instances, the other 17% . . .

21. Q. All right, sir, it says here . . . this refers to rezon-
22. ings not initiated by the Rockingham Supervisors. The
23. Supervisors themselves can initiate rezoning.

24. A. Yes, they can.

1. Q. And they do.

2. A. They do on occasion, yes.

3. Q. And when they initiate it they generally pass it, do they
4. not?

5. A. In some instances where they . . . I cannot recall if
6. they generally pass it or not, but when they do call a
7. hearing, and if it's at the request of an applicant to
8. call a hearing, they are very concerned that this be no
9. way an assurance that the rezoning will be approved.

10. Q. To what extent do you have any input in Board initiated
11. rezonings?

12. A. Board initiated rezonings are rezonings . . . generally
13. they have come from my recommendation to the Planning
14. Commission or the Planning Commission's recommendation
15. to the Board ultimately.

16. Q. Excuse me, we're talking about Board initiated rezonings.
17. If they're Board initiated, they commence with the Board.

18. A. Okay, when they are Board initiated, generally they are
19. at the recommendation of the Planning Commission, that
20. they call a hearing on a given area.

21. Q. I don't understand if it's Board initiated that it
22. could be initiated in the Planning Commission.

23. A. Because that's the responsibility of the Planning Com-
24. mission. There are some instances where we realize

1. that a zoned district should be something other than
2. what's on the zoning map, and the Planning Commission
3. looks at that area and they see to it to recommend to
4. the Board of Supervisors to do this. This is within the
5. Code of Virginia for them to call that.

6. Q. I understand that is what you do by way of initiation,
7. but there are other instances when the Board looks at the
8. Land Use Plan and a Board member or members decide that
9. they would like to have it zoned different from what it
10. is zoned as shown on the map or how it is zoned and they
11. initiate the rezoning for that.

12. A. I believe there may be some instances of that. I just
13. can't recall any right off-hand.

14. Q. You don't have the percentage figures on that?

15. A. No sir, I don't.

16. Q. And you have said that Mr. Cofer was very critical of
17. your zoning ordinance. Correct?

18. A. Yes.

19. Q. But you didn't take exception to anything he had to say
20. about it.

21. A. On the . . .

22. Q. As a matter of fact, you said that you were in the process
23. of making some revisions which he had pointed out to you,
24. isn't that correct?

1. A. Yes.

2. Q. To cure some of the difficulties or problems with it.

3. A. Yes.

4. Q. And how long have you had the zoning ordinance?

5. A. The zoning ordinance was adopted in 1969 and the revised
6. packages of new districts was presented last October to
7. the Planning Commission. The Site Plan was presented in
8. February of this year.

9. Q. To the extent that there have been deficiencies in your
10. zoning ordinance which was the subject matter of criti-
11. cism by Mr. Cofer, those deficiencies have existed for
12. over ten years, since 1969, is that correct?

13. A. Some of the deficiencies he pointed out. There have
14. been other amendments since 1969. A planned residential
15. community district has been added since 1969.

16. Q. The rural service center is something relatively new.

17. A. We have been looking at it for two years. No, it's not
18. relatively new because there were about thirty of those
19. shown on the Land Use Plan that went to public hearing
20. in 1977, and those were struck from the Plan. As we
21. worked with the Plan we saw a need to establish some
22. of those areas again on the Land Use Plan.

23. Q. To the extent that Mr. Cofer sat where you are sitting
24. and testified to the deficiencies in your ordinance,

1. those deficiencies have been there since 1969.
2. A. The agricultural district?
3. Q. Yes sir. All the criticisms that he made.
4. A. On the agricultural district I'd say yes.
5. Q. All right. In eleven years they have not been corrected
6. and they haven't been corrected as of this date.
7. A. They are being corrected.
8. Q. They haven't been as of this date.
9. A. They have not been adopted as of this date, no.
10. Q. So when you say that the County is better able to provide
11. planning for the area, you would tell the Court that the
12. planning that you would do would be with the planning
13. tools which are presently at hand, which are your zoning
14. and subdivision ordinances, is that correct?
15. A. It would with the revised zoning ordinance.
16. Q. If it's passed.
17. A. Yes.
18. Q. But the zoning ordinance which you presently have is not
19. in your opinion an ideal tool for the use in planning
20. for the future for this area sought to be annexed.
21. A. No, I can't say that because in some instances we do
22. have some very good zoning districts. I think our R-5
23. is a good zoning district and an appropriate tool for
24. this area. Our R-1 is a good zoning district. There

1. are other zoning districts that I will and am taking a
2. look at to revise those zoning districts. The R-1 and
3. the R-5 are very compatible for that area.

4. Q. The agricultural zoning that you have embraces 95% of
5. the land in Rockingham County. Isn't that correct?

6. A. Yes sir.

7. Q. Now you were critical of the Commission on Local Govern-
8. ment's report in three instances, I believe. You say
9. that Route 11 South should not be considered for any
10. additional industrial development.

11. A. As shown on our Land Use Plan. The Land Use Plan does
12. not encourage industrial development along Route 11 South,
13. south of the community service area of Harrisonburg.

14. Q. Well, there's nothing sacred about the Land Use Plan.

15. A. I think it should be in that it's a guide for our devel-
16. opment. If we're going to look at developing other areas,
17. then what good is our Land Use Plan?

18. Q. Well, that's my question to you, what good is it if you
19. adopt it and then everytime somebody comes in for rezon-
20. ing you rezone in a manner that's incompatible with your
21. Land Use Plan?

22. A. That's why we proposed a series of new agricultural
23. zoning districts, that's why we are revising our zoning
24. ordinance, because we are very intent on making our zoning

1. ordinance a compatible one with our Land Use Plan.

2. Q. Well, . . .

3. A. That's why we have our staff reports that we review
4. each one.

5. Q. Well, is it not a fact, Mr. Jennings, that month after
6. month after month you alter and permit zoning incon-
7. sistent with your Land Use Plan?

8. A. Not so much zoning, not by my recommendations, no.

9. Q. Your zoning is incompatible with your Land Use Plan,
10. isn't it?

11. A. There are some cases where it's not.

12. Q. There are a substantial number of cases where it's not,
13. isn't that correct?

14. A. With special use permits, not by zoning, so much by
15. zoning districts.

16. Q. However it is zoned you depart and you do do it basically
17. by a special use permit, in numerous instances you depart
18. from the Land Use Plan.

19. A. There are more special use permits than zoning requests.

20. Q. And that's the principal tool by which you go in the
21. direction different from your Land Use Plan, special use
22. permits.

23. A. It does get back to the agricultural zoning district;
24. and that's why we are revising those districts.

1. Q. On Route 11 South you say it had been zoned for something
2. other than agricultural and then zoned back to agricul-
3. tural.
4. A. Not Route 11 South, the interchange 61.
5. Q. Would you point that out on the map?
6. A. (Witness indicates on map exhibit). Interchange 61 is
7. here.
8. Q. What's the history of the zoning there?
9. A. That zoning was . . . there's a circle there of commer-
10. cial zoning.
11. Q. Around that interchange.
12. A. Around that interchange.
13. Q. And you now have it zoned agricultural.
14. A. We now have it zoned agricultural other than Stuckey's,
15. which remains to be zoned business.
16. Q. And what kind of an interchange is that, is it a diamond
17. or a cloverleaf?
18. A. Diamond.
19. Q. And you don't intend to permit commercial zoning around
20. that interchange.
21. A. Not at this time. It's not the policy of the Board of
22. Supervisors to encourage that.
23. Q. What is the Board's policy?
24. A. The policies of the Board are written on the County's

1. Land Use Plan.

2. Q. Well, is it fair to say that the Board's policy is to
3. permit future growth in the pink areas as shown on this
4. map?

5. A. Community growth, yes.

6. Q. And that everything else would be retained in agriculture?

7. A. Other than the nine rural service centers that were
8. amended last week.

9. Q. See that big red spot to the right of you on H-1?

10. A. Yes.

11. Q. Which looks about half the size of Harrisonburg. Do you
12. see that?

13. A. Yes, I do.

14. Q. What is that shown on your Land Use Plan as?

15. A. That red spot is extremely large.

16. Q. Well, don't blame it on me, it was drawn on there by the
17. Chairman of your Board of Supervisors; very meticulously.

18. A. Well, it represents more than the 487 acres, I believe.

19. Q. Well, my recollection is there are about 2,000 acres.

20. A. Yes, there will be some fifteen hundred acres that will
21. remain agriculturally zoned, yes.

22. Q. But how is it zoned?

23. A. Some 487 acres are zoned industrial.

24. Q. How does that compare with your Land Use Plan?

1. A. It compares in that it's a strategic location for indus-
2. try.

3. Q. Then at anyplace where there is a strategic location for
4. industry in the future the zoning will be changed?

5. A. Each situation will have to be weighed on its own merits,
6. yes.

7. Q. I'll go back then and ask you again, is there anything
8. particularly sacred about the Land Use Plan?

9. A. Yes, there is.

10. Q. It's sacred until it's changed, is that what you're
11. saying?

12. A. We always consider the Land Use Plan.

13. Q. This does not govern the outcome of requests for rezon-
14. ings or special use permits, does it?

15. A. In most instances it does.

16. Q. Is that a fact?

17. A. I believe that to be a fact.

18. Q. Where is Merck? Merck is a major employer in this area,
19. isn't it?

20. A. Merck is just south of Elkton along Route 340.

21. Q. And it's shown on here as agricultural, is it not?

22. A. It's industrial, it's zoned industrial. Merck was there
23. prior to the Land Use Plan. See, your zoning ordinance
24. was adopted in 1969 and the Land Use Plan was adopted in

1. 1977. So naturally there would have to be a period
2. where the zoning ordinance would have to be brought into
3. compliance with the Land Use Plan.

4. Q. Well, then what you're saying is when you adopted this
5. Land Use Plan in 1977 you put on here in dark red exist-
6. ing developments, but you didn't put nearly all the ex-
7. isting developments in the County in red on this exhibit,
8. did you?

9. A. No, because the purpose of that was community service
10. areas.

11. Q. Well, let's get to that a minute . . .

12. A. Where we did show existing development was one of our
13. first alternatives, and it showed that it would be
14. scattered growth continued.

15. Q. During the City's case there were references to Volumes
16. I, II and III of a study as being the County's Comprehen-
17. sive Plan. We were criticized for the use of that termi-
18. nology, but I note that in your testimony you referred to
19. Volumes I, II and III as the County's Comprehensive Plan.

20. A. Okay, that's not the adopted plan, but that was data
21. that was prepared toward the adoption of the Land Use
22. Plan.

23. Q. All right, in case there's any misunderstanding about it,
24. back on . . as indicated in your Exhibit 25, or 24, you

1. show in 1974 a committee was formed to deal with the
2. land use issues in the County. Is that correct?
3. A. Yes.
4. Q. There were a great number of citizens in Rockingham County
5. involved in that, was it not?
6. A. There were forty working committees.
7. Q. Forty working committees?
8. A. Yes.
9. Q. And how many people in all?
10. A. I cannot recall because it's history that was here
11. before I came. I've heard two hundred, I've heard four
12. hundred.
13. Q. And they worked over a period of some three years, did
14. they not?
15. A. 1974 to 1977.
16. Q. And they generated three volumes.
17. A. That's right.
18. Q. Which have been filed in evidence in this case as
19. City Exhibit 45. I think the index mistakenly refers
20. to II and III, but I, II and III have been filed as
21. City exhibits. Now, what does Volume I contain?
22. A. Volume I contains existing conditions. It looked at
23. the physical conditions, it looked at the status of the
24. government. It looked at . . . I'll read them to you.

1. Sections on history, government, physiography, land use,
2. community facilities.

3. Q. Is it fair to characterize what those citizens did back
4. at that time as an in depth look at existing conditions
5. in Rockingham County?

6. A. It was a thorough look, yes.

7. Q. By very competent citizens of the County?

8. A. I do not know. I would like to say they are, they were
9. Rockingham County people. I did not know that many
10. people involved on the committee.

11. Q. Well, their names are listed in the front of the book.
12. Look at them and tell me if there are any that don't
13. seem capable of making observations contained in the
14. report. Look at Volume III.

15. A. (Witness examines volume).

16. Q. There's a great list of people here.

17. MR. SMITH: Is there a question pending?

18. Q. Do you remember the question I asked you?

19. A. Did I deem these people capable?

20. Q. Yes, competent to make the observations in this book.

21. A. Competent. As laymen I would say several of these people
22. are competent, yes.

23. Q. Now, these laymen had professional assistance, did they
24. not?

1. A. They did hire a planner. They recommended to the Board
2. that a planner be hired, yes.
3. Q. Well, the volumes I have say, "Prepared by the Rockingham
4. Citizens Advisory Planning Committee and the Rockingham
5. County Planning Department."
6. A. I believe the material was edited by the planner at that
7. time.
8. Q. Well, it was more than editing, he was substantially
9. involved. What was his name?
10. A. Lloyd Schlicker.
11. Q. Lloyd Schlicker. His was virtually a full-time effort
12. over these two or three years involving these plans,
13. was it not?
14. A. For the time that I worked with him, for one year, I
15. know that he did put in a great deal of time on it,
16. yes.
17. Q. Now, in Volume I prepared by the Citizens Advisory
18. Planning Committee together with the Rockingham County
19. Planning Department, I notice on page 85, "Note is made
20. of the fact that the secondary highway system consists
21. of approximately six hundred and five miles of hard
22. surfaced road and two hundred and ninety miles of non-
23. hard surfaced road, approximately three hundred and thirty-
24. two miles of hard surfaced and one hundred and ninety

1. miles of non-hard surfaced roads are reported as not
2. meeting minimum tolerable standards for secondary roads."
3. That's an accurate quote from the report, is it not?

4. A. Mr. Osborne did not testify to the same figures last
5. week.

6. Q. Well, was this accurate at the time the observation was
7. made?

8. A. I have no way of knowing if it was.

9. Q. Again on 85 it says, "Secondary highway improvement costs
10. are estimated to be eighty-three point seven million
11. dollars. Rockingham County's current secondary highway
12. construction budget approximates one point five million
13. annually." Is that accurate?

14. A. I do not know.

15. Q. All right, sir. I think your attention was called ear-
16. lier to Volume I, page 23, an observation there, "In gen-
17. eralizations, it can be said that the County is in the
18. school business, the towns in the water and sewer business,
19. and the City in a complete urban services business." It
20. says, "In generalizations". Do you disagree with that?

21. A. If that . . .

22. Q. Authored under the auspices of your Planning Depart-
23. ment.

24. A. If those budget figures were correct at that time, that

1. is an appropriate generalization. But it doesn't say
2. that there aren't other services being provided at that
3. time.

4. Q. On page 38 and 39 of Volume I this is noted. "A survey
5. of government officials also revealed the opinion that
6. the current form of County government is not suitable
7. for the urbanizing pressures developing within the County.
8. A part-time Board of Supervisors form of government with
9. a chief executive position having limited authority, an
10. elected Commissioner of Revenue and Treasurer, does not
11. lend itself to sound management and fiscal control." Do
12. you disagree with that observation noted in a report
13. authored under the auspices of your Planning Department?

14. A. I cannot speak to that because that was written at that
15. time. I know there is . . . particularly in my function
16. there has been a concern for good planning since that
17. time. And there is no mention of the planning staff in
18. that section.

19. Q. After the analysis of existing conditions shown in Vol-
20. ume I, Volume II was produced, was it not?

21. A. That was published in December of that same year, 1975.

22. Q. Volume II is entitled "Trends, Issues and Alternatives."
23. Correct? And is it not a fact that this was also, ac-
24. cording to the title page, prepared by the Rockingham

1. County Planning Department and the Rockingham Citizens
2. Advisory Planning Committee? Is that a fact?

3. A. That's written, yes sir.

4. Q. Now, in this report they considered various alternatives,
5. growth patterns, did they not?

6. A. Yes, they considered four.

7. Q. So that every . . . all the studies of existing facilit-
8. ies, needs and uses that were generated in Volume I come
9. down now in Volume II to four alternative ways of grow-
10. ing within the County. Is that correct?

11. A. Growing and preservation of agricultural lands at the
12. same time.

13. Q. And the first, alternative number one, was that the ex-
14. isting trends continue, which is to say to grow like Top-
15. sy, just wherever it springs up it's tolerated?

16. A. Strip subdivisions, helter-skelter growth, yes.

17. Q. Alternative number two is entitled "Rural Growth Centers."
18. That is essentially what you have just gone to the other
19. night, isn't it?

20. A. I believe this has about thirty areas shown on that;
21. there were nine amended the other night.

22. Q. But this contemplated crossroads growth in small pockets
23. around the general stores and the gasoline stations.

24. A. That kind of growth, yes.

1. Q. Alternative plan number three would have concentrated
2. urban development around the City of Harrisonburg and
3. the seven towns, is that correct?

4. A. Yes.

5. Q. And alternative number four contemplated the creation
6. of a new city essentially over near Massanetta.

7. A. At McGaheysville.

8. Q. McGaheysville. There were presentations to the citizenry
9. all over the County of this plan, were there not?

10. A. I believe there was. There were presentations to civic
11. groups and high school students.

12. Q. Well, there was a substantial public relations program
13. for bringing to the attention of the citizens the four
14. alternative plans. Is that correct?

15. A. Yes, there was a program to do that. I've read that.

16. Q. Sir?

17. A. I've read that. I don't know, I wasn't here when that
18. occurred. It is published in Volume III.

19. Q. In Volume III it says, "A slide show summary of the
20. trends, issues and planned alternatives was presented
21. to thirty-five separate groups and organizations between
22. February 2 and April 30, 1976. There were a total of
23. 1,477 persons that expressed their choice of plan alter-
24. natives." Is that correct?

1. A. They published that as being correct.
2. Q. Well, this again is prepared by the Rockingham County
3. Planning Department. You were there at the time, were
4. you not?
5. A. No, I wasn't.
6. Q. You are aware of the document, are you not?
7. A. I'm aware of the document, yes.
8. Q. When did you come here?
9. A. I came in August of 1976.
10. Q. This was published in May of 1976. All right, sir.
11. It is a fact, is it not, that the majority of those who
12. expressed themselves with respect to the four plans
13. favored alternative number three, which was the encour-
14. agement of urban growth and development around the City
15. of Harrisonburg and the towns? That was their first
16. choice.
17. A. They endorsed the municipal growth center, the majority
18. did, according to this volume.
19. Q. Now, sir, following that Volume III was presented. It,
20. again, was prepared by the Citizens Advisory group and
21. the Rockingham County Planning Department. That contain-
22. ed recommended policies, did it not?
23. A. Yes, it did.
24. Q. All three of these volumes were presented to the Rocking-

1. ham County Board of Supervisors. Is that correct?
2. A. I would think they were.
3. Q. Did the Board of Supervisors ever adopt these plans?
4. A. No, there was no need to. This was extensive research
5. toward the formulation of a plan.
6. Q. All right, now, what they did adopt was what we have as
7. City Exhibit 12a, and that's this, is that correct?
8. A. Yes sir, that's correct.
9. Q. And that is the Rockingham County Land Use Plan.
10. A. Yes sir.
11. Q. A map on the front and some policy objectives stated on
12. the reverse side.
13. A. Yes.
14. Q. And this is City Exhibit 12a. If you compare the policy
15. objectives stated on the Land Use Plan which was adopted
16. by the Board of Supervisors on May 9, 1977, they essen-
17. tially embrace the recommendation contained in Volume III
18. of the report prepared by the citizens committee and the
19. planning committee, is that correct?
20. A. Those policy objectives are pulled from that volume.
21. Q. Now, there were some slight modifications?
22. A. Yes, like originally there was light agricultural dis-
23. tricts proposed and that policy objective was removed.
24. Q. And wherever the word "urban" appeared as in urban

1. development they changed that to community development.
2. So community development and urban development means
3. the same thing, doesn't it?

4. A. I think the intent of this is . . . having worked with
5. the joint county/town planning program, is the importance
6. of the community aspect in this. In not looking at this
7. so much as a physical thing, but a social and a physical,
8. a very integral system in that it be a community look
9. approach. And that's why the word, I believe the word
10. "community" was chosen, and a very critical word in this
11. instance.

12. Q. But the word "community", the phrase "community develop-
13. ment" was substituted for "urban development."

14. A. Well, if you can call the towns in those community ser-
15. vice areas urban development. I don't think it's of
16. that scale of growth.

17. Q. Well, isn't what is shown in red and what is contemplated
18. to develop in pink the ultimate urban areas within the
19. County?

20. A. They would be the ultimate areas if that plan was adher-
21. ed to, and if it developed as such that would be the
22. developed communities. They would be balanced communi-
23. ties.

24. Q. Would be the urban areas of the County with the remainder

1. preserved for agriculture.
2. A. Some of those areas are urbanizing, yes.
3. Q. Some is urban and the pink is urbanizing, is that correct?
4. A. It is urbanizing, yes.
5. Q. Now, I ask you if you will look in your Volume II at
6. alternative plan number three which was the preference
7. of your citizens. Now, the orange areas in three are
8. characterized as the areas of urban development, are
9. they not?
10. A. That's alternative number three which was not adopted.
11. Community service areas were adopted.
12. Q. This was the preference of the citizens, three, correct?
13. A. By the poll taken as reported, yes.
14. Q. And this volume prepared by the Rockingham County Plan-
15. ning Department and the Rockingham Citizens Advisory Plan-
16. ning Committee referred to this area around Harrisonburg
17. as urban development. Just tell me if that's what it says?
18. A. Yes, it shows it on number three, urban development; but
19. it does not show that on the Land Use Plan that's adopt-
20. ed.
21. Q. Now, would you turn around and look at the exhibit to
22. your right there. That's Exhibit H-10, a city exhibit.
23. Do you see the existing City boundaries in red?
24. A. Yes.

1. Q. I'd like for you to pick up Volume II there and you can
2. take it over with you. Look at the solid, do you see
3. the yellow line on the map, on H-10?

4. A. Yes.

5. Q. You know what that is, don't you? That's the annexation
6. line. Now, the solid green line earlier testimony shows
7. outlines the urban development shown in Volume II. Would
8. you look at plan three in Volume II and see if the urban
9. area delineated in there is the same as that shown by
10. the solid green line?

11. A. (Witness examines exhibit) Yes sir.

12. Q. Are you familiar with highway studies and major thorough-
13. fare plans?

14. A. Yes, I am.

15. Q. And you are aware, are you not, that the blue line on
16. there is the cordon line, shown on the State Department
17. of Highways 1995 Thoroughfare Plan as the cordon line?

18. A. That is shown as the cordon line on the 1995 plan, yes.

19. Q. And you see how it compares to the annexation line?

20. A. Yes.

21. Q. And then there is a broken green line on H-10. Do you
22. see it?

23. A. Yes sir.

24. Q. Do you know what it represents?

1. A. It's the community service area as shown on the adopted
2. County Land Use Plan.

3. Q. So the broken green line delineates the urban and urbaniz-
4. ing areas shown on your County Land Use Plan. Is that
5. correct?

6. A. It denotes the community service area as shown on the
7. County Land Use Plan.

8. Q. But did you not earlier tell me that what is shown on
9. the Land Use Plan in the red and pink is the urban and
10. urbanizing areas of the County?

11. A. You said that.

12. Q. And you agreed with me.

13. A. I agreed with that.

14. Q. So, what we have is that in the adoption of this Land
15. Use Plan there is embraced within the annexation line
16. virtually all of the land that the citizens and the
17. Planning Department characterized as urban development.
18. Is that correct?

19. A. There's some vacant land there too, there's agricultural
20. land. It's embraced as urban land, is that what you said?

21. Q. The annexation line embraces virtually all of the land
22. that is shown in Volume II as the land containing urban
23. development, the green line.

24. A. It contains some urban development.

1. Q. The urban development as shown in Volume II.

2. MR. SMITH: Would you repeat your question?

3. I don't think he understands.

4. MR. COGAR: I think he's probably already

5. answered it. I'll withdraw it.

6. Q. Now, when you got around to the adoption of this Land
7. Use Plan, the Board didn't go all the way with the solid
8. green line shown on H-10, but rather they used a broken
9. green line that goes around and it basically follows
10. the annexation line and goes out up to the northwest.
11. And then there is a pocket shown down here which leaves
12. a corridor, a slight corridor, between the two and this
13. southwest corner of the annexation area, which leaves
14. that in agricultural. Is that correct?

15. A. That's correct.

16. Q. Now, isn't it a fact that the only written documentation
17. upon which your Land Use Plan is based are the three
18. volumes prepared by the Planning Department and the
19. citizens committee?

20. A. The only written documentation that that plan that was
21. adopted is based on.

22. Q. Yes sir. Is that correct?

23. A. Written documentation. I believe so.

24. Q. So to that extent the Land Use Plan incorporates the

1. underlying three volumes.

2. A. It does consider those because the Land Use Plan that
3. was adopted does match some of the alternatives shown in
4. III and IV.

5. Q. Does the County have a comprehensive plan or is this
6. it?

7. A. That is the adopted Comprehensive Plan.

8. Q. Now, with respect to the County's ability to better
9. plan for the development of the area sought by the City,
10. you have told me, one, that you don't have a Comprehen-
11. sive Plan.

12. A. I told you we don't have a Comprehensive Plan? I just
13. said yes.

14. Q. Other than what's shown on this sheet.

15. A. I told you that that's our Comprehensive Plan.

16. Q. Do you have any plan or background study showing in
17. detail the physical features of the County? Topography,
18. soils, geology, hydrology, vegetation, climate.

19. A. Yes.

20. Q. Where is that report?

21. A. We have it in Volume I and we have also reviewed it
22. again in a summary.

23. Q. But whatever it is is in Volume I?

24. A. It's primarily taken from Volume I.

1. Q. Do you have a housing and community development analysis
2. of housing conditions and needs?

3. A. Well, in that the Comprehensive Plans of the other com-
4. munity service areas have been adopted, those plans all
5. have housing elements in them. And it was a requirement
6. that they be in them. In those areas we do have housing
7. analyses.

8. Q. That's in the towns.

9. A. In the towns, in the community service areas. We've
10. also done another housing analysis based on a random
11. survey.

12. Q. Do you have a comprehensive analysis for the whole hous-
13. ing conditions and needs in the whole County?

14. A. We do not have a thorough one, no.

15. Q. Do you have any goals and objectives other than those
16. contained in this Exhibit 12a?

17. A. We have those goals and the Comprehensive Plans or the
18. town plans have joint county/town goals.

19. Q. Do you have any plan for future land use? That is to
20. say beyond what is shown here of how the white areas,
21. the agricultural areas, will be developed. Do you have
22. a Comprehensive Plan for that?

23. A. We have prepared . . . our County is structured into
24. seven planning units and they are set up on drainage

1. divides. Ultimately what we hope to do is consider our
2. community service areas of the towns and look at that
3. in relationship to each one of those planning units in
4. the drainage divides. And we would also consider the
5. rural service centers too with that in those seven units.

6. Q. But this again, its development will depend on special
7. use permits.

8. A. The development will depend upon special use permits.

9. Q. Isn't that how it's come about now?

10. A. Well, that's not what it will be then. You said then.

11. Q. That's what it is now.

12. A. No, the development is not exclusively special use per-
13. mitted. That does not keep a landowner from applying
14. for a rezoning. He may apply for a rezoning, he may not
15. have it approved, but they may apply for it.

16. Q. Do you have a community facilities plan?

17. A. We have community facilities plans in the Comprehensive
18. Plans of our community service areas.

19. Q. Well, is that here?

20. A. It's in those Comprehensive Plans. Each one of those . .
21. see, the intent of those policy objectives, it was that
22. each community be a balanced community of residential,
23. industrial, commercial growth and community facilities
24. such as parks, schools, play grounds, fire stations be

1. located in community service areas. Therefore, we have
2. prepared community service area plans and each one of
3. those community service area plans have community facil-
4. ity plans.

5. Q. Well, to the extent that we have the largest community
6. service area, which is Harrisonburg and its environs, if
7. we're going to have a comprehensive plan for its future
8. growth and development, that should be evolved, should
9. it not, by one entity of government?

10. A. Not necessarily so, no. It could be done with two en-
11. tities of government.

12. Q. Well, which is more preferable from a planning stand-
13. point, can you tell me that?

14. A. The more preferable one as stated by our Land Use Plan
15. is a unified government.

16. Q. But failing that . . . that would be one government would
17. do the planning, right? And you suggested a unified gov-
18. ernment.

19. A. (Witness indicates affirmatively)

20. Q. But failing that you'd still prefer one government to
21. two to doing the planning, be it County or City, is that
22. right?

23. A. I think there would be much time, energy and cost lost
24. with two governments doing it. And, therefore, we should

1. do it as one.

2. Q. I have a question on these rural service centers. What
3. have you done other than just identify where they are?
4. What is the plan for the rural service centers?

5. A. We have prepared an existing land use analysis. We have
6. looked at soil capabilities. We've looked at the flood
7. plains in these areas. We've looked at the population
8. densities of these areas. We've designated them by our
9. zoning districts map or our tax map and established
10. boundaries for these areas.

11. Q. To the extent that you have identified them and you have
12. drawn lines around them to establish their boundaries,
13. what happens next?

14. A. What happens next is with the A-3 zoning district in the
15. zoning ordinance that's being prepared and has been
16. written we would look at the rural service centers as
17. an A-3 zoning district. And as I mentioned in my testi-
18. mony, these would be districts for community centers,
19. churches, some essential rural businesses, low density
20. areas.

21. Q. When adopted would have a zoning deemed by the Board
22. and your Planning Department to be compatible with rural
23. service centers, and that would be a guide for future
24. rezoning, is that correct?

1. A. Yes, the Land Use Plan would be a guide to a low density
2. type of usage. Some of those uses are there now, they
3. are non-conforming uses, by that A-3 zoning district they
4. would be conforming.

5. Q. You testified to a report concerning housing and housing
6. needs in the County that Mr. Deskins had testified to.
7. You said you served on the same board. What study were
8. you referring to?

9. A. The housing element of the Central Shenandoah Planning
10. District.

11. Q. And you said that a windshield survey and other statis-
12. tical data was taken into account to indicate the number
13. of residents in the County who live in substandard
14. housing.

15. A. No, I did not say that.

16. Q. You did not?

17. A. No.

18. Q. Tell me what that report does show with respect to sub-
19. standard housing.

20. A. I said that the report was prepared to give us an idea
21. of the amount of substandard housing that would be in
22. the County whereby the County could apply for block
23. grant funds and could prepare housing assistance plans
24. to qualify. It was based, those plans were based basical-

1. ly on a HUD prescribed formula and it is a recognized
2. formula by HUD. Therefore, it qualifies us for HUD
3. funds.

4. Q. To the extent that in that report you identify the num-
5. bers of substandard housing units within the County, you
6. are going to rely upon that information for your grant
7. request, aren't you?

8. A. Yes, we would.

9. Q. And you're not going to submit false data to the federal
10. government.

11. A. No. If it's recognized by HUD, apparently it's accurate.

12. JUDGE MOON: Can the Court accept that?

13. Q. Does the County have a minimum standards housing code?

14. A. A minimum housing standards code?

15. Q. Yes.

16. A. It has a building code, but it does not have a housing
17. code.

18. Q. Well, they're entirely different, aren't they?

19. A. Yes.

20. Q. And you know the City has a minimum standards housing
21. code?

22. A. Yes, I do.

23. Q. Now, you expressed or opined that if the City got the
24. annexation which it seeks, which includes the commercial

1. development on Route 33, that would lead to the deter-
2. ioration of downtown Harrisonburg.

3. A. I think because there will be other properties, other
4. vacant properties to develop, there would be less empha-
5. sis placed on downtown. There would be other greater
6. areas to serve and less time and energies placed on down-
7. town.

8. Q. I want to see if I can follow you. You are saying that
9. granted the annexation there would be developable pro-
10. perties or areas capable of developing that would not
11. get developed, or on which development would not occur.
12. Is that what you are saying?

13. A. I'm saying if you take on a greater area to serve, then
14. there are going to be greater costs in those services,
15. there will be deficiencies to rectify, there will be
16. costs there, and there will be less dollars and emphasis
17. placed on downtown.

18. Q. Can you give specific examples of what you are attempting
19. to articulate? What do you foresee the City would do
20. with the existing downtown area to ignore it? How is
21. this deterioration of which you speak going to come
22. about?

23. A. Okay, this possible deterioration is that there would be
24. less promotion for downtown. I mean, there is a vacant

1. Leggett's building that's here. It could be promoted.

2. And I think there is going to be less reason to promote
3. downtown when you've got other areas that are pulling
4. in retail sales. You just would not promote it.

5. Q. How long has the Leggett's building been vacant?

6. A. January of . . . January or February of 1979.

7. Q. And it's been vacant within our existing corporate
8. limits.

9. A. Right.

10. Q. And we don't have the 33 corridor, isn't that correct?

11. A. Yes.

12. Q. And in that period of time there has been nothing that
13. the City could do to encourage anybody to occupy that
14. building, they haven't done it. Is there anything that
15. you know of?

16. A. I haven't seen anything done.

17. Q. And that vacant Leggett's building is to you an indica-
18. tion of deterioration in downtown, is it not?

19. A. It's an indication in that it's vacant and that it's not
20. being actively pursued to relocate something in it.

21. Q. To the extent that you have looked at one or two other
22. properties which have lost their tenants into the County,
23. those properties remain vacant, those are increasing
24. symptoms of deterioration, are they not?

1. A. There is also symptoms of J. C. Penney's as one that
2. went out of the downtown area and it was turned into a
3. mall instead.
4. Q. Well, now, let's talk about both. Let's take those that
5. remain vacant in and around and throughout the City, to
6. the extent that those numbers increased, there is from a
7. planner's perspective an increasing deterioration in the
8. health and viability of the downtown area, is there not?
9. A. What I'm saying is if--there is going to be a suburban-
10. ization and if you so-call chase the stores that went to
11. the Mall, where is it going to stop? Is that going to
12. bring anymore stores into downtown; is that going to do
13. anything for downtown?
14. Q. Well, since you've asked me the question of where it
15. stops, it's where the Court makes it stop.
16. A. For now.
17. Q. Now, I'm going back one more time. From a planning per-
18. spective, to the extent that day in and day out . . . do
19. you work in this building?
20. A. No, I work in the County Office Building.
21. Q. That's over on the opposite corner?
22. A. Yes.
23. Q. Does the County own that building?
24. A. Yes.

1. Q. Is it taxed by the City?

2. A. I would think so.

3. Q. You think the City can tax County properties?

4. JUDGE MOON: Well, he's not . . .

5. A. I'm not qualified to answer that.

6. Q. How many stories are in that building?

7. A. How many stories are in that building? Six.

8. Q. And that's . . . is there any building, high rise build-
9. ing in the City any taller than that?

10. A. Possibly the bank building, I'm not sure how many floors
11. are in that.

12. Q. What was that building before it was occupied by the
13. County?

14. A. It was a bank.

15. Q. You mentioned the Penney's store that has been taken up
16. with a number of small specialty shops. You are not
17. suggesting that what has reoccupied that space has any-
18. thing near the asset value to the City that Penney's
19. offered it, are you?

20. A. I cannot speak to that.

21. Q. You can speak to it, can't you?

22. A. I don't know how much it brings in in comparison.

23. Q. Do you think any shopping developer would be interested
24. in developing something equivalent to the Mall and using

1. what's in that Penney's facility as an anchor?

2. A. Would you repeat the question?

3. Q. Do you think if somebody saw the need for another shopping
4. center, major shopping center, in this region, that they
5. would regard those small specialty shops in the Penney's
6. store as suitable anchors that would draw people through-
7. out this whole region?

8. A. No, that would not bring the people throughout the region,
9. no. It would have to be extremely special to do that.

10. Q. Now, the . . .

11. A. Some stores downtown could though. I think if there had
12. been ample parking and close by, Best Products would have
13. been a good one at Leggett's.

14. Q. On this matter of parking, how many parking spaces does
15. the County provide around the Courthouse?

16. A. I'm not certain.

17. Q. They don't provide any, do they?

18. A. I know of none they provide. I thought it was County
19. land.

20. Q. Well, it's City metered.

21. A. On County land.

22. Q. It's City meters on all the spaces around the Courthouse
23. building.

24. A. There are City meters out there.

1. Q. And from a planning standpoint are you aware of the fact
2. one of the reasons for parking meters is to provide for
3. a turnover for shoppers so that they are not occupied
4. for a full day by employees in the downtown area?

5. A. There are parking decks to provide for shoppers, and they
6. are shown as empty often.

7. Q. And those parking decks also provide parking spaces for
8. employees, don't they?

9. A. They do.

10. Q. But you don't quarrel with the proposition that meters
11. do help encourage a turnover to permit shoppers to get
12. in closer proximity to shops?

13. A. They encourage a turnover. And there are also people
14. that come in . . . as I said, the people that come into
15. our office to work with us that come in and they may be
16. in town for a day and finally they are provoked and they
17. leave. And I have heard plenty of complaints about met-
18. ers from people after people for years.

19. Q. Is . . .

20. A. It encourages the turnover and it encourages them to
21. drive out of downtown too.

22. Q. Where do they drive to?

23. A. They drive home or they drive elsewhere.

24. Q. From a planning perspective are you aware of the fact

1. that when you build a shopping center and provide acres
2. of parking around it, and then lease the spaces within
3. it, that built into the leases is the cost of the land
4. which gets built into the prices that the people pay who
5. park in the shopping center?

6. A. I don't know that.

7. Q. You don't think that the developer would want to recap-
8. ture the cost of the land that he has devoted to parking?

9. A. I don't know that.

10. Q. Now, the areas that you referred to in the City which
11. you pointed out on the map that's beneath H-10 over
12. there, did you have a figure for how many of these had
13. been built as opposed to how many had been platted?

14. A. I don't have the total figure . . . yes, I've got the
15. number that were developed, if you'd like to add them
16. up.

17. Q. Well, is it correct that in the total numbers you used,
18. that's all that were platted.

19. A. The total that I gave you was all that was platted be-
20. tween January of 1975 and the present, last week.

21. Q. And then out of that number what percent have been built
22. or constructed?

23. A. I do not know. I have a figure here on all developed,
24. but I haven't calculated it.

1. Q. Well, not all of those units, housing units, have been
2. built at this time, have they?

3. A. Not all of them, no.

4. Q. Now, is it fair to say that in every instance, or virtual-
5. ly every instance where you pointed them out on that
6. map that was upside down and I couldn't see it very well,
7. but that all of those are at the peripheral or outer edge
8. of the City?

9. A. Basically they are.

10. Q. Now, I think one of the first ones you mentioned up there
11. was Reherd Acres?

12. A. Yes sir.

13. JUDGE ARTHUR: How do you spell that?

14. A. R-e-h-e-r-d.

15. JUDGE ARTHUR: I don't know whether you're
16. saying "weird" or . . .

17. A. Reherd.

18. MR. COGAR: It rhymes with "weird", Judge.

19. Q. Now, would you step up and show the Court where that
20. development is occurring?

21. A. It's along Meadowlark, right in here (indicating on map).

22. Q. You know, do you not, that the same people who are de-
23. veloping that own most of that pie slice immediately
24. north of it between 81 in the annexation boundary and

1. the City boundary.
2. A. They do own property in that area.
3. Q. And you know it's their intention to continue the devel-
4. opment northward into that area, do you not?
5. A. It would be compatible with our R-5 zoning district, yes.
6. Q. But the question is, you know they intend to develop it
7. for residential.
8. A. I'm not absolutely certain. I've been told that, I've
9. heard that. I heard it on the tour last week.
10. Q. Well, have those people been down to you to discuss . . .
11. A. No.
12. Q. Do you know who owns it?
13. A. Depoy. I believe it's Depoy.
14. Q. And Blose?
15. A. Blose.
16. Q. You spoke of a couple of units in the County, Heritage
17. Haven, that's the home for the elderly over there.
18. A. It's housing for the elderly.
19. Q. And that's privately developed?
20. A. Yes.
21. Q. Deer Run is what?
22. A. A hundred and forty-four units for low and moderate in-
23. come families.
24. Q. And that is also being provided by private developers?

1. A. Yes.

2. Q. Without any County input?

3. A. No County dollars.

4. Q. And the land on which they desired to build that complex
5. was denied rezoning by the Board of Supervisors, was it
6. not?

7. A. Would you repeat that question?

8. Q. Where the developers originally desired to locate this
9. was on a site for which they were unable to get rezoning
10. from the Board of Supervisors.

11. A. Yes.

12. Q. And at the time they were turned down the Board adopted
13. a resolution to any public housing except for the elder-
14. ly.

15. A. Sometime after that a resolution was passed. I think
16. that resolution was not so much opposed to low and moder-
17. ate income housing and meeting the needs of those people,
18. as it was a concern that there would be an influx of
19. people from other areas moving here and socially chang-
20. ing the mix of the community. And also that the project
21. would provide housing for students.

22. Q. So, by virtue of having adopted the resolution, to the
23. extent that that desire continues to obtain among persons
24. of that socioeconomic strata and they want to come to

1. this area, they'll just have to skip over Rockingham
2. County and come right on into Harrisonburg, won't they?

3. A. Well, they've got the Deer Run project now. I think
4. they can still come to Deer Run.

5. Q. Well, Deer Run was finally able to find a tract that had
6. rezoning; they did not have to come to the Board to get
7. it, did they?

8. A. They did not have to get rezoning of that property.

9. Q. Are you willing to predict whether if Deer Run had need-
10. ed to have rezoning in order to be built, whether the
11. Supervisors would have done it?

12. A. No sir, I cannot predict that.

13. JUDGE MOON: How much longer will you be,
14. Mr. Cogar?

15. MR. COGAR: I think that completes it.

16.
17. Re-Direct Examination by Mr. Smith:

18. Q. Is it desirable, Mr. Jennings, that land use plans be
19. flexible?

20. A. Yes, it is. Because they should be . . . generally should
21. show the approximate location of each feature shown on
22. the plan. They should be flexible.

23. Q. Right, they're not set in concrete.

24. A. They are not set in concrete. They are set to be a guide.

1. Q. As a matter of fact, the law requires they be reviewed
2. every certain period of time.
3. A. Every five years; at least every five years.
4. Q. The land use plan is really a guide to rezoning, it's not
5. an absolute criteria.
6. A. It's not the absolute criteria. That's why we do a staff
7. review of various elements, the soils, the land use, the
8. school service districts, the fire stations and their
9. distances, the highway volumes, and also compliance with
10. the land use plan.
11. Q. Now, there was some questions directed to you about the
12. number of special use permits in County agricultural A-1
13. zones. Those use permits basically deal with agricultur-
14. al functions, don't they?
15. A. Basically they do, yes.
16. Q. How about a poultry house? Is it operated by a special
17. use permit?
18. A. Many of those permits are poultry houses, and those are
19. agricultural.
20. Q. And is it not true that a rezoning initiated by the County
21. Board of Supervisors goes through the same process as if
22. it were initiated by an individual citizen?
23. A. Yes. There is a public hearing.
24. Q. And these that are initiated by the Board usually deal

1. with County owned utilities or facilities?
2. A. There has been one recently that was a County utility.
3. Q. There was reference to language from the Citizens Commit-
4. tee report about County government and its ability to
5. provide for urban growth. And I think the statement was
6. basically that the County has a part-time Board of Super-
7. visors. Do you know whether or not the City Council mem-
8. bers are full-time City Council members?
9. A. I don't believe they are full-time.
10. Q. And are you aware that City Exhibit 13 shows that they
11. have a treasurer and a commissioner of revenue?
12. A. They do.
13. Q. These are elected by the citizens of the City?
14. A. I would think it's the same as the County.
15. Q. The same as the County.
16. A. Yes.
17. Q. What's the last major anchor store to locate in this
18. area? I'll give you a clue, it's in the Cloverleaf
19. Shopping Center.
20. A. I'm sorry, okay, thank you, Best.
21. Q. Best Products?
22. A. Yes.
23. Q. And that located in the City?
24. A. Yes, it did.

1. Q. And it's in a building that was operated by somebody
2. that . . .

3. A. It was originally Mason's Department Store.

4. Q. Somebody that moved out?

5. A. Yes.

6. MR. SMITH: That's all.

7.

8. Re-Cross Examination by Mr. Cogar:

9. Q. With respect to Best Products, you know that is not an
10. anchor store, don't you, Mr. Jennings, by any developer's
11. definition.

12. A. I would say that's an anchor store for that shopping
13. center.

14. Q. Can you tell me anywhere in the United States where a
15. Best Products Store has been permitted to locate in a
16. major shopping center?

17. A. I'm thinking of three places, and those three places are
18. not anchor stores in a major shopping center.

19. Q. The reason for it is they sell at discount.

20. A. Yes sir.

21. Q. And the developers know that they can't attract other
22. tenants into those stores if they have a discount house
23. in them. Isn't that a fact?

24. A. Still, in the volumes of sales that are brought into an

1. area, it could be considered an anchor.

2. Q. But anchor stores, in the context of shopping centers,
3. are your Penney's, your Leggett's, your Sears, who bring
4. great volumes of people to the store who pass by the
5. other shops in it. Isn't that what an anchor store means?

6. A. In consideration of a mall, that's an anchor store.

7. Q. Yes sir. And if Best Products is not permitted to locate
8. in a mall, then by definition it's not an anchor store,
9. is it?

10. A. Best Products could serve as an anchor in downtown or
11. could serve as an anchor in Cloverleaf, in that it will
12. bring people in.

13. MR. COGAR: I have no further questions.

14. JUDGE MOON: All right, thank you, sir.

15. (Recess)

JOHN M. SERRELL,

having been duly sworn, testified as follows:

Direct Examination by Mr. Smith:

Q. State your name, please.

A. My name is John M. Serrell, S-e-r-r-e-l-l.

Q. Where do you live, Mr. Serrell?

A. On Newman Avenue here in the City.

Q. You are a resident of the City?

A. That's right.

Q. How long have you lived there, sir?

A. Approximately five years.

Q. And you're in business in the City of Harrisonburg?

A. Yes sir.

Q. You are here to testify in opposition to the City's proposed annexation?

A. Yes sir, I am.

Q. And were you one of a group of persons who circulated petitions in opposition to the annexation?

A. Yes sir, I am.

Q. Do you have those petitions with you?

A. Yes, I do. The Clerk of the Court who we filed them with was kind enough to release them to me to present to the Judges, if they so allow.

Q. Approximately how many signatures are signed to that

1. petition in opposition to annexation?

2. A. In excess of nine thousand.

3. Q. These petitions were gathered throughout the area, the
4. County, the area sought for annexation, and the City?

5. A. That is correct.

6. MR. SMITH: I would like to offer the petitions
7. into evidence, Your Honor.

8. MR. COGAR: I would like to ask some questions
9. with respect to them.

10. JUDGE MOON: All right.

11. MR. SMITH: Do you want me to finish?

12. MR. COGAR: Well, I object to them until a
13. proper foundation is laid.

14. JUDGE MOON: You may proceed, only as to the
15. exhibit. You may question him as to the exhibit.

16. Voir Dire Examination by Mr. Cogar:

17. Q. Did you personally obtain all these signatures?

18. A. No sir, there were a group of citizens. This was not
19. aided by the City or the County; I am here as a represen-
20. tative of the citizens and the taxpayers of the City and
21. the County.

22. Q. Do you know how many people were involved in obtaining
23. these signatures?

24. A. Total count, no. It was a random distribution and they

1. took off so fast it was unbelievable.

2. Q. You don't know who obtained them?

3. A. Yes. If I may, if it pleases the Court, we placed an
4. ad in the Daily News-Record for one day, it was on a Wed-
5. nesday, the middle of the week, which we presented these
6. petitions. We had ten businesses and at the beginning
7. five town halls and then six town halls where these were
8. distributed for people to come in and sign. It was ad-
9. vertised in an ad this size, and this one ad brought out
10. over nine thousand signatures.

11. Q. Where were they obtained? What town halls?

12. A. In the beginning they were in Bridgewater, Broadway,
13. Dayton, Grottoes, Elkton, and Timberville would not allow
14. them until Thursday of that week, until Thursday evening,
15. until they had a town meeting. They would not post the
16. petition without their complete consensus of the town
17. council.

18. Q. Have you personally reviewed them and ascertained whether
19. there are any duplications?

20. A. No sir, I have not.

21. Q. Do you know the residences of the persons who have sign-
22. ed these petitions?

23. A. No sir, I do not. The majority of them put a residence
24. down. If I may address that point. I dedicated a week

1. of my life to obtaining these signatures, and I personal-
2. ly couldn't afford anymore time away from my business to
3. check the registrations or the individuals here. But
4. they have been on file in the Clerk's Office for in ex-
5. cess of a week for anyone to review that would like to.

6. Q. Do you know whether those persons are or are not regis-
7. tered voters?

8. A. No sir, I do not. We asked . . . the only qualifications
9. we gave the public on signing these, we asked them to be
10. eighteen years old and to be residents of the City or the
11. County. We did not ask them necessarily to be voters;
12. because we feel that anyone who lives or works in the
13. City and County are affected by annexation.

14. Q. Well, you don't know whether they're registered voters?

15. A. No sir, we do not.

16. Q. You don't know the residences?

17. A. They are listed.

18. Q. In some instances.

19. A. In . . . I'd say ninety-nine percent of them are listed
20. there. They are here for you to review, if you'd like.
21. I personally can't take the time to go through them.

22. Q. Well, who do you want to go through them? Do you want
23. the Court to go through the nine thousand names there
24. and check the residences?

1. MR. SMITH: You're welcome to go through them
2. if you want.

3. A. It suits me at any time.

4. Q. Are you able from that list to pinpoint where every cit-
5. izen resides?

6. A. If it pleases the Court, I'll read a few.

7. JUDGE MOON: Well, wait a minute.

8. A. How many would you like?

9. JUDGE MOON: Well, I wouldn't like any of
10. them. If you'll withdraw the question.

11. MR. COGAR: All right, I'll withdraw the
12. question.

13. A. They are listed by residence, where they reside.

14. Q. You say you cannot vouch as to whether there are any dup-
15. lications in there?

16. A. No sir, I cannot.

17. Q. When did you first interest yourself in gathering these
18. petitions?

19. A. April 3rd.

20. MR. COGAR: Excuse me, that would be getting
21. into another area. If Your Honor please, I object to
22. the introduction of these petitions on the ground that
23. there is no indication that the persons who have signed
24. are registered voters or property holders as is required

1. by the statute. He is unable to vouch to that. In
2. 15.1-1036, "In any proceedings hereunder any qualified
3. voters or property owners in the territory proposed to
4. be annexed, or any adjoining city or town, may by peti-
5. tion become parties to such proceedings as provided in
6. (b) hereof."

7. MR. SMITH: These people aren't seeking to
8. intervene or have their property annexed or anything of
9. that nature. They don't fit the intervenor category.
10. I think what counsel is really saying, the objection
11. goes to the weight rather than the admissibility. There
12. is no evidence at this point that they're anything but
13. residents of where this man says they are, the County,
14. the City and the area.

15. JUDGE MOON: Well, is there any objection to
16. the Court taking note that the gentleman has produced
17. signatures of nine thousand people gathered in the manner
18. that he said, and he does not vouch for the fact that
19. they are taxpayers or voters, but that nine thousand
20. people signed petitions opposing the annexation. And
21. there may be duplications. I mean, I'm not sure of the
22. evidenciary value of it; but it's like so many things
23. here . . .

24. MR. COGAR: Since they don't seek to intervene,

1. Your Honors please, I think this is essentially the same
2. as his coming in here with a phone book for this area
3. and saying, "I know these people are opposed," when if
4. they are opposed they should present themselves here.

5. JUDGE MOON: Well, I appreciate him going out
6. rather than them coming in.

7. MR. COGAR: To avoid that, as long as our pos-
8. ition on it is understood, I won't press the matter fur-
9. ther.

10. JUDGE MOON: All right, they will be filed
11. and accepted for the reasons stated.

12. Direct Examination by Mr. Smith (continued):

13. Q. Mr. Serrell, you said that some of these signatures were
14. received in various business establishments?

15. A. Yes sir.

16. Q. Will you tell us what those establishments are and where
17. they are located?

18. A. Yes, but if I may precede that, these businesses . . .
19. some of these businesses did not want to take a position
20. for or against. They merely allowed us to place these
21. petitions in their businesses. And they were as follows:
22. Werner's Market, Early's Cycle Center, Wampler's T.V.,
23. Heatwole's T.V., Village Auto Center, Shockey Motors,
24. Presgraves Gun Shop, Weaver Hams, Magnavox Home Enter-

1. tainment Center, and College 66.

2. Q. Do you know how many of those are in the annexation area?

3. A. No sir, I do not.

4. Q. Are any of them in the City of Harrisonburg?

5. A. Yes, they are.

6. Q. Which ones are in the City?

7. A. Shockey Motors is in the City, Village Auto Center is
8. in the City, I believe Werner's Market is. Now, in the
9. proposed annexation area you have Early's Cycle Center,
10. Magnavox Home Entertainment, Weaver Hams; so it's split
11. on both ends. And then there's a couple that are in the
12. County and not in the proposed annexation area.

13. Q. How long did it take to secure those signatures?

14. A. We put the petitions out, they were on display for a
15. week. We began on Saturday, the 4th of April, we asked
16. for them to be signed through the following Saturday;
17. but many of them were not turned in until the Monday af-
18. ter the following weekend. So, they were on display for
19. a week and were turned in by the tenth day.

20. Q. Now, you said that you had devoted a week of your life
21. to securing these signatures and that you are opposed to
22. the City's annexation.

23. A. Yes, I am.

24. Q. Can you tell the Judges the reason that you are opposed

1. to the annexation?

2. A. Well, actually it's a three-fold reason, and the reasons
3. that were most expressed by the general public who sign-
4. ed these. First of all, we have City versus County, and
5. there is no voice for the people . . .

6. MR. COGAR: Your Honor please, I'm going to
7. object to him reciting what other people said.

8. A. Okay, well, may I state it for myself, Your Honor?

9. JUDGE MOON: Yes, you may.

10. A. Thank you. I personally do not believe that the people's
11. wishes have been represented in this Court. I asked the
12. Commission on Local Government to ask the citizens how
13. they felt, and it was not done, and this is the only
14. voice the people have brought in this courtroom so far.
15. The second is, I personally question the need for annex-
16. ation. I personally feel that the City is strong and
17. viable, I feel the County does an adequate job. And,
18. thirdly, based on the need question, I feel taxes are
19. very good in the City, they are very good in the County.
20. And when they stand to go up twenty percent in both areas
21. and fifty percent in the proposed annexed areas, it's
22. excessive. And any government, whether you run it,
23. whether I run it, if we can get a fifty percent tax in-
24. crease, we can do a better job. There's no question.

1. And on those three points were the reasons that I am op-
2. posed . . . I'm not so much opposed to annexation, but I
3. am for the existing structure.

4. MR. SMITH: Your witness.
5.

6. Cross Examination by Mr. Cogar:

7. Q. Are you aware, Mr. Serrell, that the Commission on Local
8. Government did hold a public hearing?

9. A. Sir?

10. Q. Are you aware that the Commission on Local Government
11. held a public hearing?

12. A. Yes sir, I was here. I testified.

13. Q. All right. You said you asked them to hear the citizens
14. and they advertised for a hearing and they heard the cit-
15. izens, didn't they?

16. A. I asked them to go out and ask the public, what the pub-
17. lic as a whole thought, and the public . . . I cannot
18. give you an exact percentage, but it appeared to me that
19. eighty-five or ninety percent of those who testified be-
20. fore the Commission were opposed to annexation.

21. Q. You know that the Commission on Local Government adver-
22. tised here and made known the fact that they were having
23. a public hearing, and articles appeared in the newspaper
24. indicating they were going to have a public hearing; were

1. there not?

2. A. Yes sir.

3. Q. And you came here to it?

4. A. Yes sir. They did not . . . there were people, if I
5. may . . .

6. Q. Excuse me, the question is, did you come here?

7. A. Yes sir. I appeared before the Commission. I spoke,
8. I testified. And when I testified I asked them to take
9. the time themselves to ask the people on the street how
10. they felt with regard to the annexation.

11. Q. Everybody that appeared had an opportunity to be heard,
12. did they not?

13. A. I do not know. I had people in the community who told
14. me there was not enough room to come in the courtroom.

15. Q. Well, there were sixty-five people here, isn't that cor-
16. rect?

17. A. I'll guarantee you there were over a hundred and fifty
18. people here that night. This room was full.

19. Q. Well, did you see them flowing over into the streets?

20. A. No, but they had speakers outside the room here for the
21. people to hear.

22. Q. Well, how many . . . you say a hundred and fifty people
23. showed up.

24. A. Oh, at least. I don't have a true count.

1. Q. Now, where did you get your figure that taxes are going
2. to increase by fifty percent?

3. A. In the proposed annexed area. I got that from the briefs
4. that I have read that have been filed so far. The
5. County tax base is fifty-two cents a hundred, if I'm
6. not mistaken. The City's tax base is sixty-five cents
7. a hundred. That's thirteen cents increase if you're an-
8. nexed tomorrow. And on top of that the eleven to seven-
9. teen cents increase needed to pay for improvements, as
10. the City has said it will cost them, if you add those
11. two figures together you're going to come up with any-
12. where from forty-five to fifty-five percent tax increase
13. in your proposed annexed area. Now, unless I read those
14. figures wrong, that's my interpretation of them.

15. Q. Do you have any information on what the tax rate is go-
16. ing to be in the annexation area even without annexation?

17. A. No sir, I do not. I believe a gentleman has already tes-
18. tified to that fact.

19. Q. But you don't know?

20. A. No sir.

21. Q. And the people that were obtaining signatures on these
22. petitions, they were telling those whose signatures were
23. sought that there was going to be a fifty percent tax
24. increase by reason of this annexation. Is that correct?

1. SHELDON EARLY,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. What is your name, sir?

5. A. I am Sheldon Early.

6. Q. Do you operate a business in the area which is sought
7. for annexation?

8. A. Yes sir. I own and operate Early's Cycle Center, which
9. is located just south of the Harrisonburg City limits on
10. Route 42.

11. Q. We just heard some reference to Early's Cycle Center from
12. Mr. Serrell. Did you have a participation in circulating
13. the petition against the annexation?

14. A. Yes sir. The petition was displayed in my store for the
15. duration of it.

16. Q. Okay, sir, would you step over to Exhibit 23 and mark the
17. location of your business.

18. A. (Witness indicates on map)

19. Q. Put your initials there, Mr. Early.

20. A. (Witness indicates on map) It's right here in the corner
21. of Route 726 and Highway 42, the second plot of land
22. south of this corner.

23. Q. All right. How long ago did you locate your business
24. there?

1. A. I located there in 1974.

2. Q. And what were some of your criteria or considerations in
3. locating your business there?

4. A. Well, being in the motorcycle business, I needed first
5. of all a lot that was zoned business. I needed to have
6. a lot that was compatible. . . or, I needed to have
7. neighbors that I felt like the motorcycle business was
8. compatible with. And in looking at the area, farm mach-
9. inery dealers, this type of business seemed to fit very
10. well at that particular location. Also, my business re-
11. quires a great deal of road testing of our product, we
12. need a piece of property that has easy access on and off
13. the highway, and this was one of the criteria that I
14. located there for, because I had the 726 back road that
15. we can use very easily, and also the main highway, and so
16. our customers could get to and from our business very
17. easily.

18. Q. Did you look at other locations and then finally decide
19. on this one?

20. A. Yes sir. I surveyed the area very carefully. Being a
21. small businessman, very limited dollars, I looked at
22. the area within the City, several locations within the
23. City, and also several in the County, and felt that the
24. piece of property that I bought was the best buy.

1. Q. There were areas available in the City had you chosen
2. to locate your business there?

3. A. Oh, yes sir, and there still are.

4. Q. All right, sir. You are opposed to the City's proposed
5. annexation, is that right?

6. A. Yes, I am opposed to the annexation of the area around
7. me there. Anything that is not the wish of a land owner,
8. I do not think should be annexed.

9. Q. Give the Court the reasons for your opposition to this
10. annexation.

11. A. Well, when I located my business in the County there, I
12. provided myself with a well and a septic system at a
13. cost in 1973 and 1974 in excess of six thousand dollars,
14. and I have provided my own services for these needs. And
15. I feel like to be annexed, the City has nothing that I
16. either need nor want.

17. Q. Have you ever had any trouble with your well or septic
18. field?

19. A. No sir.

20. Q. Are you satisfied with the other services that are pro-
21. vided to you by Rockingham County?

22. A. Very happy with our Sheriff's Department. I have a burg-
23. lar alarm system inside directly to the County Building,
24. and unfortunately we have been broken into once. The

1. Sheriff's Department responded very quickly, and we did
2. not sustain any substantial loss. We've had a number of
3. false alarms, and of course they are very efficient in
4. getting there quickly. I live four miles west of Harri-
5. sonburg, and of course I received a call about the same
6. time, and even on a motorcycle I can't beat the Sheriff's
7. Department out to my place of business.

8. Q. As a matter of fact, on one occasion they caught the
9. burglar in your establishment, didn't they?

10. A. Yes sir, they did.

11. Q. Have you ever had need of the County fire services?

12. A. No sir.

13. Q. What provisions do you have for trash and refuse collec-
14. tion at your establishment?

15. A. At my establishment my trash is taken care of mostly by
16. my own means. Our larger bulky items, of course, I have
17. my own large truck that I haul to the County Landfill. I
18. do share a dumpster with a neighboring business, which
19. is more than adequate for the two of us.

20. Q. You also are a part owner of a business in the City of
21. Harrisonburg, aren't you?

22. A. Yes sir. I'm a partner in E & M Auto Paint and Supply,
23. a business which supplies paint and related automotive
24. materials to the automotive trade. We also have this

1. business within the City and a branch store in Waynes-
2. boro.

3. Q. How do you provide for the collection of trash from your
4. business in the City? Does the City of Harrisonburg
5. collect that?

6. A. Well, that's kind of a sore spot really. During the
7. early years of the business there we used the City ser-
8. vices, but presently we use a private trash collector
9. with a dumpster. To give you an example of why we don't
10. like the City services, they practically want your trash
11. gift wrapped. And when I say this, you have to have it
12. in such-and-such a size container with a lid on or tied
13. up in a garbage bag. And, you know, a business that's
14. operating the way a paint mixing business does, all the
15. number of tin cans and gallon cans, et cetera, this is
16. just absolutely ridiculous. So, we have hired a private
17. collection agency to take care of our trash within the
18. City. It's cheaper and much easier to work with.

19. Q. Are there other businesses located in the area where yours
20. is in the County?

21. A. Yes, I have quite a few business neighbors close to the
22. area there, and I've surveyed them and asked them about
23. their wishes of annexation, and I've come up with . . .

24. MR. COGAR: Objection, Your Honor.

1. JUDGE MOON: Sustained if he's going to say
2. what other people have told him.

3. Q. What other businesses in your area have you talked to
4. about annexation? Don't tell me what they've said, just
5. say who you've talked to.

6. A. Lough Brothers Building Contractors, the Paint Center,
7. Dairyman's Specialty, Dayton Equipment, Interstate Bat-
8. teries, Stoneburner Engineering and Construction, and
9. Shenandoah Automatic Transmission.

10. Q. What is Dayton Equipment's business? Do they sell products?

11. A. Dayton Equipment is a farm machinery dealer.

12. Q. Does the City of Harrisonburg have a business license
13. tax?

14. A. Yes. In our business in Harrisonburg we're taxed on the
15. gross receipts.

16. Q. Do you think that would have an effect on your business
17. in the County?

18. A. It would have a drastic effect on it.

19. Q. That would be detrimental, I would assume?

20. A. That's my feeling, yes.

21. Q. Are there any other reasons you're opposed to annexation
22. that you would like to make the Court aware of?

23. A. Well, in the forty years that I have watched Rockingham
24. County grow from strictly an agricultural community, agri-

1. business, food processing, to a good mix of light indus-
2. try and general business; and I feel like since we have
3. seen this growth within the County we've been able to
4. support our school system much better. And when I say
5. much better, I feel like that . . . when I was a young-
6. ster and went to school, I went to a one-room school
7. house for the first six years of my education. We have
8. been able to support our schools and make them much bet-
9. ter through the fact that we've been able to develop some
10. general business and light industry in the County so that
11. we can have tax dollars to pay for the schools that we
12. have. Now, I saw the first consolidated high school
13. built in the County, and then three or four more to fol-
14. low very shortly afterwards. And if we wouldn't have had
15. the tax base that we have in general business and light
16. industry to support this school system; and this is what
17. the biggest part of our County budget goes for, is educa-
18. tion. I feel like that if this large piece of land is
19. annexed by the City of Harrisonburg, that we will lose
20. our ability to support our school system. That's one of
21. the major concerns that I have. That my child, who is
22. in the County schools, and I'm happy with the education
23. that he's beginning to get. I feel like it's good. But
24. I feel like we need this tax base to help pay for this

1. education.

2. MR. SMITH: Answer the gentleman's questions.

3.

4. Cross Examination by Mr. Cogar:

5. Q. How long have you been located at this site?

6. A. At my present time?

7. Q. Yes sir.

8. A. I located there in 1974. That's, what, eight years.

9. Q. Were you at some other location prior to that?

10. A. Yes sir, I was on Route 33 West, four miles.

11. Q. Before moving from Route 33 down onto Route 42, did you
12. give consideration to moving away from Harrisonburg's
13. environs.

14. A. I didn't understand your question.

15. Q. When you relocated from 33 down to 42, did you ever con-
16. sider moving further away from Harrisonburg?

17. A. Well, there would have probably been no possibility of
18. it. In zoning and business you need a business location,
19. one that's zoned business.

20. Q. Well, there are places throughout the County where you
21. can operate your kind of business, are there not?

22. A. Very few.

23. Q. You've got seven towns, haven't you?

24. A. Well, you know, my location is Harrisonburg. Even though

1. I was 33 west, I was considered Harrisonburg, as far as
2. mailing address. You know, I wouldn't have wanted to go
3. to Dayton.

4. Q. And I take it that you have a substantial number of your
5. customers who are residents of the City of Harrisonburg.

6. A. I have a real good mix of customers from both Harrison-
7. burg and Rockingham and surrounding counties.

8. Q. This business that you have in the City, you pay a City
9. business license tax?

10. A. In E & M Auto Paint and Supply, does that pay a City
11. business tax?

12. Q. Yes sir.

13. A. Yes sir.

14. Q. You have no present plans to move that business out of
15. the City, have you?

16. A. Well, that business has bought a piece of real estate
17. within the County. I can't speak a hundred percent for
18. that business, because I am a shareholder. It might be
19. a possibility of it.

20. Q. Where in the County did you buy it?

21. A. Right behind my motorcycle store.

22. MR. COGAR: All right. I have no further
23. questions.

24. JUDGE MOON: Thank you, sir.

1. GLENN M. WEATHERHOLTZ,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. What is your name, sir?

5. A. Glenn Weatherholtz.

6. Q. Do you have an official position with the County?

7. A. I'm the Sheriff of Rockingham County and the City of
8. Harrisonburg.

9. Q. And as Sheriff you are elected by the voters of both
10. jurisdictions?

11. A. Yes sir.

12. Q. How long have you served as Sheriff?

13. A. Since January 1, 1972.

14. Q. Do you have your exhibits, the exhibit book?

15. A. I have an organizational chart is the only thing I have,
16. and I have a copy of my schedules just so I can remember
17. certain things.

18. Q. Would you take a quick look at County Exhibit 6, Sheriff,
19. and tell us whether or not that accurately shows your
20. professional qualifications.

21. A. Yes sir.

22. Q. You were formerly a Virginia State Police officer?

23. A. Yes sir.

24. Q. And you have experience of nineteen years in the field

1. of law enforcement.

2. A. Yes sir.

3. Q. Does this exhibit purport to be the organizational chart
4. of the Sheriff's Department?

5. A. (Exhibit shown to witness). Yes sir, it is. I have a
6. copy of that.

7. Q. All right, Sheriff, will you take a look at Exhibit 35.
8. It's a narrative of the Sheriff's Department of Rocking-
9. ham County, is it not?

10. A. Yes sir.

11. Q. How many sworn field deputies do you have in the Sheriff's
12. Department?

13. A. I have twenty sworn field deputies.

14. Q. And how many people in total are employed at the Sheriff's
15. Department?

16. A. I have forty-five full-time and two part-time.

17. Q. Can you tell us about the operation of the jail?

18. A. Well, we have eight correctional officers in the jail.

19. Last year we averaged forty-nine point ninety-six prison-
20. ers per day. We have one full-time matron who is a
21. secretary during the day shift, and the dispatchers
22. double as matrons in the evening, midnight hours, and
23. also over the weekends. We have a full-time male regis-
24. tered nurse, and I have a full-time cook plus a part-time

1. cook. One of the jailers doubles as a recreational of-
2. ficer; we do have a recreational area thanks to Federal
3. Court. And we also have a Work Release Program which
4. is worked out of the jail. We have a full-time work
5. release counselor. He has a part-time secretary who
6. works three days a week, and she also does the Uniform
7. Crime Report for us because she doesn't keep busy doing
8. that.

9. Q. Does the jail also serve the City of Harrisonburg?

10. A. The jail is for the City of Harrisonburg, Rockingham
11. County, state police, all the small towns. It is also
12. a federally approved jail.

13. Q. And is that the only federally approved jail in this
14. particular area?

15. A. From Roanoke to Winchester, say if you use 81 and Route
16. 11 as a guide, yes sir.

17. Q. What is the criteria for being federally approved?

18. A. They have certain programs and they have a jail inspector
19. that comes around ever so often. I can't elaborate on
20. each detail because I haven't seen the jail inspector
21. for about two years, it might even be three.

22. Q. Are you satisfied it's still federally approved though,
23. Sheriff?

24. A. Well, they are still putting the federal prisoners in

1. there, because we have a Federal Court here in Harrison-
2. burg.

3. Q. Does your department also provide services to the various
4. towns in Rockingham County?

5. A. Yes sir, we do.

6. Q. Would you tell us what services you provide to the towns?

7. A. Well, we dispatch full-time for the Town of Dayton,
8. Broadway, Timberville, Grottoes; Bridgewater has part-
9. time dispatchers. And they use our teletype machine to
10. run their license checks and so forth. The breathalyzer
11. machine is located at the Sheriff's Department, which is
12. used by all the small towns. This is a State Police
13. breathalyzer machine. I have seven deputies trained in
14. the breathalyzer. If ours breaks down we use the City
15. of Harrisonburg's; if theirs breaks down the City of
16. Harrisonburg uses ours, and so forth. We stand by to
17. assist the small towns in any felony case that we can
18. be assistance in. Plus, you know, we receive their
19. prisoners.

20. Q. Some of the towns don't have any police officers, do
21. they?

22. A. Probably Mt. Crawford would be the only one.

23. Q. Just tell us briefly about the training of your deputies.

24. A. Well, we have a Central Shenandoah Criminal Justice

1. Training Center, which is a long name for a training aca-
2. demy, which is at Waynesboro. And everyone within . . .
3. from Covington, Rockbridge, on north to Warrenton, Cul-
4. peper, Frederick County, uses this academy. And it is
5. one of the, I think seven, left in the state that the
6. legislators, Virginia legislature allowed to stay. All
7. of our police officers are graduates of this--deputies
8. are graduates of this school; and all of us attend the
9. same school. There is very little difference in the train-
10. ing. Of course, correctional officers have a specialized
11. school that they go to. And then we also try to have
12. some specialized training, send them to outside schools
13. and so forth. I have a man trained in the polygraph. We
14. have a polygraph which is used by everyone. It is finan-
15. ced by the City of Harrisonburg and just about all the
16. small towns, they all put some money into it. That's
17. basically, in a nutshell, some of the training.

18. Q. Basically the training of your deputies is the same as
19. for the City police officers?

20. A. Oh, it's identical except for the correctional officers.

21. Q. Are there also state police officers who operate in
22. the Rockingham County area?

23. A. Yes sir, there's fifteen state police and two sergeants.

24. Q. And James Madison University has its own security depart-

1. ment?

2. A. James Madison University, I think, has thirteen police
3. officers and a Chief and a head of security.

4. Q. And your department also provides certain services to the
5. Courts in respect to serving papers?

6. A. The Sheriff's Department has the security in the three
7. courts, the Circuit Court, the Juvenile and Domestic
8. Court, the District Court; plus the serving of civil
9. processes in Rockingham County, the small towns and the
10. City of Harrisonburg. And, of course, the Sheriff's
11. sales, the levies that go with it, and so forth. The
12. transportation of prisoners, the transportation of juve-
13. niles to the Detention Center in Staunton and returns to
14. the Court and so forth.

15. Q. Would you turn over briefly to page three of Exhibit 35.
16. Does that accurately reflect the personnel in your de-
17. partment? Have there been any changes?

18. A. Page three?

19. Q. Page three, correct, of Exhibit 35.

20. A. Okay, twenty deputies, eight correctional officers, six
21. dispatcher-clerk-matrons, one secretary-matron, one
22. registered nurse, one work release counselor, one full-
23. time court bailiff and one part-time, one cook, and one
24. assistant is not here. And then I have three . . . last

1. July 1 I was authorized by the Board of Supervisors and
2. the Compensation Board to have three process servers,
3. and they are full-time now.

4. Q. And they are employed now by the Sheriff's Department?

5. A. Yes sir, And then July the 1st the Board of Supervisors
6. has now authorized me to have two additional deputies
7. plus a correctional officer, and this depends upon the
8. approval of the Compensation Board.

9. Q. You also have auxiliary deputies?

10. A. Yes sir, I have auxiliary deputies which are . . . they
11. are appointed as special police officers by the Circuit
12. Court.

13. Q. What functions do they perform?

14. A. They ride with experienced deputies. They also assist
15. at certain functions such as ballgames, any sports event
16. that we need extra help. They usually work on weekends.
17. All of them are business people, have full-time jobs or
18. own their own businesses. And at heavy traffic times
19. they are out and are a great asset to us.

20. Q. Would you turn over to Exhibit 35a and identify that,
21. please.

22. A. This is the location of where deputies live. Now, this
23. is not done by design, it just happened that way, because
24. we have a certain criteria and these deputies met this

1. criteria. This has been changed. I think this was
2. probably done about 1980, this has changed somewhat, not
3. a whole lot. But, for example, the Bergton-Criders area,
4. I have a deputy living there now, which would be all the
5. way up to your left on the map.

6. Q. Is that in the mountain area up there?

7. A. Yes sir, the Criders-Bergton area. But this is just
8. about the way it is.

9. Q. Can you explain the shifts that your deputies work?

10. A. Okay, we have three shifts. I have three shift sergeants,
11. uniform sergeants. One shift would work eight to five,
12. this is daylight shift. The other shift would come on
13. say from four to one o'clock in the morning. Then you
14. have a midnight shift that works from twelve until eight
15. o'clock in the morning. Then during the daylight shift
16. we found out over the years that . . . this is when the
17. investigators can get the most work done. I have four
18. investigators or detectives. Three of them are assigned
19. to the dayshift and one is assigned to the evening shift.

20. Q. All right, sir. And all of these deputies have their
21. own vehicles?

22. A. Yes sir, each deputy has a vehicle assigned to him. And,
23. of course, he marks on from home and when he gets home
24. in the evening he's off.

1. Q. As soon as he leaves the house and gets out in the car
2. he checks with the dispatcher and he's on duty?

3. A. Yes sir.

4. Q. And he doesn't have to report to one central location and
5. start from there?

6. A. No sir.

7. Q. Are the majority of these vehicles marked as police
8. cars?

9. A. I have a plain car and the four investigators have a
10. plain car. The rest of them are marked. Now, I'd like
11. to explain something on the . . . you asked me what
12. shifts I have. Back in 1977, I believe, I ran a survey
13. on our high crime areas and I put an extra patrol around
14. the City of Harrisonburg at that time. This individual
15. deputy could come out say five, six, seven o'clock in
16. the evening and he'd check the business places all around
17. the City of Harrisonburg. And it did seem to alleviate
18. somewhat the problem. And the reason I say a high crime
19. area, you have a lot of business places, and the burglar-
20. ies and the larcenies.

21. Q. As a matter of fact, the crimes of murder, rape and rob-
22. bery are very seldom seen in your County, aren't they?

23. A. We have a low crime rate.

24. Q. Did you make some special provisions for the security of the

1. Valley Mall?

2. A. Yes. When the Valley Mall got started I assigned my
3. first full-time female deputy to Valley Mall, and she
4. worked from September of 1978. And in February 1980 I
5. found out that really I did not have enough work to keep
6. her busy, so I relieved her and put her on a full-time
7. shift with our regular deputies. We started the special
8. patrol around the City in July 1977, and this usually
9. takes care of the problem. Of course, with the . . . so
10. much paperwork going on you always have a deputy around
11. the office or so making reports and so forth and are
12. processing; so we usually have someone around the office.

13. Q. With respect to the subject of communications, are there
14. various businesses that have burglar alarms that are
15. tied into your office?

16. A. Yes sir, we have quite a few.

17. Q. Do you know approximately how many there are?

18. A. We have twenty-three that are on a board that comes into
19. this system. We also have quite a few on the phone
20. system. This is a recorded voice, "There's a burglary
21. in progress at such and such a place."

22. Q. This document was referred to earlier at this trial and
23. identified as the document given to a representative of
24. the Commission on Local Government. Is that correct?

1. A. Yes sir.
2. Q. You didn't testify before the Commission, did you,
3. Sheriff?
4. A. No sir.
5. Q. And there was never any opportunity to explain this
6. document?
7. A. No sir.
8. Q. It was asked for of you by a representative or a staff
9. member of the Commission, is that correct?
10. A. Yes sir.
11. Q. This volume styled Crime in Virginia, are you familiar
12. with that book?
13. A. Yes sir.
14. Q. What is the source of the information contained in that?
15. A. This is a uniform crime report which is compiled by all
16. the police departments, the sheriff's departments, et
17. cetera, and compiled by the Virginia State Police for
18. the FBI for a certain location.
19. Q. Does it contain crime statistics of the various cities
20. and counties in Virginia?
21. A. Yes sir.
22. Q. And that one is for the year 1979?
23. A. Yes sir.
24. Q. Are these statistics reported by the various localities

1. themselves?
2. A. Yes sir.
3. Q. Would you read the crime statistics that are a comparison
4. for the City of Harrisonburg and the County of Rockingham
5. for 1979; which is the same year as these statistics you
6. gave the Commission on Local Government, is it not?
7. A. Yes sir. Rockingham County in 1979 . . . now you're
8. talking about the whole county, Bridgewater, Dayton and
9. so forth, and the State Police, had a crime rate per
10. hundred thousand of 1252.72, a total crime index of
11. 689, and had a percentage cleared of 26.20.
12. Q. Would you read the comparables that go to the City?
13. A. Harrisonburg in 1979 had a crime rate per hundred thousand
14. of 3778.94, had a total crime index of 718, and had a
15. solving rate of 23.20.
16. Q. Sheriff, you are familiar with the area the City seeks
17. to annex, are you not?
18. A. Yes sir.
19. Q. Is your department providing the law enforcement that
20. is needed in that area?
21. A. Yes sir, I feel we are.
22. Q. In your opinion does this better qualify you to provide
23. for the law enforcement needs in that area?
24. A. I think we can provide for the law enforcement needs.

1. The City can most of the time have a faster response
2. time. In essence, whenever you work a congested area
3. and you have policemen in that area, they can be there
4. in a matter of minutes. They might have a response time
5. of three to five minutes, ours might be ten to fifteen
6. because of our widespread area.

7. Q. You testified that your rate of solving crimes is better
8. than that of the City in 1979?

9. A. Yes sir.

10. MR. SMITH: That's all.

11.

12. Cross Examination by Mr. Glass:

13. Q. Sheriff, your department is responsible for both the
14. City and the County.

15. A. Yes sir.

16. Q. And you provide jail services for both the City and the
17. County.

18. A. Yes sir.

19. Q. And you also serve civil process in both the City and
20. the County.

21. A. Yes sir.

22. Q. And you have approximately six deputies or sworn officers
23. per shift then?

24. A. Approximately, yes sir.

1. Q. You are responsible for providing police protection
2. throughout the entire County?
3. A. Yes sir.
4. Q. According to County Exhibit 107, if you exclude national
5. forests, national parks and the towns, that leaves ap-
6. proximately five hundred and eighty-three square miles.
7. A. Well, we have the national forests, we don't have the
8. national parks. In fact, we have a special patrol for
9. the national forest.
10. Q. You do patrol that?
11. A. Yes sir. We have no jurisdiction at all in the national
12. park.
13. Q. Even if you exclude the national forests, that leaves
14. you approximately a little bit less than six hundred
15. square miles to patrol.
16. A. I haven't figured it. I'll take your word for it.
17. Q. And with an average of six deputies per shift you have
18. somewhere in the neighborhood of a hundred square miles
19. for each deputy to patrol.
20. A. Yes sir.
21. Q. If this annexation was granted and your primary law en-
22. formment area was reduced to the area outside of the
23. enlarged City, you would be able to better serve the
24. remaining portion of the County, would you not?

1. A. With the same number of personnel, but remember I am
2. getting, supposedly getting two additional deputies
3. July the 1st. But that would be normal, I would say,
4. if your area becomes smaller, sure you can give better
5. service to what's left.

6. Q. I believe you indicated that generally the City can
7. respond on the average more quickly to a call because
8. the geographical area is smaller.

9. A. Yes sir, that's correct.

10. Q. Now, with respect to City Exhibit 54, which I think Mr.
11. Smith handed you, it's entitled "Rockingham County
12. Sheriff's Department". Those are the statistics for
13. 1979 on a report of crime in the County.

14. A. Yes sir. These grids were made for our own filing system.
15. And, for example, if we solve a burglary in Section A,
16. then it will be very simple for us to pull out the rest
17. of those burglaries that have occurred in that area to
18. try to hit the guy with them that we have under arrest.
19. That's a very simple filing system. And also it tells
20. us if we have a problem in that area we can start putting
21. extra patrols in that area.

22. Q. You divided the County on your grid system into eight
23. different areas?

24. A. Yes sir.

1. Q. And this area D which includes Harrisonburg is the small-
2. est of those eight, is it not?
3. A. Yes sir.
4. Q. Do you have any estimate of what area D might include as
5. far as a rough percentage of the whole County?
6. A. Percentage of population?
7. Q. Land area.
8. A. I haven't tried to figure that up.
9. Q. Something less than one-eighth of the entire County since
10. you have eight areas?
11. A. Oh, yes. It's less than one-eighth, I can tell that
12. from looking at it, but it wasn't done for geographical
13. reasons or population reasons. It was done for our fil-
14. ing systems and to see if we had a problem area.
15. Q. Have you calculated by chance the total number of crimes
16. which you've listed there in your 1979 figures?
17. A. Well, it's in this book, the total crimes are in this
18. book.
19. Q. And it's approximately 466 total for all this area?
20. A. For Rockingham County?
21. Q. Yes sir.
22. A. I can tell you in just a few minutes. (Witness examines
23. document) Four ninety-one is what the count was in 1979
24. for the Sheriff's Department.

1. Q. I believe area D, the total for that particular area
2. which includes Harrisonburg, has the greatest total
3. number of crimes of any of those other seven categories,
4. does it not?

5. A. You know, I didn't add them, but I would assume so. But
6. look at all the business areas around the City of Harri-
7. sonburg, this is the reason for it.

8. Q. It is generally of your eight record sheet areas, D which
9. includes the City as shown on the map, is generally the
10. area with the highest crime rate.

11. A. Generally, yes sir.

12. MR. GLASS: No further questions.

13.

14. Re-Direct Examination by Mr. Smith:

15. Q. I believe in 1979 Rockingham County had fewer crimes
16. than the City of Harrisonburg, didn't it?

17. A. Yes sir.

18. Q. Now, the Chief of the City police department testified
19. here. He made the statement that people don't cause
20. crimes . . . people cause crimes, it's not open spaces
21. that cause it. Do you agree with that statement?

22. A. Sure, I have to. Whenever you have many people in an
23. area you have problems. You can't have a fight unless
24. you have two people together.

1. WALLACE HATCHER,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. What is your name, sir?

5. A. Wallace Hatcher.

6. Q. Where do you reside?

7. A. The community of Broadway.

8. Q. Are you affiliated with the County's Industrial Develop-
9. ment Authority?

10. A. Yes sir.

11. Q. In what way, sir?

12. A. I'm vice chairman of that organization.

13. Q. How long have you been associated with the Authority?

14. A. Since its organization on January the 19th of 1973.

15. Q. Can you tell the Court what the purpose and mission
16. of the Industrial Development Authority is?

17. A. Primarily it's to provide an instrument whereby industry
18. can organize, expand and grow within the County area, by
19. providing an avenue of tax free revenue bonds.

20. Q. And who appoints the members of the Authority?

21. A. The Board of Supervisors.

22. Q. How long has Rockingham County had such an Authority?

23. A. Since 1973.

24. Q. Do you know if there are various projects located in

1. this area that have been funded through industrial reve-
2. nue bonds?

3. A. A total of twenty projects have received approval of in-
4. ducement resolutions and some have been finalized.

5. Q. Would you list those projects? Do you have a list of
6. them, what they are?

7. A. Yes. The outstanding bond issues would be R. J. Carroll.
8. Do you want the amounts?

9. Q. Yes and what development took place as a result of these.

10. A. R. J. Carroll, Incorporated, \$1,800,000.00, was a new
11. installation business in Rockingham County, relocated
12. from a location in Maryland, I think. Bridgewater Home,
13. Inc., a two million dollar expansion of a medical facil-
14. ity. It's a facility for aging persons. Merck and Com-
15. pany, two and a half million dollars, was for pollution
16. control at the Merck Plant near Elkton. Timberville Med-
17. ical Clinic, \$160,000.00, was for the location of a new
18. medical clinic in the Town of Timberville. Dr. Daniel L.
19. Perry was the physician that moved there. H. D. Lee Com-
20. pany, Inc., \$1,700,000.00 bond issue. That was an expan-
21. sion of their manufacturing facilities. Truck and Equip-
22. ment Corporation, \$700,000.00, was a relocation of a busi-
23. ness from the City of Harrisonburg to the southern edge of
24. the City, belonging to Mr. Plecker who testified earlier.

1. R. J. Carroll, Incorporated again, \$2,100,000.00, and that
2. was for the expansion of their facility that they built
3. earlier in the County. The Virginia State Poultry Federa-
4. tion, \$265,000.00 issue. That's a lab relocation and
5. federation offices.

6. Q. Was that relocated here from somewhere else?

7. A. Well, the federation offices are in the County, the lab
8. was in the City. And due to the facilities being needed
9. for something else they had to relocate, so they built
10. a common facility for both activities and they built it
11. in the County. Sierra Manufacturing Company of Virginia,
12. Inc., a \$720,000.00 bond issue. And that was an expan-
13. sion and relocation. They were in the County and they
14. expanded and relocated still in the County, but with a
15. larger facility. Sunnyside Presbyterian Home, a \$1,600,000.
16. issue. That was an expansion of their medical facilities
17. and their retirement and home for aging facility that
18. they have at Sunnyside, at Massanetta Springs. Rocco,
19. Incorporated, a \$3,000,000.00 issue. That was for the
20. expansion of facilities both in the City and the County.
21. They expanded their feed operation, the storage and
22. manufacturing capacity in the City. They also expanded
23. the grow-out facilities in the County all in one issue.
24. Rockingham Savings and Loan Association, \$400,000.00

1. issue. That is an expansion and relocation or an addi-
2. tional office that located in the County from the City.
3. They still have the one in the City. But those are the
4. issues that have been closed out.

5. Q. How many of those are outstanding bond issues for develop-
6. ments in the City?

7. A. Facilities located within the City limits would be one,
8. I suppose, of the ones I have listed. The fact that
9. Rockingham Savings and Loan had a facility in the City
10. and is building another facility in the County retaining
11. the one in the City would, I guess, add that one to
12. make two, because their ability to continue functioning
13. as an organization, savings and loan, they needed more
14. facilities. So, I guess we'd have to say two businesses
15. in the town benefited from it, within the City.

16. Q. And there are certain pending bond issues?

17. A. Yes, there are several pending bond issues. These are
18. issues that the inducement resolution has been approved
19. by the Authority and they are in various stages of prog-
20. ress, not all of which we know at this point. Merck
21. and Company has a fourteen million dollar resolution
22. approved and a one million dollar resolution approved.
23. These are for pollution control facilities at their
24. plant in Elkton. R. R. Donnelley and Sons Company has

1. a one million dollar issue that's pending. And that has
2. to do with some expansion as part of their relocation
3. from out of the state into the Rockingham County area.
4. Rocco, Inc. has a one million dollar issue pending. That
5. is a result of some expansion of their operation, purchas-
6. ing another business in the County, and this relates to
7. that. Hokeli, Limited is an expansion of the Sheraton
8. Inn Hotel facility here on the edge of Harrisonburg in
9. the County.

10. Q. Is that for the development of more motel rooms?

11. A. Yes. There's a five story addition which contains pri-
12. marily rooms, but does have some meeting room capacity
13. included in that expansion. That construction is under-
14. way now, so I assume that issue will be finalized soon.
15. Rockingham Poultry Marketing Cooperative has a two mil-
16. lion dollar issue pending. That has to do with waste
17. water processing and treatment at their plant, the plant
18. in Timberville. R. J. Carroll, Inc., a \$1.8 million
19. pending. And that's further expansion of their facility
20. in Rockingham County. Burner Well Drilling, Inc., a
21. \$700,000.00 issue pending. And that is expansion of
22. their facilities in the McGaheysville area.

23. Q. Do you have a total of the outstanding issues?

24. A. Outstanding bond issues, \$16,945,000.00. The pending

1. bond issues would be \$22,500,000.00.

2. MR. SMITH: That's all.

3.

4. Cross Examination by Mr. Cogar:

5. Q. Mr. Hatcher, what is the role of the Authority?

6. A. It's really, I guess, an instrument whereby businesses,
7. industry qualifying, can issue revenue free bonds that
8. allow them to expand or relocate, to do whatever it is
9. that they are seeking.

10. Q. It permits a tax advantage, does it not?

11. A. Yes.

12. Q. And the bonds with which the Authority is involved,
13. the County is not in any way obligated under those bonds,
14. is it?

15. A. That's correct.

16. Q. All right.

17. A. I would clarify the tax advantage that you mentioned be-
18. ing a tax advantage to the lender of the funds and not
19. to the industry, as I understand it.

20. JUDGE ARTHUR: Well, indirectly the borrower
21. benefits from the lower rate bid on interest because of
22. the tax feature, does he not? I mean, that's the whole
23. purpose.

24. A. Well, in that sense you would be right, yes.

1. JUDGE TRABUE: That's what it's all about,
2. isn't it?

3. A. It's an advantage, a business advantage; but yes, the
4. tax, I guess you could say that too.

5. Q. The people who are on this Authority are doing this as
6. a public service, are they not?

7. A. Basically we do have a small fee to offset our expenses.

8. Q. But it's not a full-time job.

9. A. It's a called meeting situation.

10. Q. What is your regular business?

11. A. I'm president of Lantz Construction Company.

12. Q. You have some business interests in Harrisonburg, do you
13. not?

14. A. Are you saying do I own business in Harrisonburg?

15. Q. Yes sir, any properties?

16. A. Not personally. I am involved in some business involve-
17. ment that does have some property in Harrisonburg, but
18. not individually.

19. Q. You are involved in a corporation that has some . . .

20. A. A partnership.

21. Q. A partnership. Are you involved in land development?

22. A. Some, yes.

23. Q. Do you have any current plans to develop anything in
24. Harrisonburg?

1. A. No.

2. MR. COGAR: All right, sir, thank you, sir.

3. JUDGE MOON: Thank you, sir. You may be
4. excused. We'll recess for lunch until 2:00.

5. (Luncheon Recess)
6.

7. JUDGE MOON: Mr. Fitzgerald, were you able
8. to find that attorney?

9. MR. FITZGERALD: No sir, but I have someone
10. looking for him.

11. JUDGE MOON: Okay. Would you like to call
12. your next witness?

13. MR. SMITH: I call Everette Smith.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.

1. EVERETTE SMITH,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. What is your name, sir?

5. A. My name is Everette Smith.

6. Q. Where do you live, Mr. Smith?

7. A. I live at McGaheysville, Virginia.

8. Q. What is your occupation?

9. A. I am a farmer, sir.

10. Q. Have you also been involved with Farm Bureau activities
11. over a period of time?

12. A. Yes, I have. I have served as the local County President
13. for eighteen years; served on the State Board for twelve
14. years.

15. Q. Could you briefly tell the Court the nature of your farm-
16. ing operation?

17. A. We--and I say "we", as a family, my wife, sons, sons-in-
18. law, and daughters-in-law, and daughters, operate a fam-
19. ily farm near McGaheysville known as Faraway Farms, In-
20. corporated. We produce milk and table eggs. We also own
21. a processing plant that processes eggs from our own pro-
22. duction and from half a dozen or more other producers.
23. Then we wholesale and retail these eggs to markets in the
24. Virginia, Washington, D.C., Baltimore and some in Lancas-

1. ter County, Pennsylvania.

2. Q. How many eggs do you produce annually at your farm?

3. A. Something like three hundred thousand dozen. We have

4. a hundred fifty thousand . . . no, three million dozen.

5. A hundred and fifty thousand laying hens of our own, and

6. they produce something like twenty dozen per bird per

7. year. We process about twice as many as we produce. In

8. other words, we're processing from about six hundred

9. thousand hens per year.

10. Q. Are you concerned that this annexation, if successful,
11. will have an adverse effect on the remainder of the County?

12. A. Yes, I'm concerned for the sake of the farmer if this an-

13. nexation is successful. In 1967 or 1969, I forget which

14. it was, while I was President of the local Farm Bureau

15. Association, we had one of our office staff to make a

16. survey of the County tax roles here, and we determined

17. at that time that even though the farmers constituted

18. only ten percent of the jobs in Rockingham County, they

19. paid forty percent of the local taxes. Now, over the

20. years we have been told that we should accept develop-

21. ment, factories, and people moving in; it was good for

22. the economy. And we did that . . . well, we had no

23. choice, we had to accept it. We tried to go along with

24. it as well as possible. Knowing all the time that we,

1. the farmers, were paying an unfair share of our local
2. taxes. Back about 1975 the Board of Supervisors did grant
3. us some relief there in that livestock, poultry and mach-
4. inery were practically exempt from taxation. There is a
5. government publication, The Nation's Rivers, I believe
6. published in 1969, that states that each new dwelling will
7. take from the community something like eighteen thousand
8. dollars in facilities, roads, schools and sewer, whatever.
9. Now, if we project that to today, it certainly would be
10. as much as thirty thousand dollars. Well, no new dwell-
11. ing is ever going to pay that much in taxes, so we have
12. to look to the facilities that bring that here to help
13. pay their way; the factories, or whatever, the industrial
14. development. Now, if the City of Harrisonburg is allowed
15. to take all of the industrial development and add to their
16. tax roles, it deducts that much from what we in the Coun-
17. ty can expect. So, we farmers feel that we are going to
18. be hurt more than any other group of people because we
19. do pay forty percent of the local taxes. And if we lose
20. that, the development, and if the proposed annexation
21. succeeds we'll lose it all, then we're going to really be
22. hurt. We are helped somewhat by the sales tax that is
23. collected through the Valley Mall. We were hoping at
24. one time that if any annexation were successful, we would

1. be able to keep that and be able to keep some of the
2. sales tax advantage. We farmers also, I think, are pos-
3. sibly the greatest contributor to the City of Harrison-
4. burg's real estate taxes through the cooperatives that
5. we own that are within the City of Harrisonburg.

6. Q. Explain how the cooperatives work.

7. A. All right, the cooperatives are organized and owned by
8. the farmer-members. The Rockingham Cooperative Farm
9. Bureau has something like five or six thousand members,
10. as I understand it. And they tell me that they pay more
11. taxes into the City of Harrisonburg than any other one
12. organization. The Valley of Virginia Milk Producers is
13. also a cooperative that is owned by some four hundred
14. dairy farmers, mostly located here in Rockingham County.
15. And they have quite an extensive operation and pay a lot
16. of taxes into the City. Also through these two organi-
17. zations, mainly the Rockingham Cooperative Farm Bureau,
18. there is a world of sales taxes that the farmers pay
19. through the buying from their own organizations. And the
20. City of Harrisonburg, of course, collects their one per-
21. cent from that. That one percent being farmed back to
22. the point of collection.

23. Q. Will the annexation, if it's successful, have an adverse
24. effect on the farmers who live in the area that would be

1. annexed to the City?

2. A. I imagine it would. I think that I heard E. B. Craun
3. tell here the other day that certainly the taxes would
4. go up if they were successful there. I believe there's
5. a Virginia law that makes assessments be made on one hun-
6. dred percent of value, and I imagine an acre of land
7. would be worth much more in the City of Harrisonburg than
8. it would be in the County, maybe except adjacent to the
9. boundaries.

10. Q. Are city regulations generally in your opinion incompatible
11. with farming operations?

12. A. Yes, very much so. We had our egg processing plant at
13. one time in the City of Harrisonburg, in the building out
14. here now owned by Whitesel Brothers. And we found our-
15. selves paying ten thousand dollars in City business licen-
16. ses, and we could not see that we obtained one penny's
17. worth of services from the City. So, we had to move that
18. out into the country, out near our farm in McGaheysville
19. where we now have it. We found no adverse effect at all
20. of moving out of the City, and did save ourselves all of
21. those business licenses that we had to pay here.

22. MR. SMITH: That's all.
23.
24.

1. Cross Examination by Mr. Cogar:

2. Q. What is your farming operation called, Mr. Smith?

3. A. Faraway Farms, Incorporated.

4. Q. And how many acres of land do you own?

5. A. We own about 1,275.

6. Q. Do you lease any?

7. A. Yes sir, we lease about another thousand acres.

8. Q. So your total operation embraces over two thousand acres?

9. A. Yes sir.

10. Q. And none of the land which you have in this agricultural
11. use is within the annexation area, is it?

12. A. No sir. None whatever.

13. Q. Your principal concern, as I understand it is, that to
14. the extent that assessable values are annexed to the City,
15. it will detrimentally affect your tax rate?

16. A. Yes sir, it will, because the farmers that are left in
17. the County will have to bear more of the burden of keep-
18. ing up with schools and other areas of County government.
19. The schools represent, I think, eighty percent of our
20. County budget at the present time. And with the farmers
21. paying, as I mentioned awhile ago, an inordinate propor-
22. tion of the local tax bill, it's just going to fall that
23. much harder on the farmers. Because we are going to lose . .

24. JUDGE MOON: I think you've already explained

1. that. He just asked you if that was your concern. You
2. can just answer yes or no, you don't have to repeat the
3. answer totally. I think he just wanted to know if that
4. was your concern.

5. Q. And for this reason it's your desire that the County hold
6. onto and retain as much of its commercial and industrial
7. facilities as possible, is that correct?

8. A. Yes sir, and also some of the retail establishments. I
9. would like to see the Valley Mall left there. Because
10. that is supported largely by the County people.

11. Q. I take it that you also foresee a need in the future for
12. the County to have some additional commercial or indus-
13. trial development, is that correct, for the purpose of
14. holding down the taxes on farm land.

15. A. No sir, the farmers in Rockingham County could well do
16. without any further commercial development. As I men-
17. tioned awhile ago, commercial development never pays its
18. own way, because of the people it brings in who move in
19. and work in the industrial establishments.

20. MR. SMITH: Would you rephrase that question?

21. I think he's got commercial and residential confused.

22. A. No, I was bringing them both together here. When you
23. bring a factory in it takes a certain number of people to
24. come in and live in to work in that factory. And, as I

1. mentioned awhile ago, it takes thirty thousand dollars
2. worth of local taxes to support a dwelling. There's no
3. way that this dwelling ever pays its way. It will never
4. generate that thirty thousand dollars, so you have to de-
5. pend on some other source to get your money back.

6. Q. Well, if you had your way . . . excuse me, are you fin-
7. ished?

8. A. There are very few factories that ever produce enough
9. then to add up to this thirty thousand. So, with the
10. farmer paying forty percent of the local taxes, it comes
11. back on the farmer to help support the facilities and
12. the government that these houses demand. Now, we do get
13. some help with the factories if we can keep them.

14. Q. The what?

15. A. I say we do get some help from the factories. Now, if
16. the factories that demand these dwellings are taken away
17. from us, we lose that much, and the farmers will have to
18. pay that much more taxes then.

19. Q. If you had your druthers, would you just as soon that
20. Rockingham County be one hundred percent an agricultural
21. county without any commercial or industrial lands?

22. A. Oh, yes, if I could go back to that point; but, I mean,
23. there's no point in saying I'd rather have that, it just
24. won't happen. We have to take where we are now. And we

1. were told to go ahead and accept this development over
2. the period of years, something like twenty or thirty
3. years, when we started industrializing the County to the
4. point that it is now. And we have accepted that and work-
5. ed with it. But now we'd like to be kept with some of
6. the tax producing property that has necessitated all of
7. the home building throughout the County that we have ex-
8. perience.

9. Q. Mr. Smith, isn't what it comes down to that you don't
10. want any commercial or industrial properties annexed in
11. the County, and also you're not interested in the County
12. having any additional development. Isn't that a fact?
13. Or, put differently, weren't you one of the most vocal
14. opponents of the Coors rezoning?

15. A. I was, sir, but only for the reason that they were taking
16. our most valuable farm land. I argued, and if you'll go
17. back you'll find it in my testimony, that there was land
18. in the County that would have been as suitable for the
19. factory site and we would not object to Coors using that
20. land. We did object to the fact that Coors took ten per-
21. cent of all the Class 1 and 2 land in Rockingham County.
22. That's what we objected to.

23. Q. But I think your argument went beyond that, didn't it,
24. Mr. Smith? That in your opposition to it you advanced

1. JOHN LISKEY,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. Would you tell the Court your name and address.

5. A. I'm John Liskey, Route 1, Harrisonburg.

6. Q. What is your occupation?

7. A. I'm a farmer.

8. Q. And are you in or outside the annexation area?

9. A. I'm just on the south edge of the proposed annexation
10. area.

11. Q. Briefly tell us about your farm out there.

12. A. I run a beef cattle feed lot operation. I mainly buy
13. yearling cattle to feed out through the feed lot for the
14. choice feeder market. We run anywhere from two hundred
15. and fifty to three hundred cattle a year through it. We
16. presently have added a swine operation, buying feeder
17. pigs and feeding them out to market hogs. And we're up
18. to six hundred to eight hundred hogs a year at this time.

19. Q. Are you associated with the Rockingham County Farm Bureau
20. Association?

21. A. Yes sir. I'm serving now as President of the Rockingham
22. Farm Bureau.

23. Q. How many members does the County's Farm Bureau Association
24. have?

1. A. We have in excess of eighteen hundred members.

2. Q. How many of those are producing commercial agricultural
3. products?

4. A. There's a little over thirteen hundred members that are
5. producing members.

6. Q. What is the function of the Farm Bureau Association?

7. A. To promote the welfare of agriculture economy, of better
8. management of the farmers, to help the farmers to live
9. in their community.

10. Q. Has the Farm Bureau taken a position in regard to the
11. proposed annexation?

12. A. Yes sir. As far as I can tell, on the state level,
13. which the County Association is a member of the State
14. Farm Bureau, I talked with their legislative lobbyist
15. Friday in Richmond, and he can go back and verify that
16. in 1961 we have policy opposing annexation unless the
17. people affected by annexation had the opportunity to
18. vote on it to decide whether they would like to be an-
19. nexed or annexation be denied. We can verify it for
20. the past twenty years.

21. JUDGE MOON: I guess he told you this Court
22. has no power at all to allow a vote on this.

23. A. Yes sir, but you have the power to deny annexation.

24. JUDGE MOON: You're saying we have the power

1. to ignore the evidence and the law. Is that your point?

2. A. Sir, I didn't understand that.

3. JUDGE MOON: Is your point that we should ig-
4. nore the evidence and the law, irrespective of our . .

5. A. No, that isn't the point. Your point, the way I under-
6. stand it, is to either grant annexation or modify it or
7. deny it. Is that wrong?

8. JUDGE MOON: Well, based on the evidence and
9. the law.

10. A. That's right.

11. JUDGE MOON: Not on public opinion.

12. A. You mean to tell me public opinion in this country doesn't
13. mean anything anymore?

14. JUDGE MOON: Well, we operate under rules of
15. law, not of man. We are bound by the law of Virginia.
16. You're in the right place when you want to change the
17. law when you're at the legislative level; but we have no
18. power to change the law. That's what I think lots of
19. people don't understand. The place to fight the law is
20. in the legislature.

21. A. We have been trying, Your Honor.

22. JUDGE MOON: What I'm saying is, none of us
23. have volunteered to come here, and this is not a pleasant
24. task for judges. And we wish that you would take it up

1. with the legislature if you don't like the law.

2. A. We have, and we'll continue to try.

3. JUDGE MOON: We may not like the law ourselves,
4. but that's not . . . we're bound by what the law and the
5. evidence is in the case.

6. A. But the citizens of this County and City is also bound
7. to live with the decision that this Court makes too.

8. JUDGE MOON: Well, that's what we are painful-
9. ly aware of.

10. Q. Is the annexation expedient and necessary in respect to
11. the farming community?

12. A. I don't . . . from our organization's standpoint we don't
13. see where annexation will help the farmers in this County.

14. Q. Farmers have all the services that they require?

15. A. Yes sir.

16. MR. SMITH: I think that's all.

17. MR. COGAR: I have no questions.

18.

19.

20.

21.

22.

23.

24.

IRA BOYERS,

having been duly sworn, testified as follows:

Direct Examination by Mr. Smith:

Q. What is your name, sir?

A. Ira Boyers.

Q. What is your occupation?

A. Part owner of Tip Top Fruit Farm. I'm president of it.

Q. Where is that located?

A. Part of it is in the annexed area, the major . . . about two-thirds of it then is down on U. S. 33 East, branching off on 704.

Q. Is that somewhat beyond the area of the Valley Mall?

A. About half a mile on part of it, and part of it about a hundred yards.

Q. All right, sir, would you step over to this map and locate the portion of your farm that's in the area sought for annexation?

A. (Witness indicates on map)

Q. Write your initials on there, Mr. Boyers.

A. (Witness writes on exhibit)

Q. How many acres do you have in there, sir?

A. About sixty-eight; between sixty-eight and seventy.

Q. What type of agricultural products do you produce there?

A. It's almost entirely all orchard, except we have some

1. land beside of it leased, and we have about ten acres of
2. that is in the grazing. We run beef cattle back and
3. forth, we move them from our other operation and back.

4. Q. What is the potential production of your orchard on a
5. year that's good weather-wise in this area?

6. A. We have completely re-did it from the old conventional
7. type tree to these new semi-dwarf trees, where instead of
8. planting forty trees to the acre you plant over two hun-
9. dred in hedge rows at a short distance. And where we
10. don't let them get over ten or twelve feet high, and
11. where you're able to get a production of in excess of
12. four or five thousand bushel. But it's real expensive.
13. Where those trees used to cost a dollar or two, with this
14. new semi-dwarf trees on your controlled root stock, like
15. molle and some of your other controlled and spur type,
16. you're paying three, four or five dollars. I just paid
17. five dollars for some this spring. And it makes it real
18. expensive. And that is why we hope to get this produc-
19. tion back out of them, since we've taken almost all of
20. these old trees out and put so many more per acre.

21. Q. How many trees do you have in that acreage?

22. A. The one thirty acre block has in excess of six thousand,
23. and the other twenty-couple acres in orchard there has
24. better than three thousand. It has some of the old con-

1. ventional trees yet.

2. Q. Do you have to spray these trees in order to get the
3. maximum out of the apple crop?

4. A. We average on apples, and I'm willing to take oath on
5. this to anybody that don't think I do, in excess of
6. twenty times a year to raise apples that you will pick
7. up in the store, the housewife will, and won't pinch it
8. and throw it back because it has a spot on it. You can
9. ask any orchard, commercial orchard, and he'll tell you
10. on apples you're spraying in excess of twenty times a
11. year.

12. Q. Does the spray that's applied to the trees have any toxic
13. effect to it?

14. A. We do. We have a special license, or we have a license,
15. and at times we use real toxic, yes.

16. Q. Are you concerned about your orchard being annexed into
17. the City of Harrisonburg?

18. A. I'm concerned, yes, because there's . . . as I see it,
19. there's things that I know I will be completely harassed
20. by. Like we have no control over nature, so naturally
21. the wind blows almost everyday. What with these high
22. toxic chemicals and all, we spray at nighttime and some
23. of the bigger equipment we use, it's real noisy, and I
24. know the City, I mean most times, don't allow noise like

1. that. I mean, I hope they do, because that's the only
2. way I can survive, and I need to live too. And it's no
3. way of quieting those large sprayers down and all. There
4. is just no way. E.P.A. might have tried it, but they
5. haven't been able to accomplish it yet. Plus the fact
6. that I cannot see how I can operate that with the sales
7. tax . . . or, not the sales tax, but the gross tax in
8. with my other operation, because in the olden days when
9. we picked and packed everything as soon as you picked it,
10. that was well and good. But with today's markets and
11. with today's buying powers, everything is picked and haul-
12. ed down on 33 in our storage, it's pre-cooled, put in
13. with the other apples of that variety from other or-
14. chards, and then anytime from September when we start
15. picking Delicious clear up until . . . we're not through
16. packing yet. They're packed in there. So, there's no
17. way that we can keep the two operations separate. It
18. just wouldn't be feasible and I'm sure no other individ-
19. ual would want to go through with this whenever it would
20. affect money out of his pocket if he had to go to extra
21. expense for something that I can see no point in.

22. Q. How do you harvest these apples?

23. A. By hand labor.

24. Q. And what source is the hand labor?

1. A. Well, at times we bring migrant help in from Florida,
2. because anybody that wants to work hard enough in Rock-
3. ingham County to pick apples has got a job. So, all we
4. get is what is on unemployment or food stamps; they can
5. make more money on unemployment than they can coming out
6. there and having to work.

7. Q. Is it expensive to harvest the apples?

8. A. Yes. And, as you know, we have been in trouble and are
9. still in trouble with the federal government, because
10. we had to bring off-shore labor in. When Judge Turk
11. forced the government to allow us to bring off-shore
12. labor in, well then the last thing that Ray Marshall done
13. was put in on the federal register where we had to pay
14. an adverse rate, which could be four fifty and could go
15. up to six fifty. And, of course, the new administration,
16. has froze it for the time being, but we can't even be
17. sure of this. In other words, as we the fruit growers
18. see it, there's no more poor people left because even
19. the working class of people are well off now, so they've
20. got to pick on the farmers and orchard men and have a
21. poorer class so everybody else is more richer.

22. Q. What have your observations been about the cost of oper-
23. ating this orchard operation?

24. A. Pardon? Say that again.

1. Q. What have your observations been about the cost of opera-
2. ting this orchard operation?
3. A. Do you mean . . .
4. Q. Which way have your costs been going?
5. A. Oh, there isn't but one way, up. Everyday.
6. Q. Is your land under the land use assessment of the County?
7. A. It is under land use now.
8. Q. Do you have any idea how that would change if you are
9. annexed to the City?
10. A. Yes, it would make it in excess . . . I would be paying
11. about a thousand dollars . . . at the present rate, after
12. I went out of land use, I would be paying about a thou-
13. sand dollars a year more just on tax alone. And I would
14. like to know, I mean, what the advantage would be for me
15. for this? I haven't been able to get nobody to exactly
16. tell me. I know I lived in the City on South Main from
17. 1948 to 1960, and when they annexed that out there I mov-
18. ed out in 1962 because all I was doing was paying more
19. taxes and I couldn't see that it was helping me. It
20. wasn't hurting me, except taking my money. And I'm just
21. like you gentlemen, if somebody starts taking your money,
22. well, you start looking.
23. Q. You are receiving all the services from the County that
24. you need in this area right now?

1. A. All that I think . . . in other words, I don't think any-
2. body is going to give me anymore. If they do, I'm will-
3. ing to listen; but I've never found anybody who'd give
4. you anything for nothing.

5. MR. SMITH: All right, sir. Your witness.

6.

7. Cross Examination by Mr. Cogar:

8. Q. You spoke of two parcels of land, Mr. Boyers, one on
9. 33? That's beyond the annexation area.

10. A. Right. We've got one on 704 . . .

11. Q. Just let me get the 33 first.

12. A. Okay.

13. Q. What's the size of the tract on 33?

14. A. About thirty acres. The main storage and packing sheds
15. and all is there also. About thirty acres of orchard.

16. Q. Is that the total amount of land that you have?

17. A. No, we've got a whole lot over on 704. This is what I
18. was trying to tell you.

19. Q. Well, do you reside on either of these two parcels?

20. A. Yes sir, 33.

21. Q. On Route 33 east?

22. A. Right.

23. Q. How far is that from the annexation line?

24. A. It's . . .

1. Q. Not the present City corporate line.

2. A. Sure, I understand what you're saying. If I understand
3. the annexation line, it's right on 33 at the power line
4. at Martin's Furniture. Right?

5. Q. Yes.

6. A. Okay. Less than half a mile probably. I'd say fifteen
7. hundred yards roughly.

8. Q. All right, sir. Now, how much acreage do you have in the
9. annexation area?

10. A. Sixty-eight to seventy, however a surveyor might end up
11. with it.

12. Q. And how much of that is in productive orchard land?

13. A. Fifty, fifty-five, somewhere along there.

14. Q. And do you have any development around you?

15. A. Over in Ashby Heights, yeah, on the other side of the
16. road; clear at the back side where they're building those
17. townhouses. That's the one corner where the City has
18. their power line, the right-of-way on the power line.

19. Q. Have you had any complaints from the residents there near
20. you about your spraying operation?

21. A. Well, I'll put it this way. I get complaints all the time.
22. I've never been taken to Court.

23. MR. COGAR: I don't have any other questions.

24. JUDGE MOON: Thank you, sir.

1. LOWELL HEATWOLE,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. State your name, sir.

5. A. Lowell Heatwole.

6. Q. And are you employed as a farmer in Rockingham County?

7. A. Yes sir.

8. Q. Is a portion of your farm located in this annexation area?

9. A. Yes sir.

10. Q. Would you step over to County Exhibit 23 and put your
11. initials where your property is located in the area?

12. A. (Witness writes on exhibit)

13. Q. You're located right off of Interstate 81?

14. A. That's correct.

15. Q. And your operation is a dairy operation?

16. A. That's right, we milk around a hundred and twenty cows.

17. Q. How much milk do these hundred and twenty cows produce?

18. A. Well, last year we produced 1.8 million pounds, which is
19. enough for four half-pints for every school child in
20. Harrisonburg everyday, or it would be ten and one-half
21. gallons for everybody in Harrisonburg.

22. Q. Do you also have another side to your farm operation?

23. A. Yes, we also raise some steers, and then of course we
24. sell cows which goes to hamburger. And I sort of fig-

1. ured that up, and at fifty percent yield, which is low,
2. beef yield better than that, but at that rate I produced
3. sixty quarter pound hamburgers for every school child in
4. Harrisonburg last year.

5. Q. You are opposed to this annexation by the City of Harri-
6. sonburg?

7. A. By all means.

8. Q. Would you briefly tell the Court why you oppose it.

9. A. Well, as cities move around farms . . . farms and cities
10. just are not compatible. Just for instance, today, . . .
11. well, if residential areas come in around the farm, I
12. have children, you know, like right now they're out of
13. school. Today on the way in here somebody stopped and
14. said, "Do you know there's three kids out in your dry cow
15. lot?" They was out chasing the cows around. Well, most
16. of the time I have a big Holstein bull out there. I was
17. awful thankful he wasn't there today, because it could
18. have been a very sad situation. And the way the Courts
19. is, the way the law is, I reckon I would have been . . .
20. if a kid gets hit by a bull on our land, the way I under-
21. stand it, then basically it's my fault. And that's what
22. happens when cities and farms try to go together. It just
23. don't work. And if you have industry, you have increased
24. traffic, and then cows get out on the road once in awhile,

1. and somebody hits them, and you end up in a suit. It's
2. just a sad situation.

3. Q. Are you receiving all the services that you as a farmer
4. require from Rockingham County now?

5. A. Yes sir. I'm well pleased with Rockingham County services.
6. We have good police protection or satisfactory, at least.
7. I've never had any trouble. And there's absolutely no-
8. thing that I can see that the City can offer me to an
9. advantage. I certainly don't need street lights, I don't
10. need water and sewer, which really I've already got,
11. whether I wanted it or not.

12. Q. Was that provided by the County?

13. A. That's right.

14. Q. Do you have any children in the County school system?

15. A. Yes, we have one, in about the second grade.

16. Q. All right, sir. Did you testify before the Commission on
17. Local Government?

18. A. Yes, yes sir. It's a sad situation. There's a lot of
19. frustration in the County. The number one question in
20. the County is, what can we do? You know, it seems like
21. it's out of the average citizen's hands. The Commission
22. for Local Government, they asked for citizen input and
23. said that the citizens' opinions would make a difference;
24. but it seems like it didn't amount to a thing. What can

1. the average citizen do on this annexation? I mean, it
2. seems like it's out of our hands. There's a lot of
3. frustration.

4. MR. SMITH: All right, sir. You may cross
5. examine.

6. MR. COGAR: I have no questions.

7. JUDGE MOON: Thank you, sir. You may be ex-
8. cused.

9. MR. SMITH: Leroy Lineweaver.

1. LEROY LINEWEAVER,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. Give us your name and address, please.

5. A. Leroy Lineweaver, Route 8, Harrisonburg.

6. Q. And what is your occupation?

7. A. I am a farmer.

8. Q. Would you step over to County Exhibit 23 and put your
9. initials at the location of your farm?

10. A. (Witness examines map)

11. Q. Is it in this general area of the County, sir?

12. A. It's south of Harrisonburg. I'm not familiar with this
13. map. It's in the area.

14. Q. It is in the area sought for annexation, is it not?

15. A. It is.

16. Q. How much property do you own in there, sir?

17. A. Well, I only own south of Harrisonburg on 42 only twelve
18. acres.

19. Q. Do you also lease a substantial acreage there?

20. A. Yes, a hundred and twenty-five acres.

21. Q. What is the nature of your farming operation?

22. A. It's mostly turkey breeder hens. We have an operation,
23. we keep 5,500 breeder hens a year, which produce 480,000
24. eggs a year, and 325,000 poults, turkey poults. Also

1. we keep beef cattle on the tenant land.
2. Q. All right, sir. There is a certain amount of droppings
3. or manure that comes from these turkeys, does it not?
4. A. There is.
5. Q. How do you dispose of that?
6. A. We clean the houses twice a year and spread it on the
7. rented land, which is also in the annexed area.
8. Q. Is there a certain odor associated with that for a per-
9. iod of time?
10. A. There is.
11. Q. All right, sir. You are here to testify in opposition
12. to the proposed annexation?
13. A. I am.
14. Q. Would you briefly tell the Judges your reasons for op-
15. posing it.
16. A. Well, one of the main reasons is I'm sure our taxes will
17. skyrocket if we are annexed into the City. Also, the
18. cleaning of these houses twice a year, I'm afraid that
19. would be objectionable if we're in the City. And if a
20. building would burn or blow down, I'm not sure we would
21. be allowed to rebuild. And I'm not real sure the City
22. has anything to offer us that we need or even want.
23. Q. Are you satisfied with the services being provided to
24. you by Rockingham County?

1. A. I am.
2. Q. You don't feel you need any additional services?
3. A. No, I don't.
4. Q. From the City or any other source.
5. A. No, I don't.

6. MR. SMITH: That's all.

7. MR. COGAR: No questions.

8. JUDGE MOON: Thank you. You may be excused.

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JOHN O'FLAHERTY,

having been duly sworn, testified as follows:

Direct Examination by Mr. Smith:

Q. Have a seat, sir, and tell us your name and address.

A. John O'Flaherty, 155 West Grattan Street, Harrisonburg.

Q. You live in the City of Harrisonburg?

A. Yes sir.

Q. What is your position concerning the proposed annexation by the City?

A. I oppose annexation under the present plan. I think it's too much area.

Q. You don't feel there's a need on behalf of the City?

A. I don't think that the City has looked into it adequately. With the present political and economic situation of the country, they're probably relying too much on federal aid for the expanded services that would be required. It doesn't look like it's going to be there. It's going to put additional tax burdens on the average City resident. By taking a good portion of the County tax base away, it's going to also add additional burdens on the County taxpayers. The County has finally gotten to a point where they can start putting more money into their educational system to upgrade it, and by this annexation that is going to disappear.

1. Q. The City has said that the downtown area is a problem
2. area. Do you agree with that?

3. A. It certainly is. Local merchants some years ago tried
4. to get something going downtown. It wasn't until after
5. the Valley Mall came into being that they finally upgrad-
6. ed the appearance of the downtown area; the brick paving,
7. the ornamental trees and whatnot. If they would have
8. started working some years ago when it was apparent
9. what malls were doing in other areas, such as Charlottes-
10. ville and Winchester, they probably could have alleviated
11. a lot of the problems today.

12. Q. Is parking a problem in the downtown area?

13. A. Well, let's put it this way. I went to pay my water bill
14. the other day at the Municipal Building, and I had to put
15. a nickel in the meter just to pay my water bill. You
16. can't park anywhere downtown without forking over a nick-
17. el or a dime. That's why I go out to the mall.

18. Q. That's why you go to the mall?

19. A. Yes sir.

20. Q. All right, sir. Are there other areas of the City
21. where City residents are required to pay to park in
22. front of their own home?

23. A. Yes sir. On West Grattan Street, Mason, areas around
24. the college, if we care to park on the City streets,

1. even though we live there, we have to pay a dollar fee
2. and prove that we reside there, because the City and
3. the college haven't been able to amply work out the park-
4. ing problems with college students. As an example of
5. this, I had to do some repair work two years ago, it was
6. snowing, I parked in front of my own place and when I
7. came back I got a ticket. It irks me; it irks other
8. residents. You can't have guests in without going
9. around collecting the passes from other neighbors if we
10. have more than two people. The college should at least
11. pay that dollar, not me.

12. MR. SMITH: You may cross examine.

13.
14. Cross Examination by Mr. Cogar:

15. Q. Did you say what your occupation was, Mr. O'Flaherty?

16. A. I work free lance for Sierra Manufacturing Company of
17. Virginia now, in research and development. I'm also
18. doing a joint venture with some gentlemen out of Wash-
19. ington, D. C.

20. Q. A joint venture in what?

21. A. A proposed manufacturing firm, metal products.

22. Q. And what was the first thing you said you did?

23. A. Research and development for Sierra Manufacturing. They
24. build woodstoves.

1. Q. Are you full-time employed by them?
2. A. Not as of two weeks ago, no sir. I'm free lance with
3. them now.
4. Q. And where do you live in Harrisonburg?
5. A. On West Grattan Street, an apartment complex down there.
6. Q. How far is it from where you live to the Valley Mall?
7. A. I would guess two miles.
8. Q. All right, sir. And I think you used the word "irked"
9. you about having to pay this nickel, and you'd drive
10. out to the mall. Is that what you said?
11. A. Yes. It irks me when I want to pay my City water bill
12. that if I go down to the Municipal Building, not a shop-
13. ping area, that in order to run in to pay my water bill--
14. it takes me five minutes--I have to feed the meter. They
15. have a few free parking spots there, but they actually
16. put meters up at the Municipal Building. You wonder
17. where all these nickels . . . what the value of all these
18. nickels collected are. There's resentment on my part,
19. and I'm not the only one.
20. Q. I wasn't asking you about the paying of your bills at
21. City Hall. You testified that the meter upset you so
22. much that you drove out to the Valley Mall. You did say
23. that, didn't you?
24. A. Yes sir. There are towns I've read about just recently,

1. there was a sale out west or somewhere, where a town
2. to encourage shopping downtown took away the meters. If
3. I have to ride around, make two or three stops, and every-
4. time I want to park I've got to feed a meter a nickel,
5. I'm better off going out to the mall.

6. Q. Do you know that recent studies indicate that the cost
7. of operating an average size car is about thirty-five
8. to forty cents a mile? So, if you drive out there two
9. miles and back, it's going to cost you about \$1.60.

10. A. There comes a point when you're talking about \$1.60
11. convenience.

12. MR. COGAR: All right, sir. No further ques-
13. tions.

14. JUDGE MOON: Thank you. You may be excused.
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CECIL ARMENTROUT,

having been duly sworn, testified as follows:

Direct Examination by Mr. Fitzgerald:

Q. Would you state your name, please.

A. Cecil Armentrout.

Q. And where do you live?

A. Route 3, Harrisonburg, Virginia.

Q. Is that inside or outside the area sought for annexation?

A. Outside.

Q. What's your occupation, sir?

A. General farming. Poultry and beef combination.

Q. You've heard the testimony of various witnesses here about the effect on farming the proposed annexation will have?

A. Yes sir, I have.

Q. Do you concur in that?

A. Yes sir, I do.

Q. Was there a time when you held a position with the County of Rockingham?

A. Yes, I was a Board member for a period of twelve years.

Q. What years were they?

A. 1968 to January 1, 1980.

Q. Would you tell the Court whether or not during those years you had occasion to be involved in the various ne-

1. gotiations between the County and the City of Harrison-
2. burg?

3. A. Yes sir. The first involvement that I can think of
4. would be the friendly annexation of Kawneer.

5. Q. You say the friendly annexation, what's been referred to
6. as a friendly annexation?

7. A. That is the term . . . I think that is the correct defi-
8. nition. It was referred to as a friendly annexation.

9. Kawneer was seeking a location in a particular area, and
10. of course being outside of the City limits they would be
11. involved in the higher water rates; so, therefore, we
12. felt at that time as a Board that it would be good for
13. the City and County residents both if Kawneer could lo-
14. cate here. So, the City was interested in the location
15. of Kawneer also. So, we met many, many times to work up
16. I guess an agreement for the friendly annexation of the
17. Kawneer Plant, which is located next to the Sheraton.

18. And through any number of meetings . . . maybe I should
19. back up a year or so before that. This was in 1969, if
20. my memory serves me correctly, and in 1968 we had began
21. to talk with the City of Harrisonburg about water and
22. sewer, a joint effort, and then went right into the Kaw-
23. neer. So, at this particular time we felt it would be
24. very important, the County, to tie in this particular

1. water and sewer agreement if we could reach an agreement
2. for the friendly annexation, or agreeing to the friendly
3. annexation of Kawneer. And we were promised essentially
4. that the County would receive water through a master met-
5. er, which we had requested, we had talked about it many
6. times before that, if we agreed to this. And late one
7. night, I recall this, about midnight, Council said . . .

8. Q. This is the City Council of Harrisonburg?

9. A. Yes sir. They said, "Gentlemen, it's getting quite
10. late, it's of the essence that Kawneer has an answer
11. tomorrow or next week or whenever, in the very near fu-
12. ture, and could we agree on the fact that Kawneer would
13. locate here." We said, "Yes, but we still haven't re-
14. solved our request on the water problem". The statement
15. was made, "We'll take care of it in the next several
16. weeks." Well, those next several weeks went into the
17. next several years; like, a lot of years.

18. Q. When you said take care of the water problem, what did
19. the County have in mind at that time?

20. A. At that time we requested that the City provide us water
21. through a master meter at a contract to be negotiated out
22. that was feasible to both groups, both governing bodies.

23. Q. Go ahead, you said that the few weeks ran into a few
24. years.

1. A. The few weeks vanished. I went to the office the other
2. day and I had the secretary look up some correspondence
3. that had taken place between the Rockingham County Board
4. of Supervisors and the Council. And I recall that we
5. hadn't gotten any response from them, so . . . that is,
6. an official response. I think the County Administrator
7. had talked with whomever at the City level. And their
8. only response to that was that we hadn't been definite
9. in our proposal. Now, this letter was drafted, this memo
10. was drafted in September, I can't get this date here . . .
11. anyway, this letter was drafted and was hand-carried by
12. C. N. Wine . . . on September 29, 1970, this letter was
13. hand-carried to Council by C. N. Wine, who at that time
14. was Chairman of the Board. This particular memo indi-
15. cates very clearly the amount of things that we wanted
16. and how these were the same things we had talked about
17. before but we hadn't submitted them as a formal request
18. in detail. And this alludes to the five hundred thousand
19. gallons of water and the agreement to become effective
20. when the new treatment plant is in operation and the
21. lines to North River is operable, and after January 1,
22. 1974 it is agreed that if said maximum is no longer suf-
23. ficient for normal residential and business expansion . .
24. It is further agreed that no industry which is a heavy

1. user of water shall be placed in a said area without con-
2. currence of the City of Harrisonburg. In the event of a
3. turn down of an industry by the City, it is understood
4. the County may secure water from some other source.
5. Rockingham County shall be charged at a rate not to exceed
6. the rate charged to largest volume users. Water shall be
7. metered from the nearest City trunk line and Rockingham
8. County shall assume responsibility for all maintenance
9. beyond the meter.

10. Q. When was that letter?

11. A. That was September 29, 1970. No response to that letter.
12. On December 4, there was another letter sent, and this
13. was sent to the City Manager of Harrisonburg.

14. Q. The same year?

15. A. Yes sir, December 4, 1970. "By action of the Board of
16. Supervisors on November 30th it was asked to seek a reply
17. from the City Council of Harrisonburg to the proposal
18. made by the Rockingham County Board of Supervisors on
19. September 29, 1970. The Board requests either an accept-
20. ance or a rejection of said proposal in order that future
21. plans may be developed." This is December 4, 1970. "We
22. trust that we may be able to hear from you following
23. your next Council meeting." No response to that. Now,
24. these things all alluded back to the cooperative effort

1. that Rockingham County was dealing with on the Kawneer
2. annexation; the friendly annexation.

3. Q. Was it your understanding that if the County agreed to
4. that annexation that the City would work out a cooperative
5. agreement with respect to water?

6. A. That was promised us.

7. Q. And that was back in 1970 you said?

8. A. That was in 1969.

9. Q. The letters were in 1970.

10. A. These letters are in 1970.

11. Q. All right, sir.

12. A. Now, there were some other things that took place. The
13. Rockingham County Board of Supervisors talked with the .
14. met with City Council and offered to buy into the City
15. water and sewer lines. At that time the City was think-
16. ing . . . now, this is back in the early days that I was
17. on the Board. They needed new transport lines to come
18. out of Rawley; money was a problem. There isn't any ques-
19. tion about that. We felt it would be a problem for the
20. City of Harrisonburg. Rockingham County, when I came on
21. the Board, it was all new Board members; a totally new
22. Board. There was no continuity at all with the previous
23. Board. At that time we had no County Administrator. We
24. acquired a County Administrator. Five new Board members

1. dealing with things that we felt needed to get on the
2. road. And water and sewer certainly had to be one of
3. those things. We couldn't develop, we couldn't grow, and
4. we couldn't provide things that has been mentioned here
5. today, like schools and whatever else, if we just contin-
6. ued to sit there and not do anything.

7. Q. Mr. Armentrout, as a Board member after you got on the
8. Board would you tell us what your opinion was with regard
9. to whether or not it was necessary to encourage some de-
10. velopment of commercial and industrial areas in the County.

11. A. We definitely felt we had to. And our hands were tied
12. by the fact that we didn't have any water and sewer.

13. Q. It's been stated here by, I think, not City witnesses
14. but Mr. Cogar, that after the City filed its annexation
15. case the County began to ring the City with steel.

16. A. Well, I don't know who said what when, but the only thing
17. I know, I was there when.

18. Q. This was well before 1975?

19. A. That is correct. No one thought about annexation at that
20. time, at least not on the County level.

21. Q. You started to testify about some other occurrences that
22. happened during this period with regard to water and sew-
23. er.

24. A. Well, anyway, we had offered to buy into the total water

1. and sewer system of the City of Harrisonburg, and this
2. was back in the early years. And the only response we
3. could really get from the City was that they had a senti-
4. mental value. To this day the Board never really under-
5. stood what the sentimental value was, but that was the
6. response that was given to us. A citizens group was form-
7. ed to study these problems. The citizens group knew that
8. Rockingham County had to provide some services or they
9. should provide some services to the outlying areas. And
10. this group, and I think it was probably spearheaded by
11. the Chamber of Commerce, I'm not real certain anymore,
12. but there were influential, prominent, civic-minded peo-
13. ple that were on this committee.

14. Q. Were there City citizens as well as County citizens?

15. A. There was both, correct. We had several meetings, we
16. had two or three meetings possibly at the residence of
17. the General Manager of W.S.V.A., who was Mr. Hamilton
18. Shea. We had a meeting at Zane Showker's, who is the
19. owner of Harrisonburg Fruit and Produce, which is now
20. Sysco Systems. And there was different people at these
21. different meetings. And the one meeting that I can call
22. to mind very readily is that the County Administrator
23. had worked out a policy or a formulation, or whatever the
24. term you want to call it, that the City and the County

1. get together on a joint venture of the water and sewer
2. problems. And Wiley and Wilson, the engineering firm for
3. the City of Harrisonburg, was at that meeting, one mem-
4. ber. I don't recall who that person was anymore, I
5. think maybe his name was Mr. Simmons; I'm not sure about
6. that. Anyway, he was an engineer with Wiley and Wilson.
7. He said under no uncertain terms that it could work out,
8. it would work out, with the proposal that Mr. Moyers had
9. submitted.

10. Q. Mr. Moyers was what?

11. A. He was County Administrator. At that time it was known
12. as County Executive, or Executive Secretary, I should
13. say.

14. Q. Did anything come of the meetings?

15. A. No sir.

16. Q. The City still refused to agree to anything of that sort?

17. A. No sir.

18. Q. Is that correct?

19. A. That is correct.

20. Q. Now, Mr. Armentrout, can you tell the Court why in your
21. judgment it was necessary for the County to begin to pro-
22. vide both water and sewer services in parts of the area
23. that's being sought for annexation?

24. A. I have written down a few things that I think maybe . . .

1. the City made no effort, showed no inclination, to serve
2. problem areas.

3. Q. Did you have any?

4. A. Yes, we did. We had two.

5. Q. What were they?

6. A. Park View and Ashby Heights.

7. Q. All right, what other reasons?

8. A. It was more difficult for the County to provide sewer
9. services without also providing water service.

10. Q. Was the City in some instances providing the water ser-
11. vice and not sewer service? Were they running water lines
12. and selling water?

13. A. That's true.

14. Q. And that sold at double rates?

15. A. That's true. Well, I'll back up on that one, I'm not
16. certain it was double rates, but it was somewhere in the
17. neighborhood. It was an exorbitant rate.

18. Q. What other reasons?

19. A. The City provided services to areas that were easily
20. served and made problem areas more difficult. And then
21. the City by requiring that facilities be paid for by
22. developers and then giving it to the City and then charg-
23. ing double water rates, discouraged commercial and indus-
24. trial development in the County.

1. Q. All right, sir. Would you state whether or not in your
2. judgment what this proposed annexation, if granted, would
3. do to the County's ability to continue to provide ser-
4. vices to the remaining part of the County?

5. A. I analyze it as being in the same position as it was when
6. I came on the Board at least twelve years ago; I came on,
7. and now we're going into the fourteenth year, the thir-
8. teenth, fourteenth year. I visualize Rockingham County
9. being at the same position that they were at that parti-
10. cular moment. So, you have rolled history back a period
11. of at least twelve to fourteen years.

12. Q. In your opinion is that detrimental to the citizens, the
13. taxpayers, of the County and the City?

14. A. I would certainly, . . I couldn't see any other outcome
15. than that. There's one other thing I'd like to allude
16. to, and that's in relation to the Valley Mall.

17. Q. Yes sir, I neglected to ask the question.

18. A. The Valley Mall was approached . . . when I say Valley
19. Mall, I mean General Growth, who were the developers of
20. the Valley Mall. They approached the City of Harrison-
21. burg first to provide services, water and sewer. The
22. City at that time had a problem on the east side of town,
23. they could not provide water unless General Growth agreed
24. to help finance or help construct a pressure storage sys-

1. tem. And also, of course, put in the construction lines.
2. And what happened, Mr. Neff came to me and asked me if
3. the County would be interested. So, the City had an op-
4. tion or an opportunity to provide services to Valley Mall
5. before the County was ever given that opportunity. And,
6. of course, the County was interested in it after Mr. Neff
7. had asked us if we would be interested in it.

8. Q. Did the County require the developers to put up a tank?

9. A. No sir.

10. Q. And run the lines?

11. A. No sir.

12. Q. It was done at County expense?

13. A. That's true.

14. MR. FITZGERALD: Your witness.

15.

16. Cross Examination by Mr. Cogar:

17. Q. Where did you say you lived, Mr. Armentrout?

18. A. Route 3, Harrisonburg. That would be north of Harrison-
19. burg.

20. Q. How far north?

21. A. About nine and a third miles.

22. Q. Is that in a town?

23. A. No sir. You're speaking of my residence?

24. Q. Where you live.

1. A. No, that's not in town.

2. Q. You have lamented the fact that over the years some ef-
3. fort has been made between the jurisdictions to reach
4. agreements, and on occasion agreements have not been
5. reached.

6. A. That's true.

7. Q. That's a frequent occurrence in dealings between govern-
8. ments who live side by side, is it not?

9. A. Well, I wouldn't have that knowledge, whether it is or
10. whether it isn't. We've been . . . I think we've coop-
11. erated with several other areas very well.

12. Q. During your tenure on the Board of Supervisors some of
13. your own citizens who resided in towns sought County
14. help with respect to certain projects, but they were
15. unable to reach an agreement with the County for assis-
16. tance in those projects. Isn't that true?

17. A. Would you ask that question again?

18. Q. I said during your tenure as a member of the Board of
19. Supervisors, you are aware, are you not, of the occasions
20. on which the towns have sought assistance from the County
21. for certain projects within the towns and the towns were
22. unable to reach agreement with the Board of Supervisors.

23. A. You say the towns requested the County or the County
24. requested the towns?

1. Q. The towns requested services and assistance from the
2. County.

3. A. But then you come along and say that the towns wouldn't
4. cooperate with the City.

5. Q. No sir. I said as a result of the request it wasn't
6. granted because agreement couldn't be reached. Is that
7. really that difficult a question?

8. A. It must be, because I don't seem to understand it. I
9. understand you to say that the towns had requested the
10. County and therefore we didn't reach an agreement be-
11. cause the towns wouldn't agree.

12. Q. No sir. I'm saying, is it not a fact that the towns
13. on numerous occasions during the time you were on the
14. Board of Supervisors, from 1968 to 1980, sought assis-
15. tance from the Board, which assistance was not forthcom-
16. ing?

17. A. There were times that the towns did request assistance
18. and there was also times that the County, those times
19. that the County did respond to those requests.

20. Q. Then there were . . .

21. A. Let me finish my answer. Before those things were ter-
22. minated, if the record will bear out, generally that it
23. wasn't because the County turned them down.

24. Q. Are you saying the County has never turned the towns

1. down for any request they've made?
2. A. I didn't say that.
3. Q. Just can you answer me this question. Has the County
4. turned down the towns for some requests that the towns
5. have made for assistance?
6. A. Not any that I can remember right out straight, no.
7. Not that I can recall. Maybe you can refresh my memory.
8. Q. How about Grottoes? How long has Grottoes wanted sewer
9. assistance?
10. A. And I think we cooperated with Grottoes very, very well.
11. Q. What sewer do they have out there?
12. A. They don't have any. Not because of the County's prob-
13. lem. The County wasn't the cause of that.
14. Q. On Route 11 North, you have had repeated requests from
15. citizens up there for sewer, have you not?
16. A. That is true.
17. Q. Have you given it?
18. A. No sir.
19. Q. You haven't been able to reach agreement with the person
20. who sought the service, is that correct?
21. A. If we could pump the sewer line back into the Sewer Author-
22. ity, we would give it to them.
23. Q. In McGaheysville. Businesses there have requested help
24. in sewer and haven't been able to get it, is that not

1. a fact?

2. A. I'm not familiar with a request for sewer in McGaheys-
3. ville.

4. Q. The fundamental question I'm asking you, isn't it a fact
5. of life that different governmental jurisdictions who
6. live side by side at times attempt to reach cooperative
7. agreements and fail.

8. A. I feel sure those things do happen.

9. Q. I see. And people within a particular governing body,
10. members of a governing body itself, can disagree amongst
11. themselves on occasion.

12. A. I agree with that.

13. Q. As a matter of fact, do you remember the Endless Caverns
14. project that was brought to you?

15. A. Yes, I do.

16. Q. All right, sir. What was that project? What was pro-
17. posed?

18. A. It was a regional recreation area, or it was part of the
19. Upper Valley Regional . . . I can't recall the correct
20. name of it.

21. Q. It was going to be a regional recreation facility.

22. A. The Upper Valley Regional Park Authority, and that's what
23. it would have been.

24. Q. And what jurisdictions are members of that Park Authority?

1. A. Harrisonburg, Rockingham County, Staunton, Waynesboro--

2. I think maybe Waynesboro; Augusta County I know is. I'm
3. not sure whether Waynesboro is in it or not.

4. Q. All right, sir. And the members of that Regional Author-
5. ity wanted to acquire Endless Caverns and had a million
6. dollar grant and the check had been written, had it not?

7. A. I was told that. It would have been a million and a quar-
8. ter.

9. Q. All right, sir. And every governing body of every jur-
10. isdiction within the region agreed to it except the Board
11. of Supervisors; they split three/two.

12. A. That's true.

13. Q. And you voted against it.

14. A. That's true.

15. Q. What year was that?

16. A. I'm not sure.

17. Q. Was that the last year you served on the Board?

18. A. No sir.

19. Q. Would it have been your last term?

20. A. I don't think so. It could have been, but I don't think
21. so.

22. Q. Now, with respect to this Kawneer story, Kawneer wanted
23. to locate on the northeast quadrant of the interstate
24. next to 81 and 33, is that correct?

1. A. Well, that wouldn't be quite northeast, I don't think.
2. But, anyway, east of Harrisonburg.
3. Q. Well, it's east of 81 and north of 33, isn't it?
4. A. That's true.
5. Q. In that corner.
6. A. Right.
7. Q. At the time they wanted to locate there, that land was
8. in Rockingham County?
9. A. That's true.
10. Q. And they asked Rockingham County to provide them with
11. services?
12. A. Not at that moment, no.
13. Q. Well, how did it come about that that area was annexed
14. to the City? Why didn't you just go ahead and extend
15. the services to them?
16. A. We didn't have the services. This was way back in 1968
17. and 1969. There wasn't any services to be offered.
18. That was the reason for the friendly annexation.
19. Q. All right, sir. And at the time it was agreed that there
20. would be a friendly annexation, mention was made of the
21. fact that the County would expect to get some water through
22. a master meter.
23. A. That's correct.
24. Q. And did the City agree to provide it?

1. A. Agreed to provide water?

2. Q. At the master meter.

3. A. Orally.

4. Q. All right, sir. Well, now, have you ever seen a water
5. contract?

6. A. I don't recall whether I have or haven't. I probably
7. have or have seen an engineer's study, or something like
8. that. Not really a water contract as such.

9. Q. Well, you know that they are terribly complex documents,
10. don't you?

11. A. Well, I would . . . you know, I don't know why they would
12. be anymore complex than any other contract.

13. Q. Well, you have to take into account rate schedules, the
14. amount of water to be provided, where it's going to be
15. served, what happens in . . .

16. A. I think maybe Rockingham County . . . I was still on the
17. Board, I think, when we resolved the contract east of
18. Harrisonburg.

19. Q. You were on the Board, weren't you?

20. A. I'm sure I was.

21. Q. And that was a product of many weeks and months of nego-
22. tiation, was it not?

23. A. It was approximately a year or so. I'm not sure of the
24. amount of time that was involved in that.

1. Q. You were not suggesting to this Court that you had an
2. agreement for the provision of services with Harrison-
3. burg which was finite in detail and that they then re-
4. neged.

5. A. No sir. I didn't say that.

6. Q. All right. As I recall your testimony you said that
7. Harrisonburg promised essentially to provide water east
8. of 81.

9. A. I didn't say that. I said Harrisonburg had agreed essen-
10. tially to provide water through a master meter.

11. Q. All right, sir. What's the difference between that and
12. what I said?

13. A. It makes a lot of difference. You're saying east of
14. Harrisonburg.

15. Q. It would be metered at the County boundary, is that cor-
16. rect?

17. A. That is correct, wherever that . . .

18. Q. And they promised essentially to do that.

19. A. That's right.

20. Q. Now, that was in 1968?

21. A. 1968 or 1969, sir.

22. Q. All right. And that was at the time the County agreed
23. to the friendly annexation.

24. A. That's true.

1. Q. Now, from the time that you agreed informally to this
2. friendly annexation until that was fait accompli, how
3. much time elapsed?

4. A. You're talking about the friendly annexation?

5. Q. Yes.

6. A. A year.

7. Q. At least a year?

8. A. Yeah, at least.

9. Q. All right, sir, and during that year before that terri-
10. tory was annexed to Harrisonburg, if you had any reason
11. to believe that Harrisonburg was reneging on any pro-
12. mise it had made, you could have balked on the friendly
13. annexation, could you not?

14. A. We would have. Well, I'll retract that statement. I
15. for one would have . . . wouldn't have agreed to a
16. friendly annexation if I would have known that the City
17. of Harrisonburg wasn't going to live up to their oral
18. agreement.

19. Q. Well, did you just go to sleep for this year or fifteen
20. months or however long it was between . . .

21. A. What do you mean by that?

22. Q. I'm getting ready to say it, if you'll let me finish my
23. question. From the time that the two, the agreement and
24. the understanding were reached with respect to Kawneer's

1. annexation and the provision of water through a master
2. meter, until the annexation was accomplished, which re-
3. quired a court proceeding, did it not?

4. A. You mentioned a moment ago a year, it wasn't a year. The
5. letter was September 27th, the Court order was signed on
6. September 27th, I think it was 1969 of that friendly an-
7. nexation. So, when we speak of a year from the time the
8. Kawneer people came here until the time the friendly an-
9. nexation was resolved; I question . . . no, I don't think
10. that was a year. I think it was just a very short period
11. of months; a couple of months.

12. Q. Well, friendly or otherwise, you had to have a court pro-
13. ceeding.

14. A. That's true.

15. Q. So, from the time you had your initial discussions until
16. the petition was drawn, the Court was designated, the
17. Court sat, and you had the annexation, I originally un-
18. derstood you to say about a year elapsed. Now, are you
19. changing that testimony?

20. A. No sir, I'm not changing anything. I came on the Board
21. January 1, 1968, the letter was drafted . . .

22. Q. What letter?

23. A. The one that was hand-carried down to the City Council.
24. So, the Court approved the annexation in September of

1. 1969, I think I'm right on that, and it was awarded Jan-
2. uary 1, 1970. I could have that verified one way or the
3. other. So, from the time that I came onto the Board in
4. January of 1968, Kawneer was already here in 1970.

5. Q. So you've had two years that have elapsed.

6. A. I had two years that had elapsed, but Kawneer had nothing
7. to do with that first year.

8. Q. But you're the one that put Kawneer and the promise to
9. furnish water together as a package deal.

10. A. That is true.

11. Q. All right, sir.

12. A. You must remember, I stated to you, or I stated to Mr.
13. Fitzgerald, in the beginning that Rockingham County be-
14. fore Kawneer was ever heard of approached the City in
15. relation to acquiring water through a master meter.

16. Q. All right, sir. So, in 1968 those discussions commenced
17. with respect to Kawneer and by January 1, 1970 you had
18. an annexation, and the memorandum was carried to the
19. Council in what year?

20. A. 1969. September 27th. There was another one December
21. 4, 1970.

22. Q. And what was the first one?

23. A. September 27 . . . that was, the City had maintained that
24. they didn't really know what the County wanted. And that

1. was alluding to what the County was requesting. That was
2. the starting point.

3. Q. I thought you said that the first memorandum was carried
4. to Council in September of 1970.

5. A. No sir, it was 1969.

6. Q. You have a copy of it there, don't you?

7. A. Yes sir.

8. Q. May I see it?

9. A. (Letter handed to Counsel)

10. Q. The date I see on here is September 29, 1970.

11. A. Well, I stand corrected then.

12. Q. All right, sir. We're from sometime in 1968 to September
13. 29, 1970, certainly something over two years. Is this
14. the first writing you have indicating your desire to
15. have a master meter? Do you have any other writing . . .

16. A. No, I don't.

17. Q. Do you know of the existence of any other writing?

18. A. I'm not certain whether there's anymore in the office
19. or not.

20. Q. All right, sir. I see the opening paragraph of this
21. memorandum which is on the stationery of the Rockingham
22. County Board of Supervisors, bearing a written date of
23. September 29, 1970, says, "Rockingham County Board of
24. Supervisors herewith submits to the City Council of

1. Harrisonburg a request for water to be supplied on the
2. following conditions," six of which are set forth. There
3. is no reference in here to any prior agreement to provide
4. it, is there?

5. A. I've already admitted to you, as far as I know there
6. isn't any other correspondence that is written to be
7. very, very specific to Town Council. If there is, it
8. would be on the records in the Board office. I don't
9. know.

10. Q. All right, sir. If you thought you had an agreement,
11. wouldn't it have been appropriate to say, "In accordance
12. with the agreement previously reached with you, it is
13. hereby requested that you enter into an agreement carry-
14. ing out the terms of that agreement."

15. A. I did not draft that letter.

16. Q. Well, is it fair to assume that whoever did draft it
17. was aware of the history and what the understanding was?

18. A. I feel certain he was. The County Administrator drafted
19. that letter.

20. Q. And then on December 4 a letter was written by Moyers
21. to the City Manager, wherein it was recited, "By action
22. of the Board of Supervisors on November 30, I was asked
23. to seek a reply from the City Council of Harrisonburg
24. to the proposal made by the Rockingham County Board of

1. Supervisors on September 29, 1970. The Board requests
2. either acceptance or rejection of said proposal in order
3. that future plans may be developed." Is that correct?

4. A. That is correct.

5. Q. So, what you were telling the City at that point, at
6. least by implication is, that if they don't propose to
7. provide you water according to the terms set forth in
8. your earlier letter, that you're going to make your own
9. plans.

10. A. Essentially that's correct.

11. Q. All right, sir; what did you do after you received no
12. response?

13. A. We had our engineering firm to start looking for water.

14. Q. Did you develop a plan?

15. A. Yes sir, to some degree.

16. Q. And when the Valley Mall people came here and proposed
17. to locate on Route 33, according to your testimony the
18. City did offer to make the service available, is that
19. correct?

20. A. That isn't what I said. I said that they were contacted
21. and the City said that they would have to participate in
22. order for them to offer the services, in the construction
23. of a water tank, a storage tank, to provide pressure.

24. Q. And do you know where the City wanted to construct the

1. storage tank?

2. A. Sir?

3. Q. Do you know where the City wanted to construct the stor-
4. age tank?

5. A. It was somewhere out in that particular area. I'm not
6. real certain of the exact spot, but it had to be in that
7. area, somewhere around the Sheraton I heard. I'm not
8. real certain about that.

9. Q. Well, were you on the Board at the time?

10. A. Yes sir.

11. Q. Didn't you follow this rather closely?

12. A. Yes sir.

13. Q. And weren't you aware that the City was denied permission
14. by the County to put a tank in the position they desired
15. to put it in order to serve the Mall?

16. A. Well, here again, we get back into the agreement and work-
17. ing out the situation. I don't think that was ever total-
18. ly definite.

19. Q. What do you mean, ever totally definite?

20. A. That they were denied a facility for a storage water tank.

21. Q. Now, Mr. Armentrout, you're not denying that before this
22. Court, are you?

23. A. I'm not denying anything. You're asking me what my mem-
24. ory recalls, and I'm telling you what my memory recalls.

1. Q. Well, you do recall that the City proposed to provide
2. water to the mall and sewer.
3. A. This was after this.
4. Q. That's what I'm saying.
5. A. That's correct.
6. Q. This is back in 1970?
7. A. That's right.
8. Q. And in order to do that it was necessary, as you have
9. said because of pressure problems, to construct a tank
10. in the vicinity of the mall.
11. A. That's what we were told.
12. Q. On land in the County.
13. A. That's true.
14. Q. And the County refused to let them construct the tank.
15. A. Now, I'm not aware of this. If I'm denying anything,
16. I'm not aware I'm denying anything. I'm not aware that
17. the County refused them to construct the tank.
18. Q. Are you aware that the City extended water to the mall
19. site and a connection was made to the site of the con-
20. struction trailer and they used City water? And the
21. City did that in anticipation of serving the mall?
22. A. No sir, I am not aware that they put water to that trail-
23. er. I know where the trailer was too. It was right on
24. the corner of that location.

1. Q. Well, where do you think that water came from?

2. A. I wasn't aware there was any water there. At the time
3. they constructed the mall I wasn't aware that there was
4. water at that trailer.

5. Q. Do you believe that they could have undertook the con-
6. struction of a facility of that magnitude without water
7. at the site?

8. A. There was water at K-Mart and Kroger's.

9. Q. Whose water was that?

10. A. The City's water.

11. Q. And the ultimate outcome of it all was that the City did
12. provide the water which is presently used in the mall
13. by selling it to you through a meter. Is that right?

14. A. That's correct.

15. Q. And but for that, that mall might well not be there to-
16. day.

17. A. No, no, I don't agree with that. Because we were ready
18. to bring the water from the Pleasant Valley well over to
19. the mall. And I think if you want to know what caused
20. the resolving of the problem, was the fact that we were
21. going to bring the water over from the well site.

22. Q. And that's the well that's down in the southern part of
23. the County?

24. A. Yes sir. It's out in the Pleasant Valley area.

1. Q. And that well is not operative now.

2. A. No sir.

3. Q. And that's where you were going to bring it from?

4. A. That's true.

5. Q. And that was engineeringly feasible?

6. A. We were told that.

7. Q. Are you aware that Mr. O'Brien testified the County was
8. going to drill a well someplace in proximity to the mall?

9. A. No sir, I don't have the advantage of the testimony that
10. took place here before today.

11. Q. All right, sir. So your memory is that it was going to
12. come from Pleasant Valley?

13. A. That's true.

14. Q. Are you aware that the County when it issued the building
15. permit to the mall conditioned that permit on the mall
16. obtaining this water from the County?

17. A. No sir, I'm not aware of that.

18. Q. Didn't that receive a great deal of publicity?

19. A. I'm still not aware of it.

20. Q. And then when it came to the Donnelley site, there were
21. thrusts and counter-thrusts, but when it all settled out,
22. City water was metered at the City line and went to Don-
23. nelley, is that correct?

24. A. That's correct.

1. Q. And you got City water.

2. A. That's correct.

3. Q. And Ashby Heights, you said you wanted water in Ashby
4. Heights. Where did the water come from that's served in
5. Ashby Heights today?

6. A. I was under the impression that part of that came from
7. the water system that was already there. I'm not sure
8. of where it all comes from.

9. Q. You're not aware that that collector system or that the
10. well which served that private system . . .

11. A. Is no longer operating?

12. Q. Yes.

13. A. No sir, I wasn't aware of that.

14. Q. Is there anyplace that you can think of in the annexation
15. area that the City has wanted a water or sewer . . . that
16. the County has wanted a water or sewer service that the
17. City has declined to provide?

18. A. Well, I wouldn't say that they ever really declined; but,
19. you know, you've been led through backwards in order to
20. acquire it. And it's kind of like standing on a cliff
21. and there's no place to go but down. And I think maybe
22. that's what has happened in several occasions in the
23. past.

24. Q. Well, my question to you is, is there any location with-

1. in the annexation area that the County has sought City
2. water or sewer service and the City has been unwilling
3. to provide it?

4. A. If you're asking an opinion on whether they've been un-
5. willing, I'd say yes. Whether they have served, I would
6. say they have also served.

7. Q. You indicated that the rates charged by the City for
8. water in the annexation area had discouraged development
9. in the County.

10. A. That's true. Kawneer is a classic example. They would
11. not have located, or at least they said they would not
12. have located here, if they had to pay the water rates.

13. Q. Can you cite any industry that has indicated an intention
14. to come here that has subsequently decided against com-
15. ing here because of any water or sewer rate charges?

16. A. No sir, I'm not that familiar with that. The Rockingham
17. Development Corporation deals with those industries, and
18. a lot of times those industries are here and are showing
19. an interest in locating here, and maybe they've shown an
20. interest and maybe they haven't, maybe they've already
21. left before I as an individual even knew they were here.

22. Q. All right, sir. And you referred to the rate charged by
23. the City as a double water rate.

24. A. No sir, I didn't say that. I said an exorbitant rate.

1. Q. Let's see if we can be a little more specific. What do
2. you mean by exorbitant?
3. A. Well, whatever the percentage is, I think that was some-
4. where in the neighborhood of thirty to forty percent more
5. than the City rates.
6. Q. And you think that's exorbitant?
7. A. Yes sir, I do.

8. Q. Are you familiar with the practices throughout this Com-
9. monwealth with respect to water sales beyond the boundar-
10. ies of cities?
11. A. No sir, I am not. I am not an engineer.
12. Q. Have you served on some state committees?
13. A. Not in reference to water rates or charges.
14. Q. Do you know what the Donnelley rate is?
15. A. The R. R. Donnelley?
16. Q. Yes.
17. A. No sir, I don't recall.
18. Q. So you're not in a position to say whether that is exor-
19. bitant or not.
20. A. No sir.
21. MR. FITZGERALD: That's a County customer,
22. I believe, Mr. Cogar. Not a City customer.
23. Q. Do you know what the rate is that the City sells the
24. water to the County?

1. MR. FITZGERALD: Your Honor, if it meets the
2. Court's approval, we have one short witness that I would
3. put on and then let the intervenors go on over our objec-
4. tion and put on his testimony, and then we'll get back
5. to the remaining witnesses of the County.

6. JUDGE MOON: All right.

7. MR. FITZGERALD: We cannot put them all on
8. this afternoon, but it looks like it will be mid-day
9. tomorrow.

10.
11. FRED R. MUMBERT,
12. having been duly sworn, testified as follows:

13. Direct Examination by Mr. Fitzgerald:

14. Q. State your name.

15. A. Fred R. Mumbert.

16. Q. And where do you live?

17. A. I live out at Cross Keys.

18. Q. That's in Rockingham County?

19. A. Yes sir.

20. Q. And what is your occupation?

21. A. I'm plant engineer for Continental Telephone Company.

22. Q. Do you own property within the proposed annexation area?

23. A. I own thirty acres at the intersection of Route 710 and
24. 711.

1. Q. Would you come and put your initials on the area of your
2. property?
3. A. (Witness writes on exhibit)
4. Q. What use do you make of that property, sir?
5. A. I have livestock; I have sheep and cattle.
6. Q. Would you tell the Court whether or not you are opposed
7. to the proposed annexation of that property to the City.
8. A. Basically I'm opposed to it.
9. Q. And what are your reasons for being opposed?
10. A. I just feel that from all the things I've heard and seen,
11. and the tax rates that I know exist, that my taxes would
12. increase considerable.
13. Q. Do you have your land under the land use tax plan?
14. A. I do have.
15. Q. Do you receive all the services for that property that
16. are needed?
17. A. I have all the services I need or can afford, really.
18. I have water and I have protection. The Sheriff's De-
19. partment.
20. Q. Have you found the Sheriff's Department to be adequate
21. protection for your property?
22. A. Very adequate. I always stop there at night when I get
23. off work. And the other night, for example, I went
24. through, and I was pulling strike duty, and I pulled in

1. there late to look about my sheep and lambs, and a car
2. pulled in behind me. I didn't know who it was; it was a
3. Deputy Sheriff checking out who was there at that time
4. of night. And I felt that that's pretty good protection.

5. Q. All right, sir.

6. A. I have all the water I need too, I have three wells and
7. five cisterns there that supply all that I need there.
8. In fact, I have a sewer line in my driveway.

9. MR. FITZGERALD: All right. Your witness.

10. MR. COGAR: No questions.

11. JUDGE MOON: Thank you.

12.
13. MR. FITZGERALD: We yield, over objection, to
14. the intervenors.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.

ORDEN L. HARMAN,

having been duly sworn, testified as follows:

Direct Examination by Mr. Thumma:

Q. State your full name for the Court, please.

A. Orden L. Harman.

Q. Mr. Harman, where do you reside?

A. Route 7, Box 10, Harrisonburg.

Q. Are you a property owner in Rockingham County?

A. Yes sir.

Q. And is some of the property that you own part of the petition to intervene that you filed in this proceeding?

A. Yes sir.

Q. Where is that property located?

A. Just north of Park View.

Q. Could I ask you to stand and point out on the map here where your property is located?

A. Okay, the property is just north of Park View, it's the property in orange here.

Q. In orange?

A. Yes.

Q. And can you point out the present annexation line?

A. Yes. The line comes across here in the little Town of Sharon, goes across the road into one field about a hundred and fifty, two hundred feet, and then runs parallel

1. with Route 42 over to our property line.

2. JUDGE ARTHUR: While your client is there,
3. sir, let him point out his property in relation to the
4. Donnelley Plant.

5. Q. Can you point out where the Donnelley property is?

6. A. Yes, the Donnelley property is approximately right over
7. in here (indicating on map), straight across from it.

8. JUDGE ARTHUR: About how far is it from the
9. nearest line of your property?

10. A. I would guess it's about three quarters of a mile to a
11. mile.

12. JUDGE MOON: Your property is all to the west
13. of 42?

14. A. Yes. All of it is on the west side of 42.

15. JUDGE MOON: What is across the road from
16. you?

17. A. Mainly just dwellings. Dwellings and railroad tracks,
18. of course, are close in here.

19. Q. What types of dwellings, is that a residential . . .

20. A. Yes.

21. Q. Approximately how many houses are out there?

22. A. Oh, my, I wouldn't have any idea. It's a good many in
23. there. I would guess fifty to a hundred, something like
24. that.

1. Q. How is this property held in the orange here?
2. A. Triple H Farms, Incorporated.
3. Q. Is that a Virginia corporation?
4. A. Yes sir.
5. Q. Are you an officer and stockholder?
6. A. Yes sir.
7. Q. What is your position as an officer?
8. A. I'm president and general manager.
9. Q. Who are the other stockholders?
10. A. My brother, Carl, is vice president, and my sister is
11. secretary, Harriet.
12. Q. Is it a closely held family corporation?
13. A. Yes.
14. Q. What is the approximate amount of land that's covered
15. in orange?
16. A. It's approximately a hundred and fifty acres.
17. Q. Do you know the County's assessed value for that land?
18. A. Yes, it's \$317,730.00.
19. Q. And is that the assessed value as of 1980?
20. A. Yes sir.
21. JUDGE ARTHUR: How many acres?
22. A. A hundred and fifty.
23. Q. Does the hundred and fifty acres have any improvements
24. on it?

1. A. Yes, there's an old barn, there's one dwelling that's be-
2. ing lived in, there is an old dwelling that's not, and
3. one silo.

4. Q. What type of land is the hundred and fifty acres? What's
5. the terrain like?

6. A. Most of it is very hilly, steep, it's got a lot of rock
7. on it. There is one field, and that is the field where
8. the annexed line comes in and parallels 42, there's ap-
9. proximately twenty acres in that one field there, that
10. is the only croppable field on the whole farm.

11. Q. Can you point that out on the map?

12. A. Yes. That would be right in this corner right here (in-
13. dicating on map).

14. Q. It's the portion of the land that's included within the
15. annexation line as it exists now?

16. A. Yes, there's a portion of it.

17. Q. Are most of these rock outcroppings on the surface?

18. A. Yes.

19. Q. Can you see them visually?

20. A. Yes.

21. Q. What intentions do you have as far as use of this land?

22. A. We would like to develop the property.

23. Q. Have you taken any steps to develop the property?

24. A. Yes, we have. A number of years ago we had the topo done

1. on the entire farm.

2. Q. Approximately how many years ago?

3. A. It was approximately 1978.

4. Q. You had a topographic map done?

5. A. Right.

6. Q. What else have you done?

7. A. Well, we have done a lot of work with the Virginia Men-
8. nonite Home.

9. Q. First of all, what is the Virginia Mennonite Home?

10. A. The Virginia Mennonite Home is a retirement village.
11. They have a nursing home, they have just recently built
12. Heritage Haven, which is an apartment complex. I think
13. it's got a hundred and fifty rooms there.

14. Q. That's already in existence?

15. A. Yes sir.

16. Q. Can you point out where that is located?

17. JUDGE ARTHUR: Gentlemen, if it will help any,
18. we've seen that property and we understand where it is.

19. Q. What have you done with the Virginia Mennonite Home?

20. A. Well, right now they are asking for us to sell them a
21. piece of land, if I may point to it, that would run right
22. behind this gentleman's house back to the Park View Men-
23. nonite Church. They would like to acquire that piece of
24. land because they have plans to build Park Village, which

1. is some duplex houses for the retired people. That's
2. what's on this plan.

3. Q. And the proposed plan has been drawn for that?

4. A. Yes.

5. Q. And you are presently negotiating to sell that?

6. A. Right.

7. JUDGE MOON: How many acres does that involve?

8. A. Four acres. That is also in that field that I was tell-
9. ing you about, the field that is the only croppable field
10. on that farm.

11. Q. What other steps have you taken, Mr. Harman?

12. A. That's the main steps that we have taken. We haven't
13. gone too much further than that.

14. Q. What you plan for the remainder is a restricted residen-
15. tial area?

16. A. Yes.

17. Q. Do you know what drainage area the portion of the land
18. lies in?

19. A. You mean how many acres?

20. Q. The portion that you intend to develop.

21. A. Well, the portion that we would like to develop would be
22. something similar to that (indicating on map). That's
23. what would drain immediately back to the City of Harri-
24. sonburg. Anything beyond there would need to be pumped

1. back. But something like that (indicating) would drain
2. immediately back right then.

3. Q. And would flow right into the Park View . . .

4. A. That's right. The sewer and the water lines are there
5. to our . . . the water lines are to the property now and
6. the sewer line is on the Virginia Mennonite Home proper-
7. ty, which is approximately a hundred yards from our line
8. fence.

9. Q. So, those utilities are available?

10. A. Yes. That is part of the negotiations with the Home,
11. to extend those lines to our boundary.

12. Q. Can you just basically tell the Court what direction the
13. community of Park View has at this time for expansion?

14. A. Well, the only way that Park View can really expand is
15. to the north, because there's no way for it to go south.

16. Q. Why is that?

17. A. Well, because it's built, it's completely full. There's
18. nowhere it can go.

19. Q. Is there some reason it can't go any further south?
20. Is there anything down there to stop it?

21. A. A lot of buildings. Well, you know, you've got Frazier's
22. Quarry out here.

23. Q. Okay, that's on the south side?

24. A. And there's also a quarry on the . . . of course, that

1. quarry is in here, but on the east side. So, there's
2. a quarry. . . but, that wouldn't really play any part on
3. this. The main other reason it can't go to the east is
4. because you've already got a housing development right
5. across from it, you've got the railroad here, and you've
6. got industry on the other side of that.

7. Q. What about to the west?

8. A. There is vacant land to the west, but it all drains the
9. other direction. None of it drains toward the annexed
10. area.

11. Q. The annexation line as it exists through Park View now,
12. does that run along the top of the ridge?

13. A. Yes, right here (indicating on map).

14. Q. Is it your wish to be within the annexation area and be-
15. come a citizen of the City of Harrisonburg?

16. A. Yes sir.

17. JUDGE TRABUE: Somehow that red shaded area
18. doesn't look the same on that map as it does on the map
19. that's attached to the petition to intervene.

20. MR. THUMMA: The red or the orange, Your Honor?

21. JUDGE TRABUE: The orange I mean.

22. MR. THUMMA: I believe it is the same.

23. JUDGE TRABUE: Is it?

24. MR. THUMMA: No sir, this one . . . I'm sor-

1. ry. I didn't notice that when the exhibit was done. It
2. includes that area there. I have another map. I apolo-
3. gize.

4. JUDGE TRABUE: Thank you.

5. MR. THUMMA: I would like to move Petitioner's
6. Exhibit A into the evidence.

7. JUDGE MOON: All right, it will be admitted
8. as Petitioner's Exhibit A.

9. Q. Is there anything else you'd like to add?

10. A. No, the only thing I would say, we're sure not here pro-
11. annexation or fighting annexation. We've got a lot of
12. farms in the County that we farm, and we just feel like
13. this is a farm that's on the north side of Park View,
14. Harold Eshelman came to me sometime ago with a concern
15. about Park View, because he had been in charge of the
16. Sanitary District for twenty-some years, and wants to see
17. Park View continue to grow. He and I discussed it, and
18. strongly feel that this farm is the type of farm that
19. would make a nice development close to Harrisonburg. And
20. it's not really suitable for agriculture. However, our
21. prime business is agriculture. But we would like to see
22. this annexed so it can be developed, and see Park View
23. continue to grow. That's all I have.

24. MR. THUMMA: Answer any questions.

CARL B. HARMAN,

having been duly sworn, testified as follows:

Direct Examination by Mr. Thumma:

Q. State your full name to the Court, please.

A. Carl B. Harman.

Q. And, Carl, where do you reside?

A. 1603 Hillcrest Drive, Harrisonburg.

Q. Where exactly is that property located? Can you show the Court on the map?

A. Right in the corner, right there (indicating on map).

Q. It's a little red dot in the corner?

A. That's correct.

Q. What does that property consist of? How much land?

A. Approximately one-half acre lot and a residence.

Q. Do you know what the assessed value of that land is?

A. It's approximately seventy-five thousand dollars, for the house and lot.

Q. And that is your residence?

A. That is correct.

Q. What kind of utilities are you receiving at this time?

A. I receive water, and that's it.

Q. You don't receive any sewer service?

A. No, I have my own sewer.

Q. You have a septic system?

1. A. That is correct.
2. Q. How about the adjacent properties? Of course, to the
3. north here you have Triple H Farm, but what about the
4. properties to the south and to the east of you.
5. A. All the properties south and east of me is developed in
6. houses and the Park View Mennonite Church is directly
7. east.
8. Q. Okay. Do the properties have single family development?
9. A. That's correct.
10. Q. What type facilities do they receive?
11. A. They have water and sewer from Park View Sanitary Dis-
12. trict.
13. Q. The water and sewer is adjacent to your property?
14. A. That is correct.
15. Q. How long have you lived there, Carl?
16. A. I have lived there since 1973.
17. Q. Is it your wish to be included within the annexation
18. area?
19. A. That is correct.
20. Q. You are also a stockholder and officer of Triple H Farm,
21. is that right?
22. A. Yes, I am.
23. Q. What is your position?
24. A. Vice President.

1. Q. As far as the future development of Park View, do you
2. have an opinion as to which way it would develop?

3. A. Well, I think the natural way for it to develop is to the
4. north, because that's the easiest route for it to take.

5. Q. And why is that?

6. A. Well, even though it's rock outcroppings and all on it,
7. it's not near as rough, not as steep as it is to the
8. west. And, as my brother explained, to the south and to
9. the east the development has pretty well taken place.
10. So, it's just natural for it to go that way.

11. Q. Does the lower portion of this property lie within the
12. Park View drainage basin?

13. A. The lower part?

14. Q. Or the Sanitary District, the lower portion of it?

15. A. Yes.

16. Q. And as far as your property as it exists now, as a single
17. family residence, and as far as your intentions in the
18. development of the property owned by Triple H Farm, would
19. that property be in need of the types of services that
20. the City would offer?

21. A. Yes, it would.

22. MR. THUMMA: Answer any questions.

23. MR. COGAR: I have none.

24.

1. Mr. Owens has it. But I'll have it tomorrow.

2. JUDGE MOON: Would you gentlemen be willing
3. to stipulate paragraph three insofar as it contains fac-
4. tual matter and not opinion?

5. MR. THUMMA: Of Mr. Eshelman?

6. JUDGE MOON: Yes, the facts to which he would
7. testify as opposed to opinion. Actually it's cumulative
8. of other testimony anyway.

9. MR. COGAR: The City would stipulate it, Your
10. Honor.

11. JUDGE MOON: You don't have to stipulate the
12. truth of it; but that's what he would testify to if he
13. was here.

14. MR. FITZGERALD: Yes sir, we'll stipulate
15. that he would testify to that.

16. JUDGE MOON: I don't know if you want to read
17. it into the record, read paragraph three into the record.
18. That's paragraph three of the description of testimony.

19. MR. THUMMA: Yes sir. It would be stipulated
20. by all the parties that Mr. Harold Eshelman if called to
21. testify would testify to the following facts, so long as
22. they don't relate to opinions. That Mr. Eshelman for a
23. period of approximately twenty years was associated and
24. has been an officer of the Park View Sanitary District,

1. that the services of the Park View Sanitary District ad-
2. join the real property requested to be annexed within
3. this petition, that the property of Carl and Sharon Har-
4. man lie within the drainage basin of the Park View Sani-
5. tary District, that a portion of the property owned by
6. Triple H Farms, Inc. lies within the drainage basin of
7. the Park View Sanitary District, that the proper area for
8. expansion of Park View lies within the real property own-
9. ed by the petitioners, the development of which real pro-
10. perty needs the administration of City government design-
11. ed to provide the necessary services for the needs of
12. an urban population, that this property has interests in
13. common with residents of the City of Harrisonburg.

14. JUDGE MOON: Other than the opinions, the
15. facts to which he would testify are stipulated, that's
16. what he would say if he were here. You have how many
17. witnesses tomorrow do you think?

18. MR. SMITH: Three are relatively short. One
19. is a little bit long.

20. MR. FITZGERALD: I think we can finish tomor-
21. row.

22. JUDGE MOON: Tomorrow or tomorrow afternoon?

23. MR. FITZGERALD: Well, I think we can finish
24. the evidence by mid-day tomorrow, about one o'clock

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME VIII

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 22nd 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 27th day of May, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

1. HARRY BYRD,

2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Smith:

4. Q. Will you tell the Court your name, sir.

5. A. Harry Byrd.

6. Q. And what is your official position with Rockingham County?

7. A. Supervisor in Election District 3.

8. Q. And does Election District 3 encompass a portion of the
9. area that is sought for annexation by the City?

10. A. Yes, it does. Everything south of Route 33 on the west
11. side of town, and also on the east side of town; every-
12. thing south of Route 33 is part of my election district.

13. Q. And as the elected representative from that district
14. you know the people in that area.

15. A. Yes, I do.

16. Q. Based on your familiarity with that, Mr. Byrd, would you
17. tell us about the educational services that the County
18. is providing for the students who reside in that area.

19. A. There has been various testimony on the agricultural
20. ability of the schools to handle the agricultural needs,
21. and the City has referred to their academic areas. I'd
22. like to touch briefly on the academic areas of the County
23. schools. Specifically the Turner Ashby School which
24. serves that area, although the same thing that I will

1. speak on on Turner Ashby holds true for the other schools.
2. The academics at Turner Ashby are excellent, along with
3. their agricultural programs. The records of the students
4. that they have turned out over the past ten or twelve
5. years, I have not gone back the twenty-five years it has
6. been in existence, but the past ten or twelve years ex-
7. ceeds anything in, I guess, any of the schools in the
8. State of Virginia. They have had two students that went
9. directly to M.I.T. out of high school, and they have had
10. numerous students that went directly to military academ-
11. ies. They had one student who on an academic scholarship
12. entered college as a sophomore, he skipped his freshman
13. year. They have won National Merit Awards every year,
14. I think, since 1970. They have had finalists and semi-
15. finalists. One student had a perfect score, eight hun-
16. dred on math and eight hundred on verbal on the S.A.T.
17. scores. And those are some of the records that they have
18. produced. They have the subject matter, they have the
19. teachers, they have the facilities to provide any student
20. with anything that he wants.

21. Q. Did your children receive their education in County
22. schools?

23. A. Yes, they have. Four have graduated and the fifth is a
24. senior at the Turner Ashby High School.

1. Q. Have some gone on to various colleges?

2. A. All four, the four that have graduated have gone on to
3. college.

4. Q. Do you feel that there is a certain number of students
5. in that area who require agricultural training, who desire
6. and require agricultural training subjects in schools?

7. A. Yes, and also they require and desire academic training.
8. By the same token there are some students leaning toward
9. academics that take home ec., take business courses, to
10. round out their total education.

11. Q. Are there also numerous working farms in your election
12. district?

13. A. Yes, there are, a tremendous number of them. If you have
14. heard testimony from Mr. Craun, plus all the other farm-
15. ers, this area here is all farms, this area is all farm-
16. ing, this area is all farming (indicating on exhibit).

17. Q. And there are also some farms on the east side.

18. A. Oh, yes. There are some orchards over here and there is
19. some grazing and farming, farming land in that area.
20. There is, I believe, as Mr. Craun and maybe some others
21. have mentioned, about ten to twelve what we call Old Order
22. Mennonites. They are a sect of the Mennonite Church;
23. horse and buggy type people who have their farms in there.
24. They make their livelihood, they exist off of their farm

1. land; they made it produce for them, they live there all
2. their lives. Their ancestors have lived there and I'm
3. sure their children and grandchildren will stay on that
4. farm land as long as possible.

5. Q. Would City regulations and City life have an adverse
6. effect on the Old Order Mennonites?

7. A. I would think it would have a very adverse effect upon
8. them. I think the land would be zoned right out of
9. existence on them.

10. Q. How do these people get along with the City traffic
11. situation?

12. A. They have a problem, being horse and buggy. They do
13. shop in Harrisonburg, usually on the southern end of
14. town, the Farm Bureau and Rockingham Mill. They have
15. trouble getting across town. I can give you an example,
16. a family who does some work in my home, horse and buggy
17. Mennonites, and it was the early spring of 1979--realiz-
18. ing the Mall opened in 1978 and Kroger and K-Mart had
19. been there for quite a while--and they had never seen
20. the Mall and Kroger and K-Mart until the spring of 1979
21. when my wife and I took them out there one night. And
22. the reason they had not, it was just too unsafe for them
23. to get across town with their vehicles.

24. Q. You mean their horse and buggy?

1. A. Their horse and buggy.

2. Q. Where are the Mennonite churches located?

3. A. One is just west of Dayton, Dayton being right in here
4. (indicating on exhibit), about a mile and a half. The
5. other one sets right off of 712/701 intersection about
6. a half a mile. It sets right here (indicating on exhibit).
7. They locate within short driving distance of their
8. churches.

9. Q. Based on your knowledge of these Mennonite people, where
10. do you feel their community of interest lies?

11. A. Their community of interest lies right on their land,
12. right where they make their livelihood, and their church
13. and their neighbors.

14. Q. Do a number of these people send their children to a
15. private Mennonite school?

16. A. They use both; they will use public schools and private
17. schools that they fund and finance on their own.

18. Q. There are other people who are not Mennonites who live
19. in that area, are there not?

20. A. That is correct.

21. Q. What is your feeling about the impact of this annexation
22. on them?

23. A. The same thing. As the land becomes citified it will be
24. zoned to where they can no longer survive on it and would

1. have to leave it, and I think that's wrong. I think
2. it's very unfair.

3. Q. I guess as an elected official you would be one of the
4. first to know if the people in your district weren't
5. receiving services from the County that they needed or
6. wanted. Isn't that true?

7. A. That is correct.

8. Q. What has been your experience about the people's feelings
9. concerning the providing of services to them by the County?

10. A. I have had no complaints on services in this area. Since
11. the County started providing water and sewer into those
12. areas, it has been where the need was greatest, as time
13. and money could provide those facilities. The contract
14. with Dayton was a joint effort with Dayton on their re-
15. quest to provide service in the southern end of the town
16. for their needs.

17. Q. Does the County have the capability to provide utilities
18. and other services to that area?

19. A. Yes. We are doing so and we have the capability to ex-
20. pand it.

21. Q. Your election district also includes the Valley Mall.

22. A. That is correct.

23. Q. Is this being served at the present time through County
24. efforts?

1. A. Yes.

2. Q. Would you care to tell us a little bit about that.

3. A. I don't know the entire background involved, but when I
4. came on the Board on January 1, 1978, one of the first
5. things that we accomplished was the signing of the con-
6. tract with the City, I think it's dated January or Feb-
7. ruary of 1978, I was Chairman at the time, to provide
8. the water service to the Valley Mall and to Kroger and
9. K-Mart. The City could not provide the water pressure
10. into that area. The County agreed to provide the water
11. lines to the tank and to provide the services under a
12. contract with the City into that area. The Mall was
13. under construction at that time. The service had to be
14. provided by September or October, their opening date, and
15. the County was able to spend the money, had the money,
16. spent the money to provide the services there.

17. Q. There was testimony by the Fire Chief about the water
18. pressure in the areas of Ashby Heights and basically
19. Portland East and this area over here. Do you have any
20. knowledge about whether or not the water pressure is
21. sufficient?

22. A. The water pressure is sufficient. We have the fire hy-
23. drants there. That area is serviced by the tank at the
24. Mall and the pressure is there, sufficient to serve any

1. customer of any elevations that exist in that area.

2. Q. In your opinion, Mr. Byrd, will this proposed annexation
3. if successful have an adverse effect on the remaining
4. County?

5. A. Oh, a tremendous adverse effect on the remaining County.
6. The tax revenue as the experts have attested to that we
7. would lose, the services that we would lose, the people's
8. money we have used to develop these services. Essential-
9. ly the County would have nothing left in the commercial,
10. industrial, and even in some other areas, the farm land
11. areas. We would have to go elsewhere to exercise those
12. facilities.

13. Q. Does the County anywhere else in the County have any
14. commercial facilities comparable to the Valley Mall?

15. A. No, we do not. At the Mall also we have the only major
16. grocery store that is not in the City.

17. Q. Which one is that?

18. A. That's Kroger. And on the south end of town here at the
19. intersection of 726 and 42, you heard yesterday we have
20. two dairy equipment buildings, a farm implement supply
21. business, the Early Cycle Shop and several other indus-
22. tries that are really the only places in the County for
23. the farmers to do business in the County, to my know-
24. ledge.

1. Q. Where are the majority of the major farm equipment sales
2. located?

3. A. Within the City.

4. Q. So the farmers would have to go to the City to purchase . .

5. A. Outside of that one little area.

6. Q. All right, so what other effects would this proposed an-
7. nexation have on the remainder of the County?

8. A. It's a total loss of the County tax revenue that we
9. would need to continue our providing of services to the
10. residents. And somehow or other it will have to be
11. made up if we are to continue to be a viable government.

12. Q. Are these the major utility service areas which would be
13. necessary for continued growth of the County utility system?

14. A. It has been suggested that the County could possibly go
15. north or south. We would probably still have to start
16. here as our base and expand out into these other areas.
17. But our water system on the south, the Valley Mall system,
18. would still be our basis to start from.

19. Q. Are there major motels and hotels located in your dis-
20. trict as well?

21. A. Yes, there are. The Belle Meade in the south end of
22. town, the Holiday Inn, the Howard Johnson's, the Shera-
23. ton, and the Econoline, I believe, is also in the County.

24. Q. Is there any other motel in any other part of the County

1. which is comparable to the Sheraton, the Howard Johnson's
2. or the Belle Meade?

3. A. No, there is not.

4. Q. There have been statements in this case by City witnesses
5. that they need to "recapture" their downtown. Do you have
6. any observations about that, Mr. Byrd?

7. A. Downtown looks pretty viable to me. From walking the
8. streets at noontime and during the daylight hours, it has
9. quite a bit of variety of businesses downtown. I think
10. they are viable. It's not a dead city at all downtown.
11. I think they have a lot going for them.

12. Q. People come downtown for various reasons, do they not?

13. A. Yes, the banks, the . . .

14. Q. Did you see all the lines of people that were standing
15. downstairs?

16. A. Oh, yes.

17. Q. Those are County people that came downtown, aren't they?

18. A. Everyone of them is County people. They had a County
19. decal to buy for their automobile.

20. Q. Can you think of any service that the people in your
21. election district need that the City can provide to them?

22. A. Better than the County?

23. Q. Yes.

24. A. No, I do not.

1. Q. Are there any other reasons that you have for your oppo-
2. sition to the proposed annexation?

3. A. Well, it's a basic matter of philosophy. The County has
4. developed some areas with their revenues, the tax reve-
5. nues of all citizens of the County. The City, I think,
6. could do a better job of developing the areas they have
7. available to them, of being more innovative you might say
8. with their government and with their planning. I don't
9. know the exact quote, I have it in here in my notes, one
10. of the City witnesses said the other day, from the Daily
11. News-Record, that they had about 2.7 million dollars
12. available for use immediately in the annexation area.
13. To me that money could be better spent in downtown Har-
14. risonburg and around the shopping centers in Harrisonburg,
15. finding out what merchants need, what is necessary to
16. make those better shopping areas or more advantageous to
17. the City, and providing those services. In other words,
18. use a little innovation.

19.
20. Cross Examination by Mr. Cogar:

21. Q. What kind of innovation, Mr. Byrd?

22. A. Taking the problem areas and doing something about it.
23. I've heard the comparison of the free parking at the
24. Mall versus parking problems downtown. And I believe

1. you have mentioned that the merchants at the Mall pay for
2. the parking through their rent and pass it on to their
3. customers through their prices. Something of that nature
4. could be done downtown, I would think.

5. Q. It all comes out the same, doesn't it?

6. A. Yes.

7. Q. What else, what other innovations?

8. A. Well, I would much rather pay the hidden cost in the
9. cost of the product than the parking meters. I've had
10. some sad experiences with the parking meters.

11. Q. Parking meters aside for a moment . . . incidentally, do
12. you know where in cities in Virginia you have ever parked
13. for anything less than what you put in a meter in Harri-
14. sonburg?

15. A. I don't use meters . . . well, the only other comparison
16. I've had lately, in the past year or so, has been a gar-
17. age in downtown Richmond.

18. Q. They have parking meters in Richmond?

19. A. Yes. I don't use them.

20. Q. Well, you can use a parking garage here too, if you want
21. too.

22. A. I do.

23. Q. Well, on the matter of innovation, what else can the
24. City do by way of innovation?

1. A. Until I knew what their problems were, what the merchants
2. concerns and needs were, I wouldn't . . . I don't know
3. their problems and what their . . . I have not made a
4. study of that nature or had a study presented to me, so
5. I would not know how to approach it or where to go.

6. Q. So it's your testimony that they should use more inno-
7. vation, but you don't have any specific . . .

8. A. Based upon problem areas that exist.

9. Q. What problem areas?

10. A. I would imagine that merchants have a list of problem
11. areas or improvements that they would like to see avail-
12. able to them.

13. Q. Well, what are they?

14. A. Well, parking is the biggest. Others would be modern
15. facilities, you might say, accessibility, it's hard for
16. a stranger--it would be for me, to find a parking deck
17. here in Harrisonburg.

18. Q. You're not suggesting that the City of Harrisonburg take
19. taxpayer dollars and fund free enterprise systems, are
20. you?

21. A. No. You can pass it on to the merchants and they in turn
22. pass it on through the cost of their products.

23. Q. You say there is no service required in your area that
24. you can't provide as well or better, is that right?

1. A. That's my opinion, yes sir.

2. Q. Are you familiar with any engineering studies that have
3. been made over the last ten years which have addressed
4. facilities needed in your area?

5. A. I have seen the engineering studies the County has done
6. since I have been on the Board, since January of 1978.

7. Q. Well, you are one of five supervisors.

8. A. That's correct.

9. Q. And as the one in Election District 3 you would certain-
10. ly be aware of any studies in existence indicating a need
11. for services in your election district, would you not?

12. A. Yes, I would think so.

13. Q. And you have heard of the Johnson and Williams Sewerage
14. and Water Facilities Study, have you not?

15. A. Not by that name. What area does it refer to?

16. Q. The whole County.

17. A. That was done before I was on the Board. I'm sure it's
18. in our files and referred to as need be. I have not read
19. it in its entirety, no sir.

20. Q. All right, sir, it's in evidence. It says here on page
21. 28, and this is a report dated 1974, "We feel that there
22. are nine areas that the County should most seriously con-
23. sider sewerage immediately. These are areas C, D, F
24. through J, L and M." Now B, and there's one other I would

1. mention, it says in here that, "Collector lines serving
2. major sections adjacent to Route 42,"--that's in your
3. area, is it not?

4. A. Yes.

5. Q. According to the note, "Construction should be given the
6. highest priority based on availability of funds." Now,
7. what sewer facilities do you have down Route 42?

8. A. It serves me that the sewer line comes . . . follows the
9. Cook's Creek watershed all the way down Route 42.

10. Q. Excuse me, I'm speaking of collector lines. This is what
11. this says, "Collector lines serving major sections . . ."

12. A. That would be from the main sewer line to what particu-
13. lar area?

14. Q. The areas, the populated areas along Route 42.

15. A. The housing developments along here?

16. Q. Yes.

17. A. They all have septic systems, and unless there's a need
18. for it, I would not see any need to run a collector sys-
19. tem unless there's a demand for it.

20. Q. Well, your engineering report says, "Construction should
21. be given the highest priority" in the Route 42 area.

22. A. Why it wasn't done in 1974, I couldn't answer, after this
23. report came out.

24. Q. And you can't answer why it hasn't been done until 1981.

1. A. Since 1978 it has not been presented to the Board for
2. consideration.

3. Q. I think the copy that is filed in evidence here shows
4. that this was adopted on August 20, 1975 by the Board of
5. Supervisors.

6. A. That could be. I'm sure it's a matter of record.

7. Q. Collector lines, force main and pumping stations to serve
8. Route 11 from the City limits to Route I-81 interchange,
9. construction priority one, indicating its immediate need.

10. A. Exactly where is that? From where to where?

11. Q. From the City limits to the I-81 interchange, along
12. Route 11.

13. A. That would be in this, I guess this area right here.

14. Q. Yes sir.

15. A. I think there is some line in to Belle Meade, the bowling
16. alley area.

17. Q. I'm talking about collector lines, force main and pump-
18. ing station. None of those have been installed?

19. A. No, they have not. There has been a joint effort for
20. the widening of Route 11 down here. The sewer lines
21. under 11 as the widening took place has been installed.

22. Q. Then another first priority identified in 1974 were col-
23. lection lines along Route 11, from I-81 interchange to
24. Sellers Furniture Store. Do you know where that area is?

1. A. I know where Sellers Furniture Store is, yes sir.
2. Q. And you know that those lines have not been installed.
3. A. Not to my knowledge.
4. Q. Collector lines.
5. A. Not to my knowledge.
6. Q. All right, sir. You know the City has the ability to
7. provide those lines, do you not?
8. A. And the County does also.
9. Q. Well, why hasn't the County done it?
10. A. It has not been presented for our consideration. And I
11. cannot say why it has not at this time. I would love to
12. take a look at it in more detail.

13. JUDGE TRABUE: By not presented for your con-

14. sideration, presented by whom?

15. A. It would have to be presented, I assume, by staff. I

16. am aware of that report, but I have not seen it and taken

17. it as a list of items to work on or accomplish. Since I

18. have been on the Board we have been working in the water

19. facilities east of town and south of town.

20. Q. What water and . . .

21. A. But I will follow up on that.

22. Q. Well, you may have to wait five years, Mr. Byrd.

23. A. I hope not.

24. Q. Are you aware of any proposed water or sewer improvements

1. in your area or anywhere in the County for the next five
2. years?

3. A. We have had some informal discussions of some areas that
4. we would like to look to, as the greatest need is develop-
5. ed. There has been some concern north of town about a
6. sewer problem, there's been concern south of town beyond
7. the annexation area regarding some water service.

8. Q. All right, let me read to you an interrogatory propound-
9. ed . . . let me ask you this, do you have a capital im-
10. provement program for water and sewer improvements for
11. the next five years?

12. A. We have a capital improvement program in our budget.
13. How it's divvied up, I could not say without referring
14. to our budget. But a five year plan?

15. Q. Yes sir.

16. A. Laid out on paper step-wise?

17. Q. Yes sir.

18. A. I would have to answer that no.

19. Q. All right, sir. And you don't know of any water or
20. sewer improvements in any capital improvement program
21. for your area within the next five years?

22. A. The one that's in existence right now south of town,
23. and the one on beyond the annexation area south of
24. town. We have instructed the engineers to prepare the

1. engineering on that.

2. Q. What is that you're referring to?

3. A. The line from the existing water system at the southern
4. edge of town towards Mt. Crawford, down Route 11, the
5. water line, extension of it.

6. Q. I refer you to an interrogatory answer served on us under
7. oath by the County in March of 1981, wherein in question
8. 35 the County was asked with respect to the County's sew-
9. age disposal projects under construction or scheduled
10. for construction by the County within the next five years,
11. and then it states where they would be located, what they
12. are going to cost, what you plan and where will they be,
13. and those sort of questions. The answer is this, "What
14. is proposed is construction of a sewerage plant for the
15. Valley Trailer Park north of the City of Harrisonburg,
16. it will begin in April or May, 1981, and it will be oper-
17. ational by the end of 1981. A water main will be con-
18. structed along U. S. Route 11 south almost to the limits
19. of the Town of Mt. Crawford. Construction will begin in
20. August, 1981. Three water projects which will be a part
21. of the South County Water System are scheduled to begin
22. construction in June of 1981."

23. A. I think I referred to those three projects.

24. Q. Now, this was asked for the whole County for the next

1. five years. Do you know of any other projects beyond
2. these which were given in answers under oath as all that
3. are planned for the next five years?

4. A. I know we're considering contracts on all three of those
5. items right now, they are under consideration with the
6. Board. Additional projects?

7. Q. You haven't let any contracts?

8. A. The contracts are being negotiated on. I know one of
9. them, and the engineering work is being done on the
10. others.

11. Q. Which project?

12. A. The contract that bids are out on is the South project,
13. the contract is being worked on for Valley Trailer Park,
14. and the engineering has been instructed to proceed on
15. the Route 11 south to Mt. Crawford.

16. Q. Now, with respect to the shopping center on 33, it's my
17. understanding from your testimony that construction had
18. actually begun at that site before the question of who
19. would provide the water was settled.

20. A. I said the construction work was in progress in January
21. of 1978 when I came on the Board, with a scheduled opening
22. of September or October of that year. There was construc-
23. tion work going on at that time. Previous contracts or
24. talks regarding water and sewer in 1976 and 1977, I have

1. no knowledge of.

2. Q. But had the question of who was to provide water been
3. settled when you came on the Board?

4. A. Yes. The contract . . . if I remember, I sat in on some
5. Board meetings in December of 1977, after I had been
6. elected but before I took office, the contract language
7. as to rates and the length of the contract were the nego-
8. tiable items in the contract.

9. Q. But the contract had not been completed?

10. A. It had not been signed. The rate and the length of con-
11. tract were the negotiable items at that time.

12. Q. So, had construction commenced before provisions for
13. water had been settled or the contract had been signed?
14. That's the question I'm asking.

15. A. That's my memory of it, yes. There was site work going
16. on.

17. Q. And do you know that the City was providing water to a
18. construction trailer at the site at that time?

19. A. I do not know that for a fact.

20. Q. Did anybody ever make you aware of where the County
21. could have provided water from if they had not gotten it
22. from the City?

23. A. We were told when I came on the Board that the well
24. would be developed at the County Farm on the south end

1. of town, and water would be provided from there.

2. Q. Were you present when Mr. O'Brien said that you had the
3. plan and design and drawings and were ready to go on a
4. well in the vicinity of the Mall?

5. A. The well was there, the piping was in, we knew the volume
6. capacity of it, it had been tested and pumped. The de-
7. velopment work from the well site to the tank would have
8. had to have been done.

9. Q. You're talking about the one at the south end?

10. A. At the south end of town, yes sir.

11. Q. And that . . .

12. A. I do not remember the other, being here when the other
13. question was . . .

14. Q. You don't remember any other plan for a well in the
15. vicinity of the Mall, do you?

16. A. No, I do not.

17. Q. And that well at the south end of town has been in the
18. planning and construction process for how long?

19. A. I do not know when it was dug.

20. Q. Four years? You heard that testimony of Mr. O'Brien,
21. didn't you?

22. A. I don't recall the length of time. I wouldn't want to
23. attest to that.

24. Q. And it still is not delivering any water.

1. A. The water is there and the capacity. You would have to
2. develop from the ground, above the ground where the pip-
3. ing is, to wherever you wanted to put it.

4. Q. But it doesn't have a permit?

5. A. The permit is applied for.

6. Q. And the construction for the Mall commenced when?

7. A. It was in construction in 1978, in January of 1978. I
8. would assume it started sometime in 1976 or 1977, a pro-
9. ject of that size.

10. Q. And in April of 1981 you're still not delivering water
11. from a well at the south end.

12. A. Not to the Mall, no. We have no need to.

13. Q. Or to anywhere else.

14. A. No, it's going to the Dayton project.

15. MR. COGAR: I have no further questions.

16.

17. Re-Direct Examination by Mr. Smith:

18. Q. Mr. Byrd, just a couple of questions. Are you aware of
19. any faulty septic tanks in your area? The City hasn't
20. produced anybody to say that their septic tank wasn't
21. working; has anybody complained to you about that?

22. A. I've had no . . . we've had no requests, to my knowledge,
23. due to a failed septic tank of wanting to hook onto the
24. County sewer system.

1. Q. And that includes the Route 42 area, the Route 11 area
2. to I-81 and beyond?

3. A. That's right. I notice one correction on these maps.
4. Whether it's been attested to or not, I do not know; but
5. this road does not exist, from the railroad track over
6. to 712. That right-of-way was abandoned back in the
7. forties; so that does not exist right there.

8. MR. SMITH: That's all.

9.

10. Re-Cross Examination by Mr. Cogar:

11. Q. I would like for you to look at a map, which is not in
12. evidence, and ask you to look at certain areas indicated
13. with a "T" . . . I'll ask you to ignore the legend, be-
14. cause I don't want to suggest anything to you. You can
15. look at it if you want to, but . . . are you generally
16. familiar with the areas indicated by the "T's"?

17. A. Oh, yes, yes.

18. Q. Are you aware of any trouble with septic tanks in any of
19. the areas indicated by those "T's" with the yellow dots
20. on top of them?

21. A. No. In fact, I used to live right here, right in this
22. general area here. And I had a very good septic tank.
23. I lived there for ten years. The house is still there.
24. But, to my knowledge . . .

1. JENNINGS MORRIS,
2. having been duly sworn, testified as follows:

3. Direct Examination by Mr. Fitzgerald:

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

5. A. Jennings Morris.

6. Q. And your address?

7. A. Mt. Crawford, Route 1.

8. Q. And your present occupation?

9. A. Presently I'm a farmer.

10. Q. Can you tell us what position you occupy with the County?

11. A. I am the elected County Supervisor from District 4 of
12. Rockingham County.

13. Q. District what?

14. A. Four.

15. Q. Generally what area is that?

16. A. That's the south side of the County, it joins Augusta
17. County on the south, from mountain to mountain.

18. Q. How long have you been a member of the Board of Super-
19. visors?

20. A. Six years.

21. Q. And have you occupied any other office of the County?

22. A. Not an elected office. I do represent the County on the
23. Harrisonburg-Rockingham Regional Sewer Authority.

24. Q. How long have you been the County's member of the Region-

1. al Sewer Authority?

2. A. Ever since I've been on the Board of Supervisors; for
3. six years, I guess.

4. Q. And you are still on that Authority, is that right?

5. A. Yes sir.

6. Q. How many representatives does the County have on that
7. Authority?

8. A. Only one.

9. Q. How many does the City have on the Authority?

10. A. The City has four.

11. Q. And the towns have three?

12. A. The towns of Dayton, Bridgewater and Mt. Crawford have
13. one each, the County has one, the City has four.

14. Q. Mr. Morris, there has been a suggestion or a statement
15. made in this case that the County didn't get interested
16. in providing water and sewer services to the area sought
17. to be annexed until the City filed this annexation case.
18. Could you state whether to your knowledge that's a cor-
19. rect statement.

20. A. No sir, I would say that's a false statement.

21. Q. What basis do you make your statement on?

22. A. I make that statement based on some reports I have here
23. of Rockingham County Engineering and Financial Feasibility
24. Study for the Proposed Pleasant Valley Sanitary District,

1. prepared by Johnson and Williams, the year 1966.

2. Q. Is that the first, earliest date?

3. A. That to the best of my knowledge is about perhaps the
4. time they really got into it. There was some talk, I
5. recall, in the newspapers years previous to 1966, but to
6. the best of my knowledge that is the first report that
7. the County really had worked up by a consulting engineer.

8. Q. What other dates of studies or reports are you aware of?

9. A. Well, here is one, Sewage Study for Ashby Heights Sub-
10. division, May of 1970. Here is another, Proposed Ashby
11. Heights Sanitary District Financial and Feasibility Study
12. of 1970. Here is another, authorization to proceed
13. with this study was contained in a contract between
14. Johnson and Williams and the Rockingham County Board of
15. Supervisors, dated June 11, 1973. Another, Rockingham
16. County Preliminary Sewage and Water Facilities Plan,
17. January of 1974. And I would submit to you that all of
18. this was prior to any annexation proceedings by the City
19. of Harrisonburg.

20. Q. Mr. Morris, if the annexation suit didn't prompt the
21. County into making an effort to serve the area with water
22. and sewer as stated, what in your judgment prompted the
23. annexation case?

24. A. I think what prompted the annexation case was the fact

1. that in 1974 with this backup that I have referred to,
2. the County did hire an engineer. He came on board in
3. 1974. In early 1975 the City Manager, Marvin Milam, at
4. that time in conversation with Mr. Krueger, our County
5. Engineer, asked the question, how serious is the County
6. about getting into the water and sewer business. Mr.
7. Krueger's reply at that time was that the County is dead
8. serious in getting in the water and sewer business, or
9. else they would not have hired me. And so it was that
10. soon after that we heard annexation rumblings around town.

11. And then it was in June of 1975 of that same year that
12. the City filed their annexation suit against the County.

13. Q. In your judgment why was it necessary for the County to
14. get in the sewer and water business to serve the area
15. that is sought for annexation?

16. A. Merely to serve the needs of the County territory and
17. its people.

18. Q. Now, was the County able to put the sewer lines in the
19. ground without a treatment facility?

20. A. They would not have been of much value, would they?

21. Q. What move did the County make to establish a sewer
22. treatment facility in order to provide sewer service
23. in that area?

24. A. Well, one of the studies that Johnson and Williams done

1. for the County--in fact, I believe that original study
2. encompassed some 50.2 square miles of County territory.
3. And I might add that it was the County's Johnson and
4. Williams plan that was eventually adopted by the combined
5. Harrisonburg-Rockingham Regional Sewer Authority. That
6. is, in conjunction with the County, City and the three
7. towns which we mentioned.

8. Q. I believe it's already been testified to, Mr. Morris,
9. that the County did pursue approval of its own treatment
10. plant.

11. A. Yes sir.

12. Q. And the City was pursuing a treatment plant at a differ-
13. ent location.

14. A. I think that's correct.

15. Q. And the state required the County and the City to set an
16. authority up and build a joint or a regional treatment
17. facility. You are familiar with that?

18. A. It was evident that the City was desirous of constructing
19. a plant of their own, but when they found out, I think,
20. from state and federal authorities that financing was
21. not going to be available to an individual treatment
22. plant, that the feds were only going to finance an auth-
23. ority project, that it was then that the City decided to
24. go with the County and the towns in a joint sewer auth-

1. ority project.

2. Q. So from your experience as a member of the Board and also
3. your experience as a member of the Authority, can you
4. tell the Court whether or not the City has at times, even
5. with the Regional Sewer Authority, attempted to thwart
6. the County in its plans to provide sewer service to the
7. area?

8. A. Yes, we have been thwarted many times it appears. Orig-
9. inally on the south side of the City, between here and the
10. sewer authority plant, it was the County's feeling that
11. those interceptor--that the customers on the interceptor
12. lines lying within the County would naturally be County
13. customers, but the City objected to this very strenuously.
14. And after many months of discussion and wrangling over
15. that project, we did agree to a fifty/fifty split on the
16. interceptors that were lying in the County. The City
17. financed fifty percent of them, the local share; the
18. County fifty percent of the local share. And we agreed
19. to split the revenue received from those interceptors
20. on a fifty/fifty basis until such time as the annexation
21. case against the County was settled. At that time,
22. whosever territory those lines remain in will be obligat-
23. ed to pay the entire cost of the interceptor and then
24. receive all the customers thereon.

1. Q. What happened though with respect to the lines to the
2. east?

3. A. Well, the interceptor--let me back up a little bit and
4. say that the interceptor lines on the south of town,
5. interceptors so far as the Authority is concerned, F and
6. G, one is Belle Meade, the other one is the one to the
7. west; these are the two that were funded together. Now,
8. interceptor H of the Sewer Authority's projected inter-
9. ceptor line runs east of 81. Now, the City did vote to
10. permit the construction of that interceptor, but they
11. refused to pay any of the construction costs thereon.
12. So, the County had to fund the entire project insofar
13. as local share was concerned on that project, with an
14. agreement with the City that all customers on that in-
15. terceptor line east of a certain point in the apartment
16. complex, Squire Hill apartment complex, would be customers
17. of the County beyond this point, certain point. Which is
18. approximately a thousand feet off of Interstate 81.
19. Everything east of that point one thousand feet off of
20. 81 would be County customers in the future.

21. Q. Is that still a binding agreement?

22. A. Yes sir.

23. Q. Now, the other instance of where the . . .

24. A. Well, I guess I didn't finish that story exactly. So,

1. anyway, the County funded it. And at that time there was
2. a construction program on in Massanetta Springs, Sunny-
3. side Home, those people were adding a fifty room nursing
4. home addition to their facilities out there. Their sewer
5. plant had been condemned, they were not allowed to make
6. anymore connections to it. So, with that need, urgent
7. need there, the County agreed with Massanetta to extend
8. that Ashby Heights line to Massanetta. We did this at
9. a cost of about two hundred and seventy thousand dollars,
10. I believe, to the County. We constructed it, we financed
11. it, we inspected it, and we had it ready for use when
12. Massanetta was ready to start utilizing the line. And
13. at that time the City balked and said no, you can't use
14. the line because the point of connection of that line
15. is City property.

16. Q. Mr. Morris, as a member of the Authority, had the line
17. been connected with the Authority's line since the begin-
18. ning?

19. A. Yes sir.

20. Q. Had any member of the City's representation on the Auth-
21. ority made any statement or taken the position that that
22. line could not be used by the Authority?

23. A. None whatsoever, not until it was right ready to be used.
24. That's when the City balked saying you can't make connect-

1. ions, you can't let sewer flow through it, because it's
2. connected to our line. Now, this was found to be true.
3. And, I think, of course, the thing that we thought was
4. so obvious about it was that the City would set there and
5. let all this construction go on and say nothing until it
6. was right ready to use. I guess they like to make things
7. hard on people, or old folks or whatnot. They certainly--
8. evidently it was one reason to make people suffer. I
9. don't know what else. But the line, evidently it was an
10. oversight of the Sewer Authority's attorneys in previous
11. years, because the blueprints did show that that line,
12. that particular line in question, four thousand feet of
13. it to be exact, which the City claimed ownership of, was
14. on the blueprints as a leg of the Sewer Authority's
15. interceptor. So as soon as the City balked on this part
16. of it saying it was our line, you can't let any sewer
17. flow through it, at the next meeting of the Sewer Authority
18. I offered a recommendation that in order to expedite things
19. so the nursing home could get on line and utilize their
20. facilities, that we would be willing to rent, lease or
21. buy the City's portion of this oversighted line.

22. Q. This is the Authority that needs to buy it, is that cor-
23. rect?

24. A. Right, but the City had problems with that. They

1. balked again for several months. And all the time Massa-
2. netta was setting out there saying, we need to connect
3. our nursing facilities, how soon can we do it. This went
4. on for several months. And then one day we got word
5. that the City had drawn a contract and presented it to
6. the people at Massanetta, the Sunnyside Presbyterian Home,
7. asking them to sign a contract which would, in fact, make
8. them customers of the City. And mind you, this was on a
9. line that had been surveyed, constructed, inspected and
10. paid for by the County. And we felt like this was nothing
11. short of trying to steal County customers. So it was at
12. that time that the Board of Supervisors made the decision
13. to open the lines at Massanetta Springs and let the sewer
14. flow; with the realization that sooner or later the City
15. would either be willing to talk or they would take us to
16. Court. In any event, we felt that the situation was so
17. serious to warrant the risk involved, so we opened up the
18. lines and let the sewer flow.

19. Q. When was it ultimately resolved?

20. A. Oh, after a few more months of, I guess you'd say jawing
21. back and forwards, they finally agreed to a settlement
22. on the line. The Sewer Authority requested our engineer,
23. Mr. Ian Koontz, who was the engineer for the regional
24. sewer project, to appraise this line in question to give

1. us some idea what the City was due to be paid in the
2. manner of rent, lease or purchase. He appraised the
3. line, some of it already having been in the ground thir-
4. teen years, some of it had been in the ground twenty
5. couple years. His appraisal was \$1,527.00 per year on
6. a lease basis for twenty years as a fair figure at that
7. time. And at the end of twenty years it would become
8. the property of the Sewer Authority. The City was un-
9. satisfied with that figure. And to make, I guess, a long
10. story short, after some months to try to get some things
11. settled in hopes of proceeding on a better basis, a better
12. relation with the City, the Sewer Authority agreed at the
13. City's insistence that--well, there was a contract drawn
14. whereby the Sewer Authority paid the City of Harrisonburg
15. \$8,500.00 a year on this.

16. Q. For how many years?

17. A. For twenty years. Anyway, that project, I guess you
18. would say that dispute was settled when the Authority
19. did agree to pay the City \$8,500.00 a year for twenty
20. years.

21. Q. Can you state whether or not in your opinion in the
22. establishment of water and sewer in the area, the sewer
23. with the Regional Authority and your experience there,
24. the City has been less than cooperative in cooperating

1. with the Authority and the County.

2. A. Well, to be honest about it, it's been a struggle ever
3. since there was something--ever since the City filed
4. their annexation suit, from all accounts that we have
5. or recollection that we have. It seems like everytime
6. something needs to be done, it can't be done in the
7. best interests or in the most economical and feasible
8. way. Because the City was desirous of their advantage
9. as to what might happen in annexation. And I don't know,
10. I can't say, of all the reasons for the City's--I can't
11. be positive of all the City's reasons for trying to block
12. the County in serving the Massanetta Home. Some specula-
13. tion was that not all of it was just to hold up the old
14. folks home, but that it was a maneuver on their part to
15. try to block the County in serving the Mall which was
16. beginning construction.

17. Q. What financial investment has the County made in the
18. Regional Sewer Authority?

19. A. I'm not sure if I know exactly what you mean. I believe
20. it was back in 1973, I have a copy here of some records
21. that show that the County made the Sewer Authority a
22. seventy-five thousand dollar loan interest free for ninety
23. days at one time. And another time, I believe it was in
24. 1976, when finances with the Authority were faltering

1. and local bank loans were exhausted, Rockingham County
2. loaned the Authority 1.1 million dollars at five percent
3. interest in order to keep the project solvent. At the
4. time we loaned this at five percent, at the time prior
5. bank loans had been running six percent. And I might
6. point out, at a time when the City had not invested one
7. cent of City tax dollars in the project. And they have
8. not as yet as of this date invested any City tax dollars
9. in that project.

10. Q. All right, sir, and I believe it's already been testified
11. to as to how much the County paid for its capacity.

12. A. Perhaps so. A million and two some odd dollars is what
13. we have invested in our capacity in the sewer plant. And
14. we have a capacity there, we have 25% of the capacity, or
15. two million and eighty thousand gallons of the eight
16. million capacity which the plant is licensed for. Now,
17. at the present time we have only used twenty-some percent
18. of our capacity, so we do have, as you can see, room for
19. a lot more County sewer; only using at the present time
20. twenty-some percent. However, I think it should be point-
21. ed out, that in normal weather conditions, some of the
22. members of this authority are getting very close to their
23. capacity, to utilizing their capacity. I say that for
24. this reason, and I would like to quote you some figures

1. from 1980. Now, this was back before the drought began.
2. We have been in a drought situation here for the past
3. you might say year now. But January 1980 figure flows
4. at the Sewer Authority was 7.3 million gallons. February,
5. there were 5.73. March of 1980, 7.14 million. April,
6. 8.32 million. In a plant that's licensed for eight mil-
7. lion. I think that here today or at this trial or whatnot,
8. this somebody needs to take note of. Now, I'll admit,
9. these figures haven't run this high since last April.
10. But just remember, we've had one of the worst droughts
11. in this area that we've had for many, many years. So,
12. the flow is not running that high today, but if we get
13. back in normal weather conditions it will be back up
14. there.

15. Q. If the plant has to be increased in size or capacity to
16. take care of additional flows over and above its capa-
17. bilities, who has to pay for that?

18. A. Whoever first--according to the by-laws, whoever first
19. utilizes their capacity will be responsible for enlarging
20. the plant.

21. Q. With respect to water, has the County had problems obtain-
22. ing cooperation from the City with respect to water?

23. A. Well, we've had nothing but problems insofar as obtaining
24. water from the City. I'm sure this Court is familiar

1. with some testimony that was given yesterday by Mr.

2. Armentrout, which was prior to my time serving on the

3. Board of Supervisors.

4. Q. What are the areas where water service is needed that
5. you have had problems with?

6. A. Well, we negotiated long and hard with the City on the
7. east side of town; especially back in 1977, after much
8. squabbling. The fact that the K-Mart and Kroger complex
9. didn't have enough water pressure to activate their
10. sprinkler system and they were having to pay exorbitant
11. rates for fire insurance because of the lack of water
12. pressure. We constructed a water tank on the east side
13. of town with the knowledge that we would fill it one of
14. two ways. Either by County wells or else we would work
15. out an agreement with the City and purchase water from
16. them.

17. Q. You mentioned County wells, is there more than one well
18. available?

19. A. Yes sir.

20. Q. Where are they located?

21. A. One is on the south side of town and the other on the
22. east side of town.

23. Q. Is that what--were you present when Mr. O'Brien testified
24. about the wells?

1. A. I don't believe I was.

2. Q. But there are two wells?

3. A. Yes sir, we have two wells; one on the south end, one
4. on the east side.

5. Q. Was the County permitted to go ahead and provide the
6. water source from those wells?

7. A. The County made a commitment, the Board made a commitment
8. in 1977 that we were to construct the water tank and we
9. would fill it one way or another, even if it meant having
10. water trucked in by trailer, we were going to fill it in
11. order to serve County needs on the east side of town. We
12. did work out a contract eventually. In late 1977, the
13. City somewhat agreed, in December of 1977. And then in
14. January of 1978 we did sign a contract with the City to
15. furnish, to buy water off of them in that area.

16. Q. Is that in that contract where the City requested the
17. County to take over K-Mart and Kroger customers?

18. A. It was at the City's suggestion that we serve, then serve
19. K-Mart and Kroger, yes sir, because we could supply the
20. water pressure for all that area on the east side of 81
21. and the City was unable to do so at that time.

22. Q. What has been the situation in Park View with respect
23. to water?

24. A. There was a twenty year contract with the Park View

1. Sanitary District with the City. That expired a couple
2. of years ago. We tried a year before it expired to nego-
3. tiate with the City, to renegotiate. They refused to
4. talk to us. We let it go a while, and I believe it was
5. in August or September, the contract was to expire in
6. December, we contacted them again to renew the contract
7. or bargain on it on a similar basis to what we had just
8. signed a contract in 1978 with them on the east side of
9. town, but they refused to bargain. Well, really, even
10. to this day there is no contract. The contract expired.
11. They haven't cut the water off yet, but they refuse to
12. bargain on it. Likewise in 1978 we had a customer, a
13. County customer, who wanted to put a subdivision in on
14. the west side of 42; just on the west as you go toward
15. Dayton. We contacted the City wanting to purchase water
16. at that point, and our request was ignored. They refused
17. to negotiate on any basis to sell us water there on 42
18. South.

19. Q. Have the representatives of the City given the County
20. any reason why they would not renegotiate the contract
21. for Park View?

22. A. Not to my knowledge, sir.

23. Q. Now would you state, Mr. Morris, whether or not if this
24. annexation should be granted, whether or not the County

1. has determined that it will retain certain water and
2. sewer facilities necessary for County purposes?

3. A. The Board is on record as saying that it will retain its
4. water and sewer facilities regardless of what this Court
5. finds in the annexation proceedings because in order to
6. remain a progressive and viable County and to serve its
7. people, we must maintain those lines.

8. Q. These are the facilities that the County consultants
9. have not put in in appraisable values?

10. A. That is correct.

11. MR. FITZGERALD: Your witness.

12.

13. Cross Examination by Mr. Cogar:

14. Q. What is the resolution that you just referred to about
15. retaining the lines?

16. A. It's a mere agreement by the Board of Supervisors.

17. Q. Do you have some writing?

18. A. No sir, I don't believe I do. It was a decision made by
19. the Board some months ago.

20. Q. In a public meeting?

21. A. Yes sir.

22. Q. Were there any minutes published?

23. A. I'm not sure.

24. Q. Do you keep minutes of your meetings?

1. A. Generally speaking. But to further point out, if you
2. have any doubts of the Board's decision, I would be glad
3. to have each one of them come up here and testify to
4. that.

5. Q. And what is that decision again?

6. A. That the County will retain all of its water and sewer
7. lines.

8. Q. Without regard to what is directed or ordered in this
9. proceeding.

10. A. Unless directed by the Court to do otherwise. In other
11. words, Mr. Cogar, we desire to keep them in order to
12. meet County needs.

13. JUDGE TRABUE: I'm not sure I understand your
14. answer to that question either because I thought you an-
15. swered Mr. Fitzgerald that the Board had a resolution to
16. retain the water and sewer regardless of what the Court
17. decides. That's what you said. You didn't mean that?

18. MR. FITZGERALD: My question was certain
19. water and sewer facilities. I think he did say water
20. and sewer facilities.

21. A. I think we have on record those specified which we are
22. desirous of retaining, sir.

23. MR. FITZGERALD: That will be presented by a
24. later witness.

1. A. And the reason I said . . . if I misstated it, regard-
2. less of what the Court decides, I'm sure that's not
3. exactly right. We are hopeful that the Court wouldn't
4. see fit to take them away from us or to cause us or to
5. force us to sell them, because we actually need them to
6. continue to spread out, further out, and serve County
7. needs as the demand increases, if it does.

8. JUDGE ARTHUR: Are you speaking now of your
9. lines within the proposed annexation area?

10. A. Sir?

11. JUDGE ARTHUR: Are you speaking now of your
12. lines within the proposed annexation area?

13. A. Yes sir.

14. JUDGE ARTHUR: When you say you want to con-
15. tinue ownership of them?

16. A. Yes sir.

17. MR. FITZGERALD: Your Honor, as to which of
18. those lines, there will be testimony later by another
19. witness.

20. Q. On the matter of Park View, Mr. Morris, Park View con-
21. tinues to receive its water through a meter from the
22. City of Harrisonburg, does it not?

23. A. Yes sir.

24. Q. And they continue to pay the same rate that they were

1. paying before the expiration of the contract?

2. A. Yes.

3. Q. You said that you came to the City in 1978 at the time
4. of the expiration of the contract and wanted a contract
5. that would give to the Park View area the same rate
6. that you had on the east side of Sl. Is that correct?

7. A. I said, I believe, Mr. Cogar, that we approached the
8. City a year prior to the expiration of that contract
9. with the suggestion that we renew, that we write a new
10. contract for the Park View Sanitary District on the same
11. basis and figures that we had just completed a contract
12. on the east side of town.

13. Q. But on the east side you had a very, very favorable
14. rate that was given to you by the City, was it not?

15. A. Well, it was a better rate than what they had been charg-
16. ing the Park View Sanitary District for the past twenty-
17. some years, yes.

18. Q. And you make a profit off the resale of water on 33 East
19. at the Mall area, do you not?

20. A. A little.

21. Q. Well, what's a little?

22. A. Not a whole lot.

23. Q. Do you have any dollar figures?

24. A. No sir.

1. Q. Do you know how that rate compares with what it sells
2. bulk water within its own City limits?
3. A. It is, I believe, a little better rate than what it
4. sells its individual customers. Of course you must
5. understand, this is all through just one meter, not
6. individual customer meters. And I would point out also,
7. Mr. Cogar, that whereas in the County the City charges
8. double water rates to all the people that they serve in
9. the County.
10. Q. But your testimony is that the bulk rate is a little
11. better than what the City charges its own customers?
12. A. Yes sir, I believe that's true.
13. Q. And that's what you wanted for Park View?
14. A. Yes sir, I think that would be reasonable.
15. Q. And you don't have a contract.
16. A. That is correct.
17. Q. And Park View is sought in this annexation proceeding,
18. and if it's granted it will be City property, will it
19. not?
20. A. That's correct.
21. Q. The three interceptors to which you have testified in
22. the context of the difficulties that you have had with
23. the City efforts to thwart you, are those the lines that
24. are commonly referred to as lines F and G and H?

1. A. Yes sir. I believe I stated they were lines F, G and
2. H, were the three interceptor lines that were in dispute,
3. did I not?

4. Q. Right. Before we get into that, let me back up a little.

5. You referred to a number of reports, one by Johnson and
6. Williams that goes back to 1966.

7. A. Yes sir.

8. Q. What kind of a report is that?

9. A. Engineering and Financial Feasibility Study for the
10. Proposed Pleasant Valley Sanitary District.

11. Q. In the Pleasant Valley area there remains to this day
12. projects recommended for water and sewer that haven't
13. been accomplished, isn't that correct?

14. A. There may be, I'm not sure.

15. Q. Well, can you tell the Court, besides just making a study,
16. how much of the things that were recommended in the study
17. have been accomplished?

18. A. Perhaps I can't relate to it specifically. I would say,
19. however, those which have been urgent have service. And
20. that has been the basis the County has proceeded on,
21. trying to see that urgent needs are met first.

22. Q. Are you saying that all the projects identified to you
23. by your consultants as needing to be met on an urgent
24. basis have been met by the County?

1. a recommendation to the County to install collector
2. sewers to serve the Town of Mt. Crawford?

3. A. I heard that, yes.

4. Q. And you are aware that's never been done?

5. A. Yes sir, and I am aware of why it has not been done.

6. Since I have been on the Board I attended a meeting of
7. the citizens called by the Town Council of Mt. Crawford
8. some years ago, wherein they voted that they did not want
9. a collector system in the Town of Mt. Crawford.

10. Q. When was that meeting?

11. A. When was that meeting? Mr. Cogar, without going back to
12. the Town Council of Mt. Crawford and looking up some
13. records, I couldn't be sure. My best recollection is
14. perhaps three or four years ago.

15. Q. Do they have a sewage collection system in Mt. Crawford
16. today?

17. A. No sir.

18. Q. And you are aware, are you not, that there has been out-
19. standing since 1972 a recommendation to the County that
20. a collection system, pumping station and other sewer
21. facilities be installed in the Town of Grottoes, a plant
22. to be located near the South Fork of the Shenandoah
23. River?

24. A. Whose report was that?

1. Q. Are you aware of that recommendation from whatever
2. source?

3. A. I'm not aware of the recommendation to which you refer.
4. I can only relate to concerns of some of the people in
5. Grottoes who are interested in and have reason of course
6. to be interested in a sewer system for the Town of
7. Grottoes.

8. Q. And they don't have one?

9. A. No sir.

10. Q. Is that in your district?

11. A. Yes, it is.

12. Q. Are you aware of recommendations made over the years to
13. the County to provide facilities to upgrade and improve
14. the degree in treatment at the Elkton plant?

15. A. Mr. Cogar, I am aware of that by newspaper reports. I
16. do know that the Town of Elkton has been for the past
17. year in the process of enlarging and upgrading their
18. sewer treatment plant, yes sir.

19. Q. Are you aware of the need for sewer services in the
20. McGaheysville area?

21. A. I am not aware that there is any facility in the McGaheys-
22. ville area at the present time that is in need of sewer,
23. no sir.

24. Q. You don't have this clipping in your collection?

1. A. No sir.

2. Q. That's dated March 11, 1981, it's about a month ago. It
3. starts out this way. "Three prominent McGaheysville area
4. men, including a Rockingham Planning Commission member
5. and a Coors opponent, have asked the County supervisors
6. to build a sewerage system for the central Rockingham
7. Village." Do you remember that?

8. A. Yes, I remember that. It was what date?

9. Q. March 11, 1981.

10. A. March 11, 1981, that was a little over thirty days ago,
11. sir. You would hardly expect it to be there yet, would
12. you?

13. Q. Do you have any plans for it within the next five years?

14. A. In the past thirty days there has been no decision made
15. on that, no sir.

16. Q. Let me ask you if you agree with this observation.

17. "Observers feel there is little chance of the Supervisors
18. funding a sewer system for the McGaheysville area in the
19. near future. Rockingham has been in the sewer business
20. only about six years, since about the time Harrisonburg
21. filed its annexation suit, and has concentrated its
22. efforts around the City in an attempt to thwart annexa-
23. tion."

24. A. Do I agree with that, you say?

1. Q. Yes.

2. A. No sir.

3. Q. Did you read it in the newspaper?

4. A. Yes sir.

5. Q. Did you take exception with anybody about it?

6. A. I've talked to a few people about it, yes sir, because
7. the statement is not true. Rockingham County has made
8. a concentrated effort to serve those parts of the County,
9. business and industrial sections, that were most urgent.

10. Q. All right, sir. Let's have your water and sewer facil-
11. ities in the annexation area, may I have your exhibit,
12. please. I'd like to have your exhibit which shows the
13. water and sewer facilities in the annexation area.

14. A. (Exhibit put up)

15. Q. On your right is an exhibit, would you read the number
16. on the bottom of it.

17. A. Sixty-seven, I believe.

18. Q. It shows the County's water system in the annexation
19. area. Is that correct?

20. A. I'd have to study it a little. I really haven't studied
21. it.

22. Q. You came here to testify about what's in the area, didn't
23. you?

24. A. Yes sir.

1. Q. And these are County exhibits, they put them in evidence,
2. are you going to accept them as showing what they've got
3. in here?

4. A. Yes sir.

5. Q. Now, would you tell the Court what's in that annexation
6. area in terms of water facilities prior to the initiation
7. of this annexation case in 1975.

8. A. Mr. Cogar, perhaps I can't tell you what was. I merely
9. can testify that it was efforts being made back prior to
10. any annexation suit to serve this area. So we have pro-
11. gressed to the point to this is what we have.

12. Q. You can't answer my question as to what was there prior
13. to the initiation of this annexation suit?

14. A. There was a beginning, and before the beginning there was
15. naught.

16. Q. I missed that. What did you intend to say?

17. JUDGE MOON: I thought it was very profound.
18. He said before the beginning there was nothing.

19. MR. COGAR: That's almost from Genesis I would
20. say.

21. JUDGE MOON: It's obviously a very true state-
22. ment.

23. Q. You don't know?

24. A. I think I answered you, Mr. Cogar.

1. Q. Would you turn around and look at the exhibit on the
2. other side of you. What's the number on that?

3. A. Sixty-eight.

4. Q. Would you tell the Court in the blue, which is sewer,
5. what you had in the area prior to the commencement of
6. this annexation suit.

7. A. Prior to the annexation there existed in the Park View
8. Sanitary District sewer lines. Also in the Belmont
9. Subdivision there was some sewer lines. I believe that
10. would be it.

11. Q. I'm sorry, I didn't hear that. What was there before?

12. A. I said the Park View Sanitary District lines and some
13. sewer lines in the Belmont Subdivision.

14. Q. Belmont is outside the annexation area, isn't it?

15. A. Yes.

16. Q. Do you know a Mayor Miller, I think he was mayor of the
17. town in 1976.

18. A. Mayor Miller?

19. Q. Yes.

20. A. What town?

21. Q. Grottoes.

22. A. No sir, I do not.

23. Q. Did you ever appear before the Grottoes Town Council?

24. A. I have attended several of their meetings, yes sir.

1. the Town of Grottoes, "There is one thing I feel very
2. definitely and positively about, that a sewer system in
3. the Town of Grottoes would do more to improve Grottoes
4. right now than anything that we have."

5. A. I don't recall where that statement was made, sir; no
6. sir, I do not.

7. Q. Well, whether you made it or not, do you accept it as
8. something you believe?

9. A. Yes, I think the concept would be true.

10. Q. Now, on the matter of F and G and H, I'm uncertain about
11. the history of these. F is the line that goes down to--
12. you call that the Hillandale line, which is on the ex-
13. hibit to your left. It goes down and basically follows
14. 42, is that correct?

15. A. I believe that's G, Hillandale.

16. Q. Well, if you'd turn around and look at that map.

17. A. It's this line on this side of town, yes sir, it's the
18. Hillandale line.

19. Q. That's F.

20. A. I don't see that it's marked on the map F or G. One is
21. F; the one that goes to Belle Meade . . . I could have
22. them reversed, but the Belle Meade interceptor and Hil-
23. landale interceptor, are the two that are F and G, which-
24. ever one is which. I wouldn't dispute that.

1. Q. And the one that goes to the east up there?

2. A. That's H.

3. Q. That's H. Now, you testified that you had been thwarted
4. in your efforts by the City to provide sewer in this area.
5. Were these lines necessary to the provision of sewer ser-
6. vice in the area?

7. A. I think they were.

8. Q. As I understand it, the City would not assist you in these
9. lines until after you entered into some negotiations in
10. which you finally had to split the costs on two and then
11. fund one of them, I'm not sure which one, by yourself.
12. Does that fairly summarize what you said?

13. A. Well, sort of. It's kind of confused, but that's sort
14. of the gist of it, I guess.

15. Q. You needed these lines, but it took long and protracted
16. discussions and negotiations with the City to finally get
17. them to assist in the funding on two, and when they did
18. tney wanted half the revenue. Is that correct?

19. A. Yes sir.

20. Q. And then they wouldn't, on the one to the east, you had
21. to put that in by yourself.

22. A. Yes sir.

23. Q. And they wouldn't assist on that.

24. A. They did not.

1. Q. Or they wouldn't discuss it.
2. A. Yes sir, that's my testimony.
3. Q. Your own sewer lines.
4. A. Yes sir.
5. Q. How long have you been on the Sewer Authority?
6. A. Oh, I expect six years.
7. Q. You are familiar with this contract, are you not, which
8. is signed on behalf of the Harrisonburg-Rockingham Region-
9. al Sewer Authority for . . . who is that?
10. A. I'm not sure I can read that.
11. Q. Donald Sipe, isn't it?
12. A. I don't know.
13. Q. Who is it signed for by the City of Harrisonburg?
14. A. It looks like Roy Erickson.
15. Q. Well, who was chairman at the time this was signed?
16. A. Mr. Phibbs perhaps. There was a Phibbs who was chairman
17. of it, he was a representative of the Town of Dayton.
18. I believe that's perhaps Phibbs instead of Sipe.
19. Q. Well, Sipe signed right down here for the County of Rock-
20. ingham, didn't he?
21. A. Yes sir.
22. Q. And didn't Mr. Sipe sign right here?
23. A. No sir, that's Mr. Phibbs, Donald Phibbs. He was Dayton's
24. representative and chairman of the Harrisonburg-Rockingham

1. Regional Sewer Authority.

2. Q. And who signed here for the Town of Dayton?

3. A. Mayor Eberly.

4. Q. And you are familiar with this contract, are you not?

5. A. I have some knowledge of it.

6. Q. And this was executed in October 14, 1976, correct?

7. According to the terms of the contract.

8. A. According to that, yes sir.

9. Q. All right, sir. I want you to read these two paragraphs
10. to the Court (indicating on document). Would you read
11. it outloud.

12. A. These two here?

13. Q. Yes sir.

14. A. That's all you want me to read?

15. Q. Yes sir, that's fine. Then you can read anything else
16. you want to.

17. A. "Whereas, the interceptors have been designated on the
18. records of the Authority . . . "

19. Q. Just speak up so the Court can hear you.

20. A. . . . as Division F . . . "

21. Q. Start back again will you, please.

22. A. "Whereas, the said interceptors have been designated on
23. the records of the Authority as Division lines F, Hillan-
24. dale, Division F, Dayton, Division G, Belle Meade,

1. Division H, Ashby Heights, Whereas, in July of 1975, the
2. City of Harrisonburg offered to pay the entire local share
3. cost of the construction of all said planned interceptors
4. with the provision that the customers along said lines
5. would belong to the City, but the lines and all physical
6. equipment would belong to the Authority, which proposal
7. was accepted by the Authority at a regular meeting. But
8. no formal contract for such matter was ever executed by
9. the parties." Do you want me to read some more?
10. Q. If you want to; that's all I asked you to read. Let me
11. just ask you a question now.
12. A. Let me read it again.
13. Q. All right, sir.
14. A. (Witness reads)
15. Q. Can you tell me, Mr. Morris, why you would come in here
16. and tell the Court that the City of Harrisonburg refused
17. to assist you in funding these lines and it took two years
18. of haggling before they did it, when this document that
19. you entered into recites that in July of 1975. that the
20. City of Harrisonburg had offered to fund all three lines.
21. A. Yes, but what you are leaving out is the fact that it
22. also says they wanted all the customers on the lines that
23. were within the County.
24. Q. Yes sir, but what you are leaving out, are you not, sir,

1. is the fact that before you read this language you stated
2. to the Court that the City of Harrisonburg would not
3. participate in the funding of it?
4. A. They would not participate, unless they got the customers,
5. that's correct. And I stand by that, sir.
6. Q. You didn't qualify that in any way, did you? I asked
7. you twice and twice you answered that the City of Harri-
8. sonburg would not participate in the funding of these
9. lines, two of them, and not at all in the third. You
10. answered that, did you not?
11. A. Yes sir, that is my recollection. And since you bring
12. the point, and that states very emphatically there that
13. they would offer to do it if they could have the County
14. customers, which we didn't think was right and proper
15. and honest and honorable.
16. Q. It is a fact that from the time that you stated it was
17. first recommended for the construction of those three
18. interceptors Harrisonburg was ready, willing and able
19. to absorb all costs of them. Isn't that correct?
20. A. I do not know that.
21. Q. Isn't that what it says right here?
22. A. It says that up to a point, but it goes on to say, "If
23. they receive the customers."
24. Q. All right, sir, leave aside the customers.

1. A. Well, no, that's a part of it. We can't just read half
2. of it and take that for a fact.

3. Q. All right, let me read you this statement, which is
4. found in Exhibit 29. I want to ask you if you disagree
5. with any part of it. "The State Water Control Board
6. wanted the Authority to construct interceptors from
7. Dayton to Harrisonburg, the Route 11 and Belle Meade
8. interceptor, the Ashby Heights interceptor. These lines
9. were located in Rockingham" Do you agree with
10. that statement?

11. A. Sir, I don't know where you are reading from or what time
12. it was.

13. Q. Well, do you recall a point in time that the State Water
14. Control Board wanted the Authority to construct intercep-
15. tors from Dayton to Harrisonburg, the Route 11-Belle Meade
16. interceptor, and the Ashby Heights interceptor? Is that
17. a fact?

18. A. Specifically I cannot confirm or deny that because I do
19. not know.

20. JUDGE MOON: Can you be more specific? Give
21. him a time, if you know.

22. Q. Prior to 1975 when the City offered to construct them.

23. A. Sir, I'm sorry, but I was not a member of the Board of
24. Supervisors at that time.

1. Q. But you've gone into history back into the 1960's, have
2. you not?

3. A. Just to what I think is to show the Court that many of
4. the statements I heard you making the other day were not
5. true, that the County had not endeavored to get into the
6. water and sewer business until after the annexation; and
7. that's certainly false.

8. Q. Well, were you here when Mr. O'Brien testified?

9. A. No sir.

10. Q. Are you aware of the fact that the Board of Supervisors
11. declined to participate in any funding of lines F, G
12. and H until after the City offered to do it?

13. A. That must . . .

14. Q. You are not aware of the fact that Mr. O'Brien testified
15. to that? .

16. A. That must have been prior, and you may have some records,
17. I'm not sure, I'm not disputing that, but I personally
18. am not aware of that, sir. It must have been prior to
19. my service on the Board of Supervisors or on the Sewer
20. Authority.

21. ~~MR. COGAR: I have no further questions.~~

22. ~~JUDGE MOON: All right, any questions, Mr.~~
23. ~~Fitzgerald?~~

24. ~~MR. FITZGERALD: Just one question.~~

1. Re-Cross Examination by Mr. Cogar:

2. Q. How much money has Rockingham County contributed toward
3. this project for the Town of Grottoes or the authority?

4. A. I don't have the figures. Off the top of my head I'd
5. estimate in round figures a thousand dollars perhaps.

6. Q. A thousand dollars?

7. A. Perhaps.

8. Q. Is that the engineering expense as far as you know?

9. A. And some incidentals. This could be, Mr. Cogar, I don't
10. think it's as much as two thousand.

11. Q. Are you sure it's as much as a thousand dollars?

12. A. Not absolutely, but I know it may be a little less or
13. a little more than a thousand.

14. Q. And it may not be anything.

15. A. No, that's not correct, there is some. We have partici-
16. pated with them, as long as they desired our participa-
17. tion.

18. MR. COGAR: All right, sir, thank you.

19. JUDGE MOON: Thank you, Mr. Morris. We'll
20. take a recess.

21. (Recess)
22.
23.
24.

WILLIAM H. SIPE,

having been duly sworn, testified as follows:

Direct Examination by Mr. Fitzgerald:

Q. Would you state your name, please, sir.

A. William H. Sipe.

Q. And your place of residence?

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

Q. And what is your occupation?

A. Farmer.

Q. And what position do you have with the County?

A. Board of Supervisors, Election District 5. I'm Chairman this year.

Q. You are Chairman of the Board of Supervisors this year?

A. Yes sir.

Q. How long have you been on the Board of Supervisors, Mr. Sipe?

A. Three and a half years on the first term and a year and four months this term.

Q. How long have you been a resident of Rockingham County?

A. All my life. My son is the ninth generation on the farm.

Q. Do your ancestors go back to the--or, your family's ancestors go back to the original owner of this property we're on?

1. A. Yes sir.

2. Q. The Harrisons?

3. A. The Harrisons, yes sir. I have a deed in my pocket to
4. a lot on the south side of Court Square signed by Reuben
5. and Robert Harrison, sons of Thomas, the founder of the
6. City of Harrisonburg.

7. Q. The original deed?

8. A. The original deed.

9. Q. Speaking of that, the City has parking meters all around
10. Court Square, is that on the Courthouse property?

11. A. The Courthouse property goes to the . . . approximately
12. the property lines are on the outside perimeter of Court
13. Square. It's two and a half acres that Thomas Harrison
14. sold to Silas Hart for five shillings with the condition
15. that it be used for a public square to hold court and
16. the County seat.

17. Q. And the City is collecting the parking meter fees?

18. A. Correct, yes sir. And also in that agreement a County
19. resident has the right to barter, trade or sell produce
20. on that square.

21. Q. Now, Mr. Sipe, I guess you have been a farmer most of
22. your adult life. Is that correct?

23. A. Yes.

24. Q. Are you familiar with farming generally throughout

1. Rockingham County?

2. A. Yes sir, I am.

3. Q. Can you tell the Court what is the economic condition
4. of farming, of the farming industry generally in Rocking-
5. ham County as of now?

6. A. Well, farming, when you look at a farm, you see what is
7. very evident, that is the production side. I guess you
8. could say that farmers in Rockingham County are one of
9. the most efficient group of people in the nation. On
10. the flip side of it is their inputs, their cost of doing
11. business; and this has soared astronomically in the last
12. six or seven years. Well, it goes back to the 1973 oil
13. embargo. The inflationary factor has taken its toll.
14. Fertilizer--all these things, fertilizer, even tires on
15. the tractors, the chemicals, the herbicides, the insecti-
16. cides, the nitrogen fertilizer, all of these are based
17. upon the oil industry. That's the main derivative of
18. these, the main source these things are manufactured
19. from. And they have just skyrocketed in the last . . .
20. well, since 1973. Plus the fact we've had a severe
21. drought, we had a severe drought in 1977. Which a lot
22. of farmers, and I say a lot, I'd say seventy-five to
23. eighty percent of them, that were in the general agricul-
24. ture business, even dairy, that depended upon the pro-

1. duction of feed and foodstuffs to keep their farming
2. operation going, for their livestock, their dairy animals,
3. the beef animals, the hogs, whatever. They invested a
4. considerable amount of money in putting out a crop. They
5. lost the whole thing period; they lost their investment,
6. they lost their potential of income from that. Plus they
7. had to turn around and buy what they would normally raise
8. at an exorbitant rate of cost. The result was that a
9. large number of them had to take out disaster loans.
10. These are low cost loans from the federal government,
11. the FHA or whichever, at three percent over a seven year
12. period. Right now a high percentage of those farmers
13. are just on the brink, right now. And we are in a deficit
14. moisture situation in this area. And I wouldn't hesitate
15. to say one minute that if we have a repeat of 1977, that
16. there's going to be a lot of foreclosures and bankruptcies
17. because they have utilized all their assets, all their
18. collateral in borrowing, and they are right up to their
19. eyeballs in debt.

20. Q. What is the ability of the farming industry to withstand
21. any increase in taxes?

22. A. It certainly has got to have a negative impact, a serious
23. impact. It's another cost of operation.

24. Q. We've heard a considerable amount of testimony about

1. whether the City or the County can do something better
2. than the other one. Which of these jurisdictions has
3. been doing something to try to preserve the agricultural
4. industry in accordance with state policy?

5. A. Rockingham County.

6. Q. Can you tell us some of the things the County has done
7. to try to follow the state policies of preserving the
8. agricultural land in the County?

9. A. Well, I think the thing that has really the most impact,
10. and that is the dollar figure which certainly has to be
11. taken into consideration, is the enactment of the Land
12. Use Tax in the County. And that I think will go . . . and
13. hopefully I think it's recognized by the state that in
14. allowing this enactment or making this legislation, that
15. this will have a positive effect in retaining farming
16. as farming. But here again, you have to take into con-
17. sideration even with that tax break all your buildings
18. are excluded from it; your poultry house, your dairy
19. barn, all those buildings are excluded. They are taxed
20. on a hundred percent value. It's your land, open space.
21. So it softens the blow to some extent.

22. Q. Mr. Sipe, the enactment of a Land Use Tax on the farm
23. properties, that decreases the County's revenue from
24. taxes on farms, is that correct?

1. A. That's correct.

2. Q. Has that hampered the County in providing or increasing
3. or meeting some of the other needs of the County?

4. A. Well, it has an impact on it. Your one source of revenue
5. is shrinking so therefore you have to turn to other
6. sources of revenue to balance your budget and meet your
7. obligations.

8. Q. Would that make the County's sales tax sources all the more
9. important?

10. A. Yes sir, without a doubt.

11. Q. What else has the County done to assist in the preservation
12. of the agricultural land?

13. A. Well, mainly one thing was the Land Use Plan which we're
14. still working on, the Comprehensive Plan with the towns.
15. They are getting their plans lined up to be incorporated
16. into the County's plan, overall plan. We are working
17. on that, still working, it's an on-going project. We
18. have satisfied the requirements of the state as to a
19. Land Use Plan.

20. Q. In the enactment of zoning and subdivision control, has
21. the County tried to take into account the needs of the
22. farming areas?

23. A. We do that, right, through rezoning, special use permits,
24. this type of thing, to try to preserve as much as pos-

1. sible the agricultural community. Of course, we still
2. have to take in the needs of some of the residential
3. people in that area. You have to meet the needs of the
4. people.

5. Q. How about in the County's regulatory ordinances, in your
6. opinion has the County taken into account the farm
7. operations in the regulatory ordinances in order not to
8. hamper the farmers in pursuing farming?

9. A. That's right. We try not to put them in a strait jacket.

10. Q. Now, will the proposed annexation if granted hamper the
11. County's efforts in preserving the agricultural land
12. in accordance with the state policy?

13. A. It's going to have, I would say, an unquestionable
14. effect on the remaining or the residue of the County
15. from this standpoint. If you just take the sales tax
16. in consideration alone, which is over a million and
17. forty-six thousand dollars, I believe.

18. Q. Is that what would be lost?

19. A. Would be lost, just that one item. Well, if you equate
20. that out at ninety thousand dollars at one cent on your
21. tax rate, so we're talking about 11.555% or thereabouts
22. that we have to absorb some way or another. What are
23. you going to put it on, real estate? The limit is set
24. as far as utilities. Where do we turn? To preserve

1. agriculture we can't put the whole burden on agriculture
2. or real estate out here. So, we are going to have a . . .
3. what it's going to amount to is practically a crash pro-
4. gram to get industry and commercial established in the
5. County. And that in turn is going to put a bind on the
6. agricultural community. So, it's a Catch 22 situation.

7. Q. Mr. Sipe, in the event the proposed annexation is granted,
8. would the County still have to perform all its functions
9. that it's now presently engaged in?

10. A. Yes, we are not going to be able to shut down the Court-
11. house or anything, the County offices.

12. Q. Are there any functions that will be discontinued that
13. you know of?

14. A. Not that I'm aware of.

15. Q. There has been some alluding or some testimony to the
16. role the City has played in developing the area. Could
17. you tell the Court from your experience and judgment
18. whether or not the City has fostered the growth of the
19. County or vice versa?

20. A. It's the County has fostered growth to the City.

21. Q. Why do you say that?

22. A. It's the economic. They've built their . . . the City
23. has been built upon the economic base of the County,
24. the agricultural community. The land, the people out in

1. the County. You can take the City away and the County
2. will still survive, but you can't take the County away
3. and have the City survive.

4. Q. In your experience in the farming industry, is much of
5. the farm dollar spent right here in the City of Harri-
6. sonburg?

7. A. I'll give you a personal example. I've spent over
8. forty-six thousand dollars in the City of Harrisonburg
9. since January 1 of 1981. I did not, I could not have
10. bought one item at the Valley Mall. There's only one
11. establishment within the annexation area that I could
12. have made a purchase of all of that forty-six thousand
13. dollars. And that's the equipment dealer on the south
14. end of town. He didn't have the equipment I wanted and
15. didn't have it available.

16. Q. Does the business of the City rely and depend on the
17. viability of the farmer in the County other than in
18. equipment?

19. A. That's right.

20. Q. What else does it depend on?

21. A. It depends upon the financial institutions located in
22. the City. It depends upon the shopping, the medical
23. facilities, the legal facilities; the whole spectrum.

24. Q. In your judgment is this what makes the City viable,

1. the reliability on the farmer in the County?

2. A. That's right. If you take away that, they'd fall as flat
3. as a one egg pudding.

4. Q. Fall flat as a what?

5. A. A one egg pudding.

6. Q. You have heard witnesses describe the various commercial
7. and industrial enterprises in the area sought for annexa-
8. tion. There has been testimony or exhibits as to the
9. relative amount as far as the County's commercial wealth
10. in this area. Can you tell the Court in your judgment
11. which jurisdiction, the City or the County, needs that
12. commercial wealth the most?

13. A. The County.

14. Q. What do you base that judgment on?

15. A. Well, it provides a source of revenue to our citizens,
16. to our County. In sales tax alone, I've jotted down some
17. figures of the impact it would have on the County. And
18. these are local sales tax, this came from the Department
19. of Taxation in Richmond for 1981-82, this is their
20. estimates. The County, it has been projected that they
21. will receive \$1,600,000.00.

22. Q. That's the County?

23. A. That's the County. The City will receive \$1,900,000.00.

24. The County's percentage . . . or the total for the whole

1. area, the County and the City, is three million and a
2. half. Of this the County would receive 45.8%, the City
3. 54.2%. Now, this works out per capita, for each resi-
4. dent of the County they would get back \$28.05 based on
5. this one cent sales tax local option. The City will
6. receive \$96.59 per capita based on state estimates. Now,
7. if you throw in the 65% of our sales tax that is repre-
8. sented in the annexation area, if you jerk that out of
9. the County's and put it into the City's side, that gives
10. the City \$2,947,300.00, which represents 84.2%; or a
11. per capita income, revenue, of \$149.83. That leaves the
12. County out of that three and a half million, the County
13. would wind up with \$552,700.00 which represents 15%,
14. 15.8%, or a per capita sales tax benefit of \$9.69. And
15. taking into account that the County's 57,038 residents
16. represents 74.4%, the City's 19,671 residents represents
17. 25.6%, so it's already lopsided to start with; and this
18. would just gut the County.

19. Q. Mr. Sipe, I'm going to show you County Exhibit 120. Have
20. you seen that exhibit?

21. A. Yes sir, I have.

22. Q. Does that express what you have said in the various ways
23. of per capita for sales tax and per pupil and ADM per
24. capita?

1. A. Yes, this is worked out a little different. I worked
2. it out on a basis of per capita population. And this
3. is based on the average daily membership of the schools.
4. This I think illustrates again maybe a little more dra-
5. matic than the way I did it.

6. Q. What would be the per capita . . .

7. JUDGE MOON: What exhibit is that, Mr. Fitz-
8. gerald?

9. MR. FITZGERALD: One twenty in the financial
10. book.

11. Q. What is the present per pupil in ADM local sales tax in
12. the City?

13. A. The present without annexation is \$803.00.

14. Q. What is the County's figure?

15. A. \$164.00.

16. Q. What would the City's figure per pupil in ADM be if
17. the annexation is granted?

18. A. \$1,035.00.

19. Q. What would the County have left per pupil in ADM?

20. A. \$59.00.

21. Q. Mr. Sipe, would you tell the Court whether or not if
22. this annexation is granted it would assist or hurt the
23. County in providing for the needs of the citizens,
24. taxpayers, of the remaining area of Rockingham County?

1. A. It would certainly have a serious effect upon the County
2. residents.

3. MR. FITZGERALD: Your witness.

4.
5. Cross Examination by Mr. Cogar:

6. Q. Mr. Sipe, on the matter of wealth per child before and
7. after annexation, it's a fact, is it not, that state
8. funding to localities is based primarily on local wealth?

9. A. It's . . .

10. MR. FITZGERALD: Which state funding?

11. MR. COGAR: That would be ADM, what the state
12. returns to the locality.

13. A. Yes. State aid is based upon ADM and your index, compos-
14. ite index they call it.

15. Q. And under the composite index essentially the localities
16. in the state which have more wealth per child receive
17. more money than those counties and localities which have
18. less wealth per child.

19. A. I'm not sure as to how they work the formula. I know
20. they have an index and take a lot of things into consid-
21. eration. I couldn't honestly answer your question.

22. Q. I think I may have misstated it. Let me say it again.
23. Have you ever seen the formula?

24. A. No sir, I haven't.

1. Q. Are you aware of a budget process year by year that what
2. you receive under the composite index is directly related
3. to your wealth per child?

4. A. I've been told that, yes.

5. Q. Now, with respect to your concerns about the preservation
6. of farm land in the area, let me ask you this question.

7. Do you think that the extending of water and sewer
8. facilities in the proposed annexation area was calculated
9. to preserve farm land or was it more likely to result
10. in increased residential, commercial and industrial
11. development?

12. A. I'm not aware that we went out into open farm land as
13. such. There is connections with the Dayton system that
14. does go through open farm land, mainly to get through
15. under 81 and to make our connections across the highway.
16. There was some open land there. But the bulk of our
17. expansions has been in the Park View, the Valley Mall
18. east, the Ashby Heights area, and down in the Pleasant
19. Valley area that we have concentrated. We haven't spread
20. out towards the Penn Laird or anything like that.

21. Q. The extension of any water or sewer facilities into
22. undeveloped areas tends to promote development, does it
23. not?

24. A. Well, if you have the services there it can get used.

1. Q. And when they are put there they tend to cause increases
2. in the value of the land adjacent to them, do they not?

3. A. Yes sir, to a certain extent.

4. MR. COGAR: I have no other questions.

5. JUDGE MOON: Thank you, sir.

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WILLIAM C. OVERMAN,

having been duly sworn, testified as follows:

Direct Examination by Mr. Fitzgerald:

Q. Would you state your name, please, sir.

A. William C. Overman.

Q. And your place of residence?

A. In Virginia Beach, Virginia.

Q. Your occupation?

A. I am a professional engineer. I am President of William C. Overman Associates, consulting engineers, planners, and surveyors, which has an office in Norfolk, Virginia.

Q. And how long have you been a professional engineer?

A. Since 1950; for thirty-one years.

Q. Prior to your present position with your present firm, were you connected with another consulting firm?

A. Yes sir. Prior to 1977 I was associated with the firm of Langley, McDonald and Overman as a partner in the firm. And from about 1958 to 1960 I was the principal sanitary engineer with the firm of Langley, McDonald, after which the firm's name changed.

Q. Are your qualifications and experience as set forth in County Exhibit 12 correct?

A. Yes sir.

Q. Approximately how many annexation cases have you par-

1. ticipated in?

2. A. On page 3 of Exhibit 12 we have listed some representa-
3. tive annexation assignments. There are approximately
4. thirty or thirty-five listed on that page as I recall.

5. Q. And have you testified as an expert in those cases?

6. A. In a number of them we have, sir.

7. Q. What experience have you had in the area of appraisal
8. of water and sewer facilities?

9. A. Well, in the practice of engineering in our particular
10. firm and the one I was associated with prior to 1977,
11. we became and have become very much involved in the
12. development of water and sewerage facilities throughout
13. Virginia. This might be associated with such items as
14. the acquisition of privately owned utilities which nec-
15. essitate appraisals. It might be associated with the
16. determination of construction costs, of proposed improve-
17. ments by some particular local government or private
18. enterprise or the private sector altogether. Now, we
19. have been involved in a number of annexation cases in
20. which utilities have been involved and had to be appraised.
21. Normally it has been done on the basis of reproduction
22. costs less depreciation and original costs less depre-
23. ciation.

24. Q. What do you consider to be fair value or present value

1. in a utility system?

2. A. As it relates to the facilities that we have at hand,
3. we feel that the reproduction costs less depreciation
4. under the statute is present value.

5. Q. Did there come a time when you were employed by the
6. County of Rockingham with regard to this annexation
7. proceeding we are in?

8. A. In approximately 1975, about the middle of the year, we
9. were employed by the Rockingham County Board of Super-
10. visors to collect and analyze data relative to the
11. then proposed annexation proceedings.

12. Q. Over the years have you conducted certain studies pur-
13. suant to that employment?

14. A. Yes sir, we have. The particular attention, even from
15. the early stages, in gathering and analyzing the data
16. was related to the necessity and expediency aspects of
17. the case or the ordinance itself. We also assisted the
18. County in matters relating with inner-governmental
19. relationships or arrangements and other matters related
20. to an engineering nature.

21. Q. And pursuant to that did you make certain exhibits to
22. show this Court what your studies revealed?

23. A. Yes sir. In these analyses and studies we, of course,
24. started with the ordinance as filed by the City of

1. and I think it's been pointed out previously, was made
2. available to the City consultants and they elected to
3. use the same base, I think for the convenience of the
4. Court so they were oriented to the same map rather than
5. going to different scales.

6. Q. Is that how they happened to come to get the road on
7. theirs too?

8. A. Yes sir, they have the road on their map too. Some
9. corrections have been made as a joint effort of both
10. the City and the County consultants to keep the map up
11. to date as best as possible. The particular map exhibit
12. that is exposed, 23, also has data shown on it, statisti-
13. cal data, as to area and population. It should be noted
14. that the City of Harrisonburg again is indicated as hav-
15. ing 3,327 acres while the proposed area, 9,050. If the
16. annexation were granted the new City would consist of al-
17. most 13,000 acres, which would be a percent increase of
18. two hundred and thirty-six. As to population, the City
19. presently has a population of 19,671 persons while the
20. proposed annexation area, 5,165. The new City again if
21. annexation is granted would consist of a City of almost
22. 25,000 persons. In this case, an increase of 26%. On the
23. other hand, going to the City momentarily, I think that
24. it should be pointed out that even based on the City's

1. prior exhibits, the school enrollment, and that is City
2. Exhibit 4, the school enrollment of James Madison Univer-
3. sity, in 1970 the enrollment had increased 170% over the
4. previous decade, or during ten years. Between 1970 and
5. 1980 the University again exhibited a growth in excess
6. of a hundred percent. You may recall that Dr. Carrier
7. indicated figures similar to those. On the other hand,
8. the growth and the population of the City itself exclud-
9. ing the student population at the University has remain-
10. ed relatively static. It so happens that in 1970 and
11. 1980 the student body populations of the universities
12. were included in the U. S. Census. Prior to that time
13. a student was counted in his place of permanent resi-
14. dency or his home. But between 1970 and 1980, excluding
15. the student population in the City, it grew 290 persons
16. or approximately 29 persons a year. You might say from
17. the standpoint of housing requirements associated with
18. those persons that there would be a need exhibited of
19. about nine or ten residences or households generated by
20. that growth annually. In support of some of the data
21. dealing with the James Madison University, there are
22. three other exhibits, Senator, that relate to this
23. subject. There are Exhibits 84, 85 and 86, which are
24. also found in the County data book.

1. Q. Is this in the smaller County data book?

2. A. Yes sir, excuse me. That's 84, 85 and 86, yes sir.

3. This speaks of population density and the two other
4. documents are in support of the figures used in Exhibit
5. 84.

6. Q. Did you make an exhibit concerning prior annexations?

7. A. Yes sir, we did. County Exhibit 74 is a large map
8. exhibit . . . excuse me, is a statistical exhibit in
9. this format and in your data book. The map exhibit
10. displayed at the present time is identified as 91. And
11. it shows in a variety of colors similar to that of the
12. City's exhibit what has happened to Harrisonburg since
13. it was incorporated as a town in 1780. It might be
14. pointed out that the City presently indicates a popula-
15. tion of in excess of five persons in the red, the whole
16. area of the present City. Removing the student body
17. of the James Madison University from this, you might
18. end up with a density of four or even less. The density
19. within the City could even be reduced further when you
20. consider the number of apartment units or multi-family
21. developments that do exist within the City itself. It
22. would probably be in the vicinity of three and a half
23. persons per acre existing within the City as opposed to
24. five. You would have to do the same exercise in removing

1. these high density areas. It's not uncommon to look at
2. them and relate the density to the remaining area. I
3. don't know if you wish me to describe all the colors,
4. Senator, or not for the Court.

5. Q. I think they can look at it. Would you pay particular
6. attention to the area annexed in 1962.

7. A. Yes sir. The area annexed in 1962 is shown in red on
8. Exhibit 91.

9. Q. Do you have another exhibit showing just that area?

10. A. Yes, this exhibit has been prepared to show just that.
11. It is entitled "Area Annexed to the City in 1962" and
12. identified as Exhibit 87 and is found in the study area,
13. County study area data book, very near the end.

14. Q. What analysis did you make of that?

15. A. In 1962, January 1, which was the effective date of
16. annexation, the City annexed approximately 938 acres of
17. vacant land. One of the interesting analyses that we
18. found based upon the City's Exhibit 10, 839 acres of
19. vacant land remain in the City today, which is almost
20. 90% of that amount annexed in vacant land in 1962. Also
21. in analyzing the area annexed to the City in 1962 and in
22. conjunction with reviewing the decree, the order of the
23. Court of 1961 applicable to that case, we found not only
24. in reviewing the City's exhibits but in our own studies

1. that there were areas that were still without curbs and
2. gutters, the type of public facilities that you would
3. have expected to have been included in a period of twenty
4. years. Also in reviewing the exhibits of the 1962 or
5. 1961 case, we found that there were other improvements
6. that in that period of twenty years we would have expect-
7. ed to have been installed. We have heard much in the
8. last several days about the water tank that the City
9. has constructed only in the last several months, so to
10. speak. There was need for this water pressure prior to
11. that time, but it has only occurred, as I said, in the
12. last portion of a twenty year period.

13. Q What was the City required to do by the order in provid-
14. ing facilities?

15. A. Well, I have the order here in front of me. This is
16. Section 7 of the order dealing with capital outlay and
17. provisions of services. And I read, "In prescribing the
18. capital outlays to be made by the City of Harrisonburg
19. in the annexed area following the effective date of
20. annexation and in outlining the capital improvements to
21. be required of it to meet the needs of the annexation
22. area and to bring the same up to a standard equal to
23. that of the remainder of the City, the Court hereby
24. approves the general statement of plans and policies

1. prior to that time?

2. A. I don't believe they have, especially as it relates to
3. curbs and gutters, which is also related to drainage, and
4. to which the ordinance of 1959 spoke. Curbs and gutters
5. are constructed and designed for the purpose of handling
6. drainage problems by and large.

7. Q. Are they more beneficial or essential in a highly built
8. up area than it is out in an open countryside?

9. A. It's common practice that curbs and gutters are found
10. where there are more densely populated areas where the
11. lots are small, there needs to be control of the traffic
12. as well as the drainage. It's not common practice that
13. curbs and gutters are found in the more suburban commu-
14. nities of larger lots or even the rural areas. I think
15. you will find that City Exhibit H-34, which deals with
16. curbs and gutters, shows those streets and roads within
17. the City that are void of curbs and gutters. And so many
18. of the areas are evident in your travels as you leave
19. the City on your way back to the motel and so forth.

20. Q. All right, sir. In your experience and studies in other
21. annexation cases throughout the State of Virginia, is
22. the lack of sidewalks in the City of Harrisonburg a
23. pretty unique situation?

24. A. Yes sir, it is. In fact, in many instances in prior

1. annexations we have found that the courts have required
2. cities to construct sidewalks, particularly within a
3. certain distance of schools so the children can walk to
4. the schools and so that they are available to them rather
5. than walking in the streets, and especially where there
6. are no school bus systems, as provided here by the County
7. of Rockingham and not by the City. They have a public
8. transportation system in the City as we have heard, which
9. is by private interest, and there are a few students
10. using it. But by and large sidewalks are not available
11. for even students to walk. It is not common practice to
12. find a city such as Harrisonburg to be void of sidewalks.

13. Q. You mentioned the bus system that the City has is private-
14. ly made, it's a paid service?

15. A. Yes sir.

16. Q. It's actually operated by the City though, isn't it?

17. A. Right, but the individual or the private individual
18. must pay for the use of the service.

19. Q. Did you develop an exhibit showing the major watersheds
20. that are in this area?

21. A. Yes sir. Also reproduced and identified as Exhibit 43
22. in the data book and now on the easel, which is on the
23. County base map of one inch equal fifty-five hundred feet.
24. We have attempted to delineate the major watersheds

1. This map is not unlike that prepared by the City. The
2. City showed smaller watersheds and tributaries to these
3. major ones. This shows the four basic ones. The North
4. Fork of the Shenandoah River watershed is outlined in
5. green, which serves generally the northern portion of
6. the County. The Dry River watershed which serves to the
7. west. The North River watershed to the south. And the
8. South Fork of the Shenandoah River watershed. The City
9. on this map is shown in red. Again, the area that's
10. proposed for annexation is shown in yellow. Which, I
11. might add, practically all of our map exhibits, and to
12. the best of my recollection the City's too, show the City
13. either outlined in red or in red color and the proposed
14. area in yellow or bound in yellow. This has generally
15. been a practice of ours for some twenty odd years.

16. Q. Mr. Overman, did you make a study of the County's utility
17. system?

18. A. Yes sir. I might add at this point that within the
19. data book there is a general description of the County's
20. operations in the utilities business. They are identi-
21. fied as County Exhibit 44 and 45, there are two sheets.
22. They are very brief. They give a little of the back-
23. ground of the operations. We have a larger map exhibit
24. identified as 68 entitled "Sewer Systems." It's on

1. what we refer to as the annexation area base. It has
2. been reproduced in the data book as 63. I might point
3. out that much has already been said as to the Regional
4. Sewer Authority and its participants and service areas,
5. and it's not my proposal to go into those details. I
6. think that the County's Exhibits 44 and 45 give some of
7. the background and I think the Court has heard some testi-
8. mony over the last two weeks and again today regarding
9. the subject of the Regional Authority. For the purpose
10. of orienting the Court and for identifying the systems
11. in existence, I might point out the areas of service,
12. because within the proposed annexation area sewer services
13. are available to the areas of need. One of the areas is
14. identified and referred to as the Pleasant Valley Road
15. area, which is in the southern portion or southeastern
16. portion of the proposed area. The area is outlined, the
17. area of service is outlined or identified in a blue
18. shade. The sewer lines for the County are shown in black
19. as identified in the legend. The red sewer lines are
20. the interceptors of the Regional Authority. And over to
21. the very southern tip of the area sought to the west of
22. Interstate 81 is an area that we have referred to in the
23. past as the Rockingham Motel area just for identifica-
24. tion purposes. The service in that area is provided by

1. the County and its facilities. The Ashby Heights and
2. Portland East Subdivision are identified in the area to
3. the east. They are intercepted by a red line here going
4. from east to west, which is the Authority's interceptor.
5. The black lines serving Ashby Heights and Portland East
6. are owned by the County. The green lines in the Forest
7. Hills area are owned by the City of Harrisonburg. There
8. is a line projecting from the annexation boundary to the
9. east which serves the Massanetta and the Sunnyside areas
10. of the County that would remain if this annexation were
11. granted. To the north and adjacent somewhat to U. S.
12. Route 33 in the vicinity of the Valley Mall and across
13. the highway to the north you will find some green lines
14. on this map and in your small map in the data book.
15. These are lines generally owned by the City. The Valley
16. Mall area is shaded in blue which is the area of service
17. provided by the County and by contract through the City.
18. In the northwestern portion of the area sought for annex-
19. ation you will find the shaded area being Park View.
20. This is an area that was developed some years ago. The
21. black lines within that area represent the sewers that
22. generally exist throughout. That is the Park View Sani-
23. tary District. A line moving to the north from the City's
24. existing boundaries has been referred to and will be again

1. as the Donnelley sewer line. It's a line that serves
2. on beyond the annexation line to Donnelley. Moving to
3. the west we'll find a green line projecting from the
4. City limits which serves the City park and portions of
5. that. The red line again, moving to the south, is an
6. interceptor of the Regional Authority, and the black line
7. projecting on out into the County from the western bound-
8. ary of the area sought is serving an area to the west and
9. beyond, as I recall, the Belmont Estates.

10. Q. Mr. Overman, have you made a tabular exhibit showing the
11. length of the sewer and water lines affected by the pro-
12. posed annexation?

13. A. I have, sir.

14. Q. Is that 69?

15. A. Yes sir.

16. Q. Is there a revision of that?

17. A. Yes sir, there is a revision.

18. Q. A revision?

19. A. Yes sir. I think you have that.

20. MR. FITZGERALD: Your Honors, this will be

21. 69R.

22. A. This same data was the information contained in the
23. answer to a City interrogatory. And the answer, I think,
24. was filed the day of the bus tour. It's just been assem-

1. bled to reflect the actual quantities I think included
2. in that answer.

3. Q. All right, sir. Just briefly, does Exhibit 67 show the
4. water facilities that have been testified to several times
5. already?

6. A. Yes sir. And Exhibit 69 also shows water and sewer lines
7. both on that sheet.

8. MR. COGAR: What is the exhibit you just handed
9. us?

10. MR. FITZGERALD: 69R.

11. A. There is a 69 found in the County data book and it does
12. . . . the one that was just passed out reflects the changes.
13. As to water, there is a map exhibit which is displayed on
14. the easel to my left, the Court's right, identified as
15. Exhibit 67. It is also on the annexation area base map
16. with a scale of one inch equal eight hundred. The annexa-
17. tion area proposed is shown in yellow again, the City
18. existing as of this date is in red. The County owned
19. facilities are shown in black. Of course, these lines
20. here are under construction and the Court may remember
21. that it was being tested at the time. This is the line
22. that testimony was given on that has been constructed
23. and portions of it will be constructed prior to the
24. conclusion of this case or to the award if an award is

1. granted, that the County has plans to proceed with the
2. red area or the booster pumping station shown here in
3. red. They are also shown on your small map. This is
4. the line, as I said, that is being constructed in agree-
5. ment with the Town of Dayton, a backup or supply for
6. Dayton as well as a backup supply for the County. It
7. is a part of the County's water system. On the map and
8. in the area there are black lines extending from the
9. Valley Mall section adjacent to U. S. Route 33 to a tank,
10. a half a million gallon tank, shown at this location that
11. feeds down into the Ashby Heights-Portland East area and
12. further down into the multi-family section that was point-
13. ed out as being Deer Run or Squire Hill.

14. Q. There was some question about the water pressure in that
15. area, whether it was adequate for fire protection. Have
16. you made an analysis of that?

17. A. Yes sir. As a matter of fact, I have asked and in my
18. instructions have had the pressure checked at all the
19. hydrants in this system to ascertain what the static
20. pressures were that were available at the hydrants. And,
21. I can only conclude the same as has been stated before,
22. there is more than adequate pressure to provide fire
23. protection in the Deer Run area which was in question.
24. As I recall it was Chief Austin. At the present it runs

1. a hundred and fifty to a hundred and sixty pounds. And
2. even in the higher areas of service the pressures are
3. sixty pounds or better static. Certainly the pressure
4. that is available to the area as a result of this tank
5. would more than adequately provide fire protection for
6. the area, if it's measured in accordance with any stan-
7. dards of fire protection.

8. Q. Well, what standard did you use?

9. A. Well, actually the Hazen-Williams curves, which we have
10. used and looked at, could well provide fifteen hundred
11. gallons; the facilities are there for pressure. The
12. standards made for fire might be a thousand gallons a min-
13. ute for four hours, depending on the type of development.
14. To proceed from there, the green areas in the Forest Hills
15. Subdivision are those owned by the City of Harrisonburg.
16. Moving on to the north and adjacent to U. S. 33, we see
17. some other green lines which depict those lines owned by
18. the City which extend out to this area, for example Fairway
19. Hills and the area behind the Sheraton. To the north we
20. also see a black line owned by the County. There is a met-
21. ering station here at the City line. which is the line that
22. was constructed for Donnelley. The area to the northwest,
23. again shown in blue, is the Park View Sanitary District
24. and its service area. The line and tanks are those

1. owned and operated by the County. The governing body,
2. of course, as we all know, of the County is the governing
3. body of the Sanitary District. The Sanitary District has
4. paid its debt and it has been incorporated into the Coun-
5. ty system. To the west along U. S. 33 you will notice
6. the treatment plant of the City and the tank are shown
7. in green. The Belmont Estates area is shown as being
8. served by the City of Harrisonburg. Also these areas to
9. the west of the City extending into the area sought,
10. which are mere extensions of lines and are owned by the
11. City. Again, to the southwest is Dayton.

12. Q. Mr. Overman, it has been testified to here several times
13. that the City sells bulk water to the County. Is there
14. anything unusual about one jurisdiction selling bulk wat-
15. er to another if they have surplus water?

16. A. Not at all. It's frequently done and at a profit.

17. Q. If the water is not utilized that's produced, what hap-
18. pens to it?

19. A. Well, they cut down on the hours of operation. It's not
20. thrown away necessarily, but it doesn't require the hours
21. of operation. The City certainly has, according to the
22. testimony I heard, a large capacity in its facilities,
23. treatment facilities, and has had and has been selling
24. water to the County at a double rate, and even extend-

1. ing lines. The rates do vary. There have been contract-
2. ual arrangements with the County for service, and there's
3. no reason for a proprietary type of operation such as
4. the City utility not to make its services available by
5. contract or otherwise. I think this has been customary
6. just about in every municipal utility that I can think
7. of at the present time.

8. Q. Are there also some county authorities in the state who
9. sell water back to city areas?

10. A. Yes sir, any number. In fact, I have personally been
11. involved in the negotiations of a number of water and
12. sewer contracts between some of the major cities and
13. counties in the state, or the largest ones, Roanoke and
14. Roanoke County, Lynchburg and Campbell County, and even
15. Prince William and Fairfax. And water is passed back and
16. forth from the facilities available, not unlike what is
17. being done for Dayton in the County area. It's not un-
18. common for any city to make its services available. It's
19. usually done at a profit to the cities. I might mention,
20. Senator, seeing the well on Map Exhibit 67, that is
21. the well system that has been developed and is being
22. developed as the supply of water of some consequence.
23. It's a big producing well. It will be equipped with
24. treatment facilities. It's not uncommon for wells not

1. to be, well water not to be treated. It is proposed that
2. the well water be treated as required under state stand-
3. ards, as much so as any city would be required to treat
4. its water regardless how good they are. There are any
5. number of localities, cities as a matter of fact, in the
6. state and elsewhere in the country that use well water as
7. a primary source of supply or as a backup. There are a
8. number of counties that do this and have done it for
9. years and will continue to do it. It's quite frequently
10. found to be that the well water is the supply of water,
11. or springs, for early development of facilities.

12. Q. All right, sir, referring you to County Exhibit 70.

13. A. County Exhibit 70 is in your book, it's entitled "Rock-
14. ingham County Utilities, Customers Affected by the Pro-
15. posed Annexation." It's broken into two groups. The
16. center group being water customers. The group to the
17. right being sewer customers. Those two columns, the
18. left one of each of the two groups, is entitled "Existing."
19. Under water customers you will find of the total County
20. water system, service is provided to 574 customers. That's
21. regardless of type of customers; it could be an industry,
22. it could be a business, it could be a residence. In the
23. second column entitled "In Proposed Annexation Area" you
24. will notice that there are 562 customers located in the

1. area sought. In other words, there are 98% percent of
2. the County's customers to be found in the area being
3. sought by the City. As to sewers, we have a similar re-
4. lationship. There are 573 existing customers on the
5. County's sewer system or lines. In the area sought there
6. are 445 or leaving approximately 128 of them outside the
7. area proposed to be annexed. There are, therefore, 78%
8. of the total sewer customers lying within the area being
9. sought.

10. Q. And Exhibit 71.

11. A. In a similar manner Exhibit 71, which is entitled "Rock-
12. ingham County Utilities, Annual Revenues Affected by
13. Proposed Annexation", we show the revenues for water and
14. those for the sewer programs. The total revenues from
15. the water system, annual revenues, are approximately
16. \$94,000.00. The remaining revenue, if the annexation is
17. granted, would be \$4,590.00, or \$4,600.00. Basically we
18. are saying then that 95% of the revenue would be taken
19. by this annexation if it is granted. As to the sewer
20. revenues, 80% of the County's revenues derived from the
21. provision of sewer services would be depleted or trans-
22. ferred, leaving only approximately \$42,000.00 for the
23. County to continue to operate its sewerage systems.

24. Q. And Exhibit 72.

1. A. Seventy-two is also found in your book.

2. Q. Has there been a revision of that exhibit?

3. A. There are revisions, but I can make them, whatever is
4. at the convenience of the Court. There are only three
5. items, four items.

6. Q. This will be 72R?

7. A. 72R. 72R, very quickly if I may, Senator, I would like
8. to show you the changes that occurred. Under Item B.
9. entitled "Customers", the second line which reads "After
10. Annexation", the original exhibit

11. MR. COGAR: I would like to get this too, Mr.
12. Overman. Where are you now?

13. A. Under Item B. as in "baker", entitled "Customers", under
14. the line entitled "After Annexation" there is a figure
15. shown 125 sewer on the original exhibit. That should be
16. 128.

17. Q. Well, it's been changed on the revised exhibit.

18. A. That particular error of three sewer customers have
19. caused the other changes, the result. The figure on the
20. right of 137 is really 140.

21. Q. All right, sir, what does the exhibit show?

22. A. It shows the total investment made by the County in its
23. utilities program. It indicates under Item A. at the
24. bottom line the total investment by the County in its

1. entire sewer program to date is in excess of six and a
2. half million dollars. Under Item B. it indicates that
3. there are approximately 1,147 water and sewer customers
4. totally on these systems.

5. Q. You said the total up above was sewer, is that water and
6. sewer?

7. A. Yes sir. The customers lost through the proposed annexa-
8. tion would be in excess of 1,000 leaving only 140 to the
9. County to which they were to provide service and to carry
10. the system for the future development, so to speak.
11. Item C. is per capita, per customer capital investment
12. before annexation. There is a \$5,740.00 investment in-
13. volved with each existing customer of today. Item D.
14. shows that the capital investment is six and a half mil-
15. lion dollars less that amount proposed to be given to
16. the County by the City in compensation for taking the
17. utilities within the area sought.

18. Q. And that's the City's estimate?

19. A. That is the City's estimate, which it came from Exhibit
20. 32R. It is shown that the City proposes to compensate
21. the County to the amount of \$853,805.00. Now, that has
22. been, since the trial started, has been updated by City
23. Exhibit 32A with a block around it, which now is \$876,000.
24. The investment after annexation as shown on Exhibit 72R

1. is \$5,730,000.00. With that adjusted figure provided by
2. the City that figure of investment after annexation would
3. be \$5,707,686.00; a slight difference. The capital in-
4. vestment per customer that would result if the annexation
5. is granted and all of the utilities within the area are
6. awarded to the City, the investment would be approximately
7. \$40,800.00 to \$40,900.00 per customer; a rather heavy
8. investment to be placed on customers.

9. Q. Let me ask you this, Mr. Overman. Are these systems
10. capable of serving larger areas or customers that are
11. not shown on the exhibits?

12. A. Oh, yes, and they are today as a matter of fact serving
13. beyond the proposed boundaries as I pointed out; in this
14. area sewer service is provided to Belmont Estates by the
15. County and to Massanetta and Sunnyside. In the case of
16. water, the tanks have been sized to accommodate future
17. growth and to areas beyond the boundaries. The facilities
18. are not designed to serve the service area or the annexa-
19. tion area only. We are speaking in terms of extending
20. the service and this sort of thing. They have that
21. capability very definitely.

22. Q. In your judgment will it be necessary for the County
23. then to retain certain of its facilities, both water
24. and sewer, to provide the services regardless of annexa-

1. tion?

2. A. Yes sir. The City proposes taking all of them, but the
3. County certainly should retain as much of the facilities
4. as possible. One of the main reasons is to the early
5. stages of the development of any utility system, regard-
6. less of whether it's a city or county, cities in Virginia
7. have a jump on the counties because they were more con-
8. gested or compact areas and the needs occurred first; but
9. counties over the last twenty years are very much in the
10. water and sewer business. And Harrisonburg has the jump
11. on Rockingham County, but the need was there in the begin-
12. ning. And by efforts the City has extended lines and is
13. serving portions of the area sought and beyond. A county
14. utility system in the early stages of development is
15. desirous and must have as many of its captive connections
16. or customers in order to support the future development.
17. To be deprived of those revenues from the captive con-
18. nections, it's an entirely different process to start
19. again; especially today in high inflation rates of con-
20. struction. But it's definitely necessary to keep as much
21. as possible.

22. Q. Have you made an estimate of the value of the lines in
23. the area that the County could transfer to the City in the
24. event of annexation if it were compensated for them?

1. A. I have, sir.

2. Q. Has that been revised?

3. A. No, the data contained on that exhibit, Senator, was
4. filed in answer to an interrogatory in early April, the
5. 7th or 8th of April.

6. MR. FITZGERALD: Your Honors, I would like
7. to have this introduced as Exhibit 72A. It should follow
8. the exhibit showing the . . . that's all right, 72A.

9. Q. Does this exhibit the values that you have placed on
10. the various water and sewer facilities in the County
11. if annexation is granted, what the County would expect
12. the City to purchase?

13. A. Yes sir, its present value based on reproduction costs
14. less depreciation. Would you care for me to identify
15. them?

16. Q. Yes sir.

17. A. There are three basic items that the County could dispose
18. of without having a drastic effect upon its utility
19. program. I think the exhibit explains that. It's
20. entitled "Value of Facilities to be Transferred to
21. Harrisonburg by Rockingham County in the Event of Annexa-
22. tion, Reproduction Costs less Depreciation". Referring
23. to Map Exhibit 67 entitled "Water Systems", you will
24. notice that in the middle of the page there is a project

1. identified as W2-79. These are the water facility im-
2. provements which are identified in black on this map
3. directly north of the present City and are the meter
4. and water mains serving the Donnelley property. They
5. are those lines that are within the annexation area
6. sought.

7. Q. There would still be a line from the City limits, new
8. City limits if it were annexed, on to Donnelley?

9. A. That is correct. The first project that is identified
10. is S-2-75. It's further described as the sewerage
11. facilities in the Pleasant Valley area. Now, on Map
12. Exhibit 68 these are the facilities generally shown in
13. black on this exhibit and the service area in blue. They
14. consist of 650 linear feet of eight inch line, about
15. 6,031 linear feet of ten inch line. The last area
16. which they are servicing again has to do with the Donnel-
17. ley property and is identified as such, and it's the
18. sewerage facilities to the Donnelley property. And, again,
19. on Exhibit 68 they are reflected as the red line where I
20. am pointing; the triangle being the meter and the line
21. running from the City to the north and beyond to serve
22. Donnelley. The items are identified there as eight inch,
23. ten and twelve inch. The S1-75 project is further des-
24. cribed as the Route 11 collector sewers. The County has

1. underway in design sewerage facilities to serve an area
2. along U. S. Route 11. They have not been put under con-
3. struction. The plans are completed, the engineering is
4. done.

5. Q. Does this represent the cost that has been expended?

6. A. And the County would be willing to basically transfer
7. those plans, and they are identified . . .

8. JUDGE TRABUE: Would you point that out on the
9. map?

10. A. Well, it has to do with sewers and it would be down in
11. this area. They are not shown on the map because they
12. are proposed facilities. These two map exhibits, Judge,
13. really show the existing facilities. The total value
14. based on reproduction costs less depreciation is shown
15. as \$485,242.00 as the present value.

16. Q. Mr. Overman, if these systems were separated as this
17. would suggest, would there be costs to the actual physi-
18. cal changing of the systems?

19. A. Well, there would be costs related to placing the system
20. back into an operation condition. For example, if this
21. line, sewer line, within the area sought now serving
22. Donnelley were transferred to the City, the meter at the
23. present location here on the present City line would be
24. of no value. There would have to be another meter locat-

1. ed on the new line, the new City boundary; as all the
2. meters are located. The same would hold true for the
3. water to Donnelley. There is a square shown on Exhibit
4. 67 which is a water meter. This water meter or a new
5. one would have to be located on the new boundary. This
6. would be true at this location for the transfer of facil-
7. ities because the City would certainly expect to develop
8. within those areas on the lines that they have acquired,
9. and the meter should only measure what the County is us-
10. ing. To accommodate that we have estimated that it would
11. cost approximately \$41,000.00 to place what we can simply
12. say is the system back into a whole condition or a truly
13. functional operation.

14. MR. COGAR: What was that last number?

15. A. I'm sorry, sir?

16. MR. COGAR: What was that last number you
17. mentioned?

18. A. \$40,937.00. I think I said, Mr. Cogar, \$41,000.00.

19. MR. COGAR: Is it shown on an exhibit?

20. A. No, it is not.

21. Q. Mr. Overman, did you make certain studies or analyses
22. of land use within the City of Harrisonburg?

23. A. Yes sir.

24. Q. We're going into another field, a different area, and

1. I think it's going to take possibly another half hour or
2. forty-five minutes.

3. JUDGE MOON: Okay, we'll go to lunch then until
4. 1:45.

5. (Luncheon Recess)
6.

7. Q. Mr. Overman, I believe before the luncheon recess I
8. asked you whether or not you had made studies of the
9. land use that's in the existing City of Harrisonburg.

10. A. Land uses within the City were really restricted to
11. City Exhibit 11 and to some exhibits we had, land use
12. studies we made within the area sought and obtained in
13. the 1962 case. As to the land use, existing land use
14. in the City of Harrisonburg, we have in our own exhibit
15. form presented County Exhibit 75 which is in the data
16. book. We do not have a map exhibit that corresponds to
17. it because the data is taken directly from City Exhibit
18. 11. According to this exhibit you will see that the
19. residential growth occupies approximately a third of
20. the entire City. The commercial growth accounts for
21. almost 7% or about 228 acres. And it might be of interest
22. to note that the industrial development occupies more
23. acreage in the City than does commercial activities.
24. Industrial growth occupies about 358 acres or about 10%.

1. This, of course, includes the railroads.

2. Q. What is the percentage of the total commercial and in-
3. dustrial growth?

4. JUDGE ARTHUR: Gentlemen, I can't find the
5. exhibit.

6. A. I'm sorry, it's 75, sir.

7. MR. FITZGERALD: It's the first one in the
8. small booklet.

9. A. In the County data book, in the study areas.

10. JUDGE ARTHUR: I looked in that. Seventy-
11. five?

12. MR. FITZGERALD: It's the first exhibit.

13. JUDGE ARTHUR: All right, thank you.

14. A. The combined percentages for commercial and industrial
15. would be approximately 16% of the City total.

16. Q. All right, sir.

17. A. As to public lands within the City, we found, as exhibited
18. by 11 of the City's documents, that 619 acres or 16%,
19. the same as the combined commercial and industrial pro-
20. perty, is occupied by that classification. Of this 619
21. acres 194 acres are within the campus of James Madison
22. University according to the data we obtained from the
23. office of the Director of Institutional Research. Vacant
24. land as purported and shown by City Exhibit 11 is 839

1. acres or about 22% of the City.

2. Q. Mr. Overman, I believe the evidence has been shown by
3. City witnesses where they had deducted from the vacant
4. land land that is subject to sink holes, but it's shown
5. on city exhibits that most of that land has already been
6. developed. Can you see any reason then to reduce the
7. vacant land by that development?

8. A. No, I did not. Frankly, the sink holes, for example,
9. and the other aspects or impediments that are listed
10. have been utilized when it was felt necessary or desir-
11. ous. For example, not fifty yards from here near the
12. small card shop on the way to the parking lot, that is
13. a flood plain in the downtown area of Harrisonburg. It's
14. very well defined. And portions of the street that you
15. cross going to the restaurant or to Denton's is in the
16. flood plain and it is allowed. It is subject to it and
17. it occurs. You passed, all of us passed, coming from
18. the Sheraton to the Courthouse a sink hole that is used
19. to this day. It's roughly on the corner of Market Street
20. and Reservoir Street just east of the cemetery. All of
21. the houses are surrounding the sink hole. I noticed
22. yesterday that someone had plowed it for a garden, so
23. they are utilizing it for whatever purpose they wish.
24. As to rock outcroppings, these are found everywhere.

1. The Valley Mall was very well covered with rock and had
2. to be removed.

3. Q. And also steep slopes?

4. A. And very steep slopes, very definitely. And, of course,
5. this is relating to the other impediment that's mentioned
6. in City Exhibit I think it's 11, much of Harrisonburg is
7. built on steep slopes. Park View certainly exhibits this
8. and doesn't seem to present much of a handicap to people
9. who want to build on it; and actually they build and
10. take advantage of it.

11. Q. From your observations of the area sought for annexation,
12. are a number of the developed subdivisions there develop-
13. ed on steep slopes rather than in the flat lands?

14. A. Absolutely. Park View being an example. In reviewing
15. old exhibits and planimetrics, which again were submitted
16. by the City in the 1961 case, sink holes are shown.
17. Interstate 81 was built on sink holes. The regional
18. sewage treatment plant, I think you may have heard testi-
19. mony that it had been built on sink holes. The land is
20. used when it's necessary. In some instances it may be
21. more expensive, but it certainly is used in every in-
22. stance to a hundred percent that the people want to.

23. Q. In your opinion is there any magic in having any certain
24. percent of vacant land in a city of a given size?

1. A. No sir.

2. Q. In your studies and experience are there cities with
3. virtually no vacant land?

4. A. Well, we have seen land use classifications or categories
5. running from 9% or 10% up to . . . I remember Martins-
6. ville in 1962 of about 55%. They vary. I suppose from
7. a standpoint of easy development or saying that vacant
8. land is available for development there is an advantage.
9. It has a tendency to keep the local government from
10. addressing the subject that they need to attract more
11. industry or more private funds into the area by doing a
12. little better housekeeping or adjusting their ordinances
13. to accommodate interests, local money or outside money.
14. But this is done, and many cities have to do it. Norfolk
15. has had to do it because it hasn't had an annexation in
16. twenty years or more.

17. Q. That's a rather large city. Alexandria is . . .

18. A. Is another example.

19. Q. It's a somewhat medium size city, has that had an annexa-
20. tion in many years?

21. A. No, it's been denied an annexation in the early 1960's,
22. 1970's. In fact, approximately twenty years ago Alexan-
23. dria had, according to their own planning department,
24. about 25% vacant land. I think what Mr. Barnes said,

1. yes, it might be desirable to have 10%, 20%, 30% vacant
2. land.

3. Q. I think he said 20% to 30%.

4. A. I'm sure it's desirable to have it. I don't think it's
5. an absolute necessity to have vacant land. Without vacant
6. land you have to face up to doing something to make your
7. area more attractive.

8. Q. You have participated in suits involving the City of
9. Falls Church, a small city?

10. A. Yes sir, we did.

11. Q. Do you recall the geographic size of Falls Church; two
12. square miles?

13. A. I would say that or four, it's relatively small, very
14. compact, very crowded.

15. Q. Almost 100% developed?

16. A. Yes sir. They found a need during that case and prior
17. to that case to create a central business district and
18. a historical area and do some developing internally.
19. And since that time they have accommodated that problem.

20. Q. And has the City of Alexandria done the same thing?

21. A. Very definitely. I think that's evident, especially in
22. the downtown area with the new construction that is going
23. on.

24. Q. Has all that transpired since annexation was denied in

1. Alexandria?

2. A. A great portion of it has occurred since the annexation
3. was denied in the early 1970's.

4. Q. In your opinion, Mr. Overman, do you see anything wrong
5. with the balance of the land uses in the existing City?

6. A. No, I do not. In conjunction with that particular ques-
7. tion, Senator, we prepared and have prepared and display-
8. ed on the easel County Exhibit 102. It's identified by
9. title "Major Areas of Vacant Land." And it is an over-
10. lay which the Court has seen before, an acetate outlay.
11. On the acetate there is green lines. What we have at-
12. tempted to do here is to lay that on top of the land use
13. plan of the City, which has been placed in color and
14. identified by colors, on the City's zoning map; so the
15. map shows essentially three things. It shows the zoning
16. classifications within the City. It shows the land uses
17. proposed and so forth in the City. And in the overlay it
18. reflects the major tracts of land. We have identified
19. from the City's own exhibit the vacant tracts. Then we
20. attempted to find the major ones and find out what kind
21. of classifications they might be in. So, basically we
22. are using again the City's data and then identified the
23. vacant land within the City as to what those lands could
24. be used for based on their own zoning. I mentioned

1. earlier the quantity of vacant land within the City
2. according to their own exhibit is 839 acres. Now, of
3. that 839 we found that 680 acres were in larger tracts.
4. As you can see in the green lines, they vary. We didn't
5. attempt to take each single lot, we didn't show that. We
6. could have, but we just elected to take the major or
7. larger ones. Of those 680 acres which are shown on the
8. Map Exhibit 102, 502 of those acres are zoned residential-
9. ly. I might add, of those 502 acres there are two very
10. large tracts of land which are in the R-3 classification.
11. One is approximately 80 or 85 acres, another is 55 acres.
12. One of these has always appeared to me since we began
13. studying, it ideally lies in a location near and access-
14. ible to an interchange and available for a mall if such
15. were to be proposed. It happens to lie in the southern
16. portion, I might add for the Court's benefit, the map is
17. turned differently; north is here instead of here. This
18. is U. S. 11. These are relatively large tracts and I
19. think we passed them on the tour. There is a new in-
20. dustry being built in this area. Here is another large
21. tract of land. But they are large, the southern one is
22. near the interchange off of U. S. 11 South. It's access-
23. ible to City streets, has a good flow pattern of streets
24. across the City, from 42 to 11. It's not necessarily

1. steep. It may or may not have rock outcroppings, but
2. they can certainly be accommodated, but it certainly is
3. a good location just to give you an idea.

4. Q. Do you know what it is zoned?

5. A. It is zoned residentially. It could be zoned otherwise
6. as the case may be.

7. Q. All right.

8. A. To proceed, with respect to the City areas zoned for
9. business, of the total 839 acres of vacant land in the
10. City we found that 43 of the acres, at least 43 of the
11. acres, still remain undeveloped and in the business zon-
12. ing classification. They are shown also. The map colors
13. here, Your Honors please, blue again is industrial, the
14. low density residential is purple. I might just add
15. that these colors of orange, purple and yellow are resi-
16. dential. Institutional is in green which is James Madi-
17. son. The central business district is the red which
18. surrounds the Courthouse. And the general business being
19. orange as you might expect outward from the central dis-
20. trict. As to the industrially zoned lands, there are
21. 135 acres, as I said, in relatively large areas; these
22. are not small ones. Obviously the inner-city or downtown
23. problems with business cannot and need not be solved
24. by annexation of the land from the County, for within

1. the City there are, as I said, 839 acres. And we know
2. from this map alone we know that at least 680 are major
3. tract sizes and different zonings. And that's all in
4. accordance with the City data that they have presented
5. on Exhibit 10. It should also be noted probably that
6. the City in 1962, as I mentioned earlier, annexed or
7. acquired 930 acres of vacant land. Approximately 90%
8. of this amount of vacant land remains. Now that is not
9. necessarily in the 1962 area. Actually there are about
10. 731 acres in the area annexed. It's my opinion that
11. annexation of a portion of the County may well hurt the
12. area and not aid the City in industrial development. We
13. found that service industries generally are looking for
14. larger tracts of land which are close to the City but
15. beyond their boundaries. In many instances this is
16. related to taxes because taxes have such an impact on
17. their prices and they like to be able to have control.
18. They are also interested in sites which may be developed
19. as they see fit which can accommodate parking and so
20. forth. However, there are tracts of land, the point is,
21. that there are tracts of land within the City that could
22. be utilized for industrial development and that is taking
23. place today. We passed a new industry that is under
24. construction.

1. Q. Mr. Overman, even if the City had zero vacant land, do
2. you see any reason why the City could not continue to
3. be viable under the conditions that exist in the City
4. and Rockingham County?

5. A. No, I think it would remain very viable, and probably
6. more so than it is today.

7. Q. Do you have any further comments on the land uses within
8. the existing City?

9. A. No sir. I think these two exhibits indicate and have
10. been prepared for the Court's benefit to indicate the
11. location of lands. The 1962 annexation map, I could
12. refer to that while it's on the easel. This is Exhibit
13. 100. As I mentioned earlier, here is the land use within
14. the City, that we did conduct our own land use by a
15. windshield survey. That is, by riding around the country-
16. side or riding down the roads and attempting to identify
17. as best we could the uses to which the lands had been
18. placed within the area annexed to the City in 1962. This
19. particular exhibit also has photographs in addition to a
20. coloring scheme. And this area which is colored is that
21. area generally annexed in 1962. As before, the dark green
22. is vacant tracts, and in some instances agricultural
23. even within the City. The yellow are residential. The
24. red are commercial. The industrial is shown in blue.

1. And the light green or apple green is in this case James
2. Madison University.

3. Q. Are the public lands?

4. A. The public and semi-public. Now, in addition to deter-
5. mining the land use composition of the area annexed in
6. 1962, we elected to determine exactly where these larger
7. tracts of land may be without regard to zoning. On this
8. map you will notice some numbers, one, two, three, five
9. and four. We have taken photographs of these properties
10. to indicate exactly what they consist of. Some of them we
11. were able to pass during the tour, some of them we were
12. not, without prolonging the day's trip. Number one is
13. on North Liberty Street and it's vacant. In fact, you
14. can see corn stalks and some distance out into the County.
15. This being the new industry that is under construction,
16. which is located in the northern portion of that area
17. annexed in 1962.

18. Q. Has that been referred to as AMP?

19. A. AMP, that's correct. That's on Charles Street. It was,
20. I think, very clearly pointed out during the tour. Area
21. 5 is vacant land. You'll see a fence. This is very
22. difficult for the Court to see at that distance. Number
23. 5 is located in the southern portion right here. In fact,
24. it's in the area that I identified over here on this map.

1. This is a rather long series of photographs, this is
2. number four, it's on Waterman Drive. And as you will
3. recall, the tour having left the Park View Sanitary
4. District area came down Waterman and into the City.

5. Q. Is that the wooded area to the north of the quarry?

6. A. To the north of the quarry. The quarry is shown in
7. blue, yes sir. Again, it lays fairly well. Area two,
8. this photograph, again this is the northern portion.
9. This is North Main Street. Area three shows again
10. areas annexed before 1962. This is East Washington
11. Street. This was not in the 1962 annexation area,
12. it was prior to that. This other designation on the
13. map is the development around sink holes. This was
14. built and I think you will recall there are goal posts
15. setting down in the sink hole, they have been made use
16. of. This happens to be in the Harris Gardens area.

17. Q. All right. Now, did you also make some studies of the
18. land uses within the proposed area for annexation?

19. A. Yes sir, we did. And in order to relate these to the
20. Court, I might, Senator, refer them to County Exhibit
21. 76 first which is entitled "County Study Areas." There
22. is not a . . .

23. Q. Did you find it beneficial to divide this rather large
24. area up in subareas to make your study with regard to

1. land use?

2. A. In our experience over the last many years we have found
3. that in the assembling of data in the early stages and
4. in the analyzing of data, it is to our advantage and to
5. everybody's advantage to have it in a manageable form.

6. We therefore attempt to break the areas down, the area
7. proposed for annexation and even areas beyond in some
8. instances; but into manageable areas that we can do
9. something with. And then the data is gathered and anal-
10. yzed and assembled and then we have it so that we can
11. present it as need be for the Court. We did this.

12. County Exhibit 76, which is a map in your report or in
13. your book, shows four areas and I will address those
14. a little later, but I thought it might be best because
15. when I refer to study area one or study area two, you
16. will know generally where they actually lie. I might
17. point out that one, for the benefit of the Court, is to
18. the west of Interstate Highway 81 and is somewhat in
19. the arrowhead portions of the annexation area sought.

20. Q. I think, Mr. Overman, if I might interrupt you.

21. A. Certainly.

22. Q. I think the exhibit is clear enough.

23. A. All right. There is no big exhibit on county study
24. areas, Senator.

1. Q. All right, what did you find in the analysis of the
2. proposed area as far as land use is concerned?

3. A. All right, sir, I would ask the Court to turn to Exhibit
4. 77, which is a map exhibit, which corresponds to the large
5. map exhibit on the easel, which is 92, both of which are
6. generally identified as land use. I think the one in the
7. book is land use in the proposed annexation area and that
8. on the easel identified as land use, period. In both
9. instances these show the land uses within the area being
10. sought. For the benefit of the Court and because there
11. is always a lapse of time existing between filing dates
12. and the time of testimony, this exhibit that's on the
13. easel we have attempted to keep up to date as near as
14. possible. Map exhibits, I think as the City witnesses
15. explained, that are in the book are always late because
16. printing has to be done early; so there are some differ-
17. ences between that. Some of the major differences in
18. comparing the big map and the little one is the fact
19. that we have shown pasture land, crop land, wood land
20. and open land in different green stippling colorings.
21. Again, it is probably difficult from where you are sitting,
22. but they are shown to get the data that was assembled
23. as to area of each of these as to the land use categories.
24. This is shown on Exhibit 78 in the study area book. And

1. this particular exhibit labeled "Land Use in Proposed
2. Annexation Area" does relate to the exhibit that's on
3. the easel and to Exhibit 77 which is in your book.

4. Q. Mr. Overman, with regard to that Exhibit 78, would you
5. add up the figures for us?

6. A. I'll do the best I can, sir.

7. Q. The percentages. What is the percent of total agricul-
8. tural land that you found in the area sought to be annex-
9. ed?

10. A. Agricultural land including both crop land and pasture
11. land actually is 3,851 acres and approximately 43% of
12. the total area sought.

13. Q. 43.55%, would 44% be correct?

14. A. Yes sir, in that range.

15. Q. That's just agricultural land. How about vacant land?
16. Vacant land including the wood land and the open vacant
17. land.

18. A. There are a total of 2,306 acres or approximately 25.5%
19. of the total area is vacant. The sum of those two is
20. 68%.

21. Q. Would you add up the total vacant land and the total
22. agricultural land and tell the Court what you found to
23. be the total undeveloped land or vacant in agricultural
24. use or in no use?

1. A. That's the figure I just mentioned, that's the 68%.

2. That's 6,157 acres or 68% of the area being sought is
3. represented by the green area which is both vacant and
4. agricultural property.

5. Q. That's better than two-thirds of the area sought?

6. A. Yes sir, slightly.

7. Q. What is the most predominant land use in the area sought
8. to be annexed?

9. A. Other than the farm land . . .

10. Q. No, I'm not talking about other than the farm land.

11. A. Well, the greatest use is in agricultural property, which
12. is about 43%. That's followed by a residential land use
13. of about 9.3%.

14. Q. Wouldn't it be followed by the vacant land?

15. A. Well, vacant land is not in land use. It's not in use.

16. Q. All right, you show it on your land use map, don't you?

17. A. That's correct. It's a land use category.

18. Q. So the largest and most predominant land use is in farm-
19. ing.

20. A. Yes sir.

21. Q. And the next one is vacant?

22. A. That is correct. For the benefit of the Court, Senator,
23. you will notice that we have shown the breakdown of
24. single family, mobile homes and multi-family classifica-

1. tions because we determined in the assembling of data
2. and the analyzing of it that mobile homes are something
3. the County has some provisions for handling whereas the
4. City obviously does not. I might point out the colors
5. for the benefit of the Court. The orange colors, such as
6. the Deer Run apartments and the Squire Hills area are
7. shown in the orange. The single family, again, as all
8. color schemes, are shown in yellow. It's Ashby Heights,
9. Fairway Hills. Here's Park View scattered with multi-
10. family and with single family. The red is commercial.
11. This is the south U. S. 11 area. This is Route 33 East.
12. This is the Port Republic Road area. This is Howard
13. Johnson's, for example, there shown in red. The light
14. green or apple green is the public and semi-public that
15. you see here. This is the City's sanitary landfill.
16. The County farm. The greens in the various types of
17. stippling depict the agricultural or vacant categories
18. as to whether they are crop land, pasture land, wood
19. land and open lands.

20. Q. Mr. Overman, did you break down the land uses in each of
21. these study areas?

22. A. Yes sir, I did. (Exhibit handed to the Court)

23. Q. We're not going to go into some of that to save time,
24. but it does show a breakdown of all those land uses for

1. the study area, is that correct?

2. A. Yes sir.

3. JUDGE MOON: What number is this?

4. MR. FITZGERALD: That would be 132, I believe.

5. A. It's land use in the proposed area.

6. Q. Have you also determined population figures in the area
7. sought for annexation? I believe you have already given
8. the total population figures.

9. A. Yes sir, I did.

10. Q. Did you also break down those population figures and
11. other data by those same study areas?

12. A. Yes sir, I did. If you'd like for me to give them to
13. the Court I'd be happy to. (Exhibit handed to Court)

14. MR. FITZGERALD: That will be 133.

15. A. I might point out, Senator, that there are a few correct-
16. ions that need to be made on that exhibit.

17. Q. All right, sir.

18. A. They are improperly identified. It reads "School Age
19. Population," that's really ADM in both instances there.

20. Q. All right, sir. Anything else that needs correcting?

21. A. No. I have the assessed values for the tax year 1980.

22. Q. Now, did you also show some of those statistics in regard
23. to land use on the map exhibits that are in the book,
24. 79 through 82?

1. A. Yes sir. On County Exhibit 79, that's the first of the
2. series, County Exhibit 79 deals with study area one. The
3. map does show the land use breakdowns by residential,
4. commercial, industrial, public and agricultural and
5. vacant categories; the land use categories for that
6. particular area. They are the same figures on Exhibit
7. 132, I believe, that was just passed out to the Court.
8. I am prepared, if it will serve the Court any particular
9. benefit, to identify the boundaries of each of these
10. study areas if they need to be described.

11. Q. I think they're self-evident. Did you make any investiga-
12. tion as to the businesses located in the present City of
13. Harrisonburg?

14. A. Yes sir, I did.

15. Q. What did you find in that regard?

16. A. We prepared an exhibit to indicate this to the Court.
17. They are identified as Exhibit 62, 63 and 64.

18. Q. Are they in the book?

19. A. Sixty-two is a statistical exhibit, 63 is included in
20. the book and is entitled "Commercial and Industrial Land
21. Use" and there is a large exhibit which will be on the
22. easel shortly. Sixty-four is a map exhibit as well as
23. some statistical data in the right-hand side. This is
24. identified as "Selected Places of Employment."

1. Q. Would you go on and explain to the Court the purport of
2. these exhibits.

3. A. All right, sir. Well, while we are waiting for the
4. larger exhibit, if we would refer to Exhibit 64 I'll
5. identify that same data as shown on the big one. Or,
6. 63, excuse me. This is a map exhibit that looks like
7. that. This particular exhibit entitled "Commercial and
8. Industrial Land Use" shows the City of Harrisonburg
9. outlined in red and colored slightly pink. It shows
10. the annexation area in yellow and the proposed line in
11. a heavier yellow. The commercial properties within the
12. area being sought are shown in red. They are taken from
13. the existing land use studies that we conducted. They
14. are the same basically as those shown on the land use
15. map which was previously on the easel. The blue areas
16. are the industrial land use that we found and the approx-
17. imate acreages in industrial land use classifications.
18. We found, for example, that as reflected by Exhibit . . .

19. Q. I believe a moment ago I might have asked you about the
20. commercial in the City, I meant in the area sought for
21. annexation.

22. A. Yes sir. Exhibit 62 reflects the commercial and indus-
23. trial development that has occurred in the area proposed
24. to be annexed. For example, the firms in both of those

1. categories in the area proposed to be annexed are approx-
2. imately 293. The persons employed in the area proposed
3. to be annexed are 4,262. Now, the firms in those same
4. categories in the area proposed to be annexed hiring ten
5. or more persons are 83 in number. The persons employed
6. by firms hiring ten or more persons are almost 3,600.
7. The area does offer considerable employment to both the
8. City and to the County citizens; and also to the James
9. Madison University students. On Exhibit 64, which is
10. again a map exhibit, I'd like to point out to the Court
11. that the numbers shown on the map portion of the exhibit
12. correspond to those listed on the right and by name we
13. have attempted to show those industries which actually
14. are located at those approximate locations or approximate
15. sites within the area. In one instance, or two, I might
16. add, on Items 11. and 12., that is really one industry,
17. one business under same names, but one is Bros. and the
18. other one is Blauch Home Improvements; totally or to-
19. gether they have 30 employees, not 30 each. The total
20. therefore would be 3,546 at the bottom of that page, not
21. 3,576. We have found from a review of this data that
22. the County has experienced a rather healthy growth in
23. both these categories in the past two decades. Both the
24. City and the County have benefited from this growth.

1. Of these benefits has been the provision of employment
2. opportunities, as I mentioned a minute ago, to both the
3. City and the County citizens. I myself have noticed that
4. an awful lot of the J.M.U. students or James Madison Uni-
5. versity students are employed in different commercial
6. activities in the area being sought; the Sheraton for one,
7. and other ones as well within the City. So actually em-
8. ployment opportunities are afforded to citizens on both
9. sides. The County has attracted much of this growth,
10. we believe, through reasonable tax rates, the available
11. labor force they obviously have, and by providing ade-
12. quate utilities when necessary, when needed and through
13. whatever means that are available. The County has also
14. provided housing within the area and beyond. It also
15. has an excellent school system which obviously attracts
16. new employees and major businesses to the area. The
17. police protection and the fire protection for these
18. businesses has been testified to as being adequate. It
19. certainly seems to be sufficient to still allow these
20. businesses to come to the area.

21. Q. Have you heard or seen any data indicating any excessive
22. fire losses in the area to be annexed?

23. A. No sir, I have not.

24. Q. With respect to businesses, Mr. Overman, did you take a

1. look to see what had happened to the locations where the
2. City said it lost business enterprises?

3. A. Yes sir. We prepared another large map exhibit to indi-
4. cate that. It works somewhat like Exhibit 64.

5. Q. This particular map, are you referring to . . .

6. A. Ninety-nine, identified as "Relocation of Businesses."

7. It shows as a red border the City of Harrisonburg. With-
8. in the City there are some blue dots in which are some
9. numbers. The numbers in this case correspond to the
10. photographs around the map and around the exhibit. In
11. most instances they show business locations which existed
12. at one time and which on the City Exhibit, I think it's
13. been referred to as a rainbow exhibit, that these are
14. buildings that have been vacated or businesses that have
15. moved into the County. The point of this exhibit is to
16. indicate that some use in most instances has been made
17. of those buildings that have been vacated or those lands
18. that were vacated or the buildings that were demolished.
19. For example, here is area 21, the Bryan Memorials. This
20. is a parking lot now. Nielsen at 25 shown on the City's
21. earlier exhibit, Gilmer Industries is in that area now.
22. Woody's Sport World is now located here. Carr's Recap-
23. ping is located here.

24. Q. Without going through all of them, Mr. Overman, would

1. you just tell us how many of them did you find that were
2. at this time vacant.

3. A. Of these photographs I think there are probably four.

4. There is Leggett's, there is Glassner Jewelry, Dr. Adams,
5. Charles Smith Shoes, and I believe that's all.

6. Q. You show some other photographs at the bottom there, will
7. you tell the Court what those depict.

8. A. The four long panoramic sort of photograph exhibits are
9. headed "Shopping Centers in the City of Harrisonburg."

10. And that's exactly what these photographs do depict.

11. This is Roses, as well as Firestone. This is the Clover-
12. leaf which we have referred to before in testimony.

13. There is the A & P, there's Best Products. This particu-
14. lar area shows Safeway, Peoples Drug Store and Roses.

15. But they are shopping centers independent of one another
16. which are located in the City which serve the City and
17. County residents.

18. Q. Does this in your judgment, Mr. Overman, correspond and
19. corroborate the testimony of Mr. Robinson that he found
20. by checking to see how many registered retail merchants
21. there were in the City now as compared to--or last year,
22. as compared to just prior to the Mall opening. Did you
23. hear his testimony?

24. A. I'm sorry, sir, I did not hear that particular statement.

1. Q. If that testimony indicated that the City has more
2. merchants now than it did prior to the Mall opening,
3. would this indicate that any vacancies that had been
4. created in that time had been substantially filled?

5. A. I think all of them have been filled and more have been
6. created. As a matter of fact, Senator, in conjunction
7. with our studies of the area, the City, County and so
8. forth, in preparation of these proceedings, we turn to
9. the records that are published by the state on covered
10. employment. We found, for example, that in Harrisonburg
11. alone since 1960 and to 1980 based on the fourth quarter
12. reports, that they had received within the City a 122%
13. increase in the number of establishments, or a total of
14. 357 establishments. Now, of those, 127 establishments
15. have been created in that twenty year period in trade.
16. Which for the sake of discussion we are talking about
17. commercial or business enterprise, which is an 85% in-
18. crease. The number of employees has increased in the
19. trades alone by almost eighteen hundred people in that
20. twenty year period. Which I think does support the fact
21. that they are being utilized, the buildings are being
22. occupied even as they are vacated.

23. Q. Mr. Overman, did you cause to have made Exhibit 65, a
24. map exhibit, which is also in the exhibit book?

1. A. Yes sir, I did, and corresponding is the 65 exhibit in
2. the book and on the easel.

3. Q. What does that show?

4. A. This particular exhibit shows only the agricultural lands
5. which were found during our studies of the area proposed
6. to be annexed related to land use. It shows only the
7. agricultural. If you took the existing land use map,
8. these are the green areas in agricultural pursuit. It
9. indicates again and more clearly, possibly than the
10. earlier map, the 43% of the area sought is actually in
11. agricultural use.

12. Q. All right, sir, I'm going to read you language from
13. Section 15.1-1042. "The Court shall draw the lines of
14. annexation as to have a reasonably compact body of land
15. and so that no land shall be taken into the city which
16. is not adapted to city improvements or which the city
17. will not need in the reasonably near future for develop-
18. ment unless necessarily embraced in such compact body of
19. land." Tell the Court whether in your opinion the area
20. sought for annexation as defined by the City meets that
21. criteria.

22. A. No, I do not. I feel there is an excessive amount of
23. farm land included within the bounds of the proposed
24. area. And I think that Exhibit 65 clearly shows that to

1. be the case. And by the figures that I have recited as
2. to the 43% of the area being in agricultural pursuits
3. certainly does not satisfy in my opinion the compactness.

4. Q. In your judgment from the studies and analyses that you
5. have made of this area, does that farm land that you have
6. referred to, is it adapted to City improvements?

7. A. Not readily, no sir.

8. Q. Is it needed in the reasonably near future for develop-
9. ment?

10. A. I would certainly not think so based on the growth of
11. the City over the last ten or twenty years.

12. Q. At my request have you considered whether or not it is
13. possible if the Court grants it, that for whatever reason
14. the City needs to be bigger, that a line could be drawn
15. that in your judgment did meet the criteria of Section
16. 15.1-1042?

17. A. Yes sir, I did.

18. Q. Do you have something that we could put up?

19. A. I prepared an overlay to work with this land use exhibit
20. in response to your request in question. (Map placed
21. on easel)

22. Q. What have you put up there, Mr. Overman?

23. A. On top of Exhibit 92 titled "Existing Land Use Within
24. the Area Being Sought" we have prepared what we will

1. refer to as a cutout.

2. MR. FITZGERALD: Shall we call that Exhibit
3. 92A, if that is permissible to the Court?

4. JUDGE MOON: Yes sir.

5. Q. What does that show, Mr. Overman?

6. A. Well, in response to your request we attempted to con-
7. sider the aspects of the data that had been presented.
8. And with respect to compactness we were looking for an
9. area that seemed to exclude rather than include as much
10. of the farm land as possible, except of course as it
11. might have to be included in order to make such an area
12. compact. We were attempting to select an area which might
13. give the City additional land into which to develop com-
14. mercially and industrially oriented properties or firms.
15. We also were attempting to obtain an area which would more
16. balance the equities and not deplete the County entirely
17. of its major tax base, leaving something for the County
18. to proceed with and satisfy to whatever possible efforts
19. we could come up with the City's requirement. We were
20. looking for an area which would not place an undue burden
21. on the City by overcrowding the school system, because
22. there has been testimony to the effect that the schools
23. could be overcrowded and have limited space. We were
24. looking for an area which would not create too many other

1. burdens on the City such as excessive number of mobile
2. homes and areas which might require a drastic land use
3. tax assessment. Also an area which might or would not
4. affect the farmer, or at least so many farmers and
5. agricultural property as the proposed annexation does.
6. We were looking for an area which would give the City
7. a fair portion of the existing commercial and industrial
8. property, a more balancing of the equities as the case
9. may be, and ones that would be accessible to major high-
10. ways, railroads and also provide the City with some con-
11. trol of these areas and the roads, and would provide
12. lands adjacent to the railroads for development in the
13. cases of those of the need for rail. Also we were look-
14. ing for an area that might have a tax base to the City
15. or assist in the tax base as an addition because it would
16. be faced with the problems of capital improvements coming
17. down the road with annexation as opposed to the one sought
18. which would be major undertakings. We were looking also
19. for an area which might be more compatible with the City
20. from zoning and planning viewpoints; ones that would not
21. be so extensive, ones which are closer to the City, can
22. be controlled through their access from their railroads
23. and properly zoned to accommodate the growth that they
24. are seeking, or development that they plan to be seeking.

1. We were looking for an area which would not drastically
2. affect the County's water and sewer programs. And at
3. the same time, an area in which utilities might exist
4. and might have to be acquired by the City, but which
5. could be intergrated with the City's existing system
6. without any handicaps or undue burden.

7. Q. Mr. Overman, there are certain contracts that have been
8. testified to that are long-term contracts between the
9. County and the Authority or the County and the City.
10. Does this in main honor those contracts?

11. A. Basically it would, sir. You are speaking of the utility
12. contract?

13. Q. Yes sir.

14. A. Yes sir.

15. Q. Are there any other criteria you used?

16. A. To carry your question and my answer a step further, it
17. speaks of the same sort of utilities that we spoke of
18. earlier on value of transfer of facilities, that's easy
19. to account for in there. And also in our efforts we
20. were looking for an area which would permit the City
21. and the County's governing bodies to continue to cooperate
22. in the best interests of the region as a whole, to co-
23. operate in the best interest of the City, new and other-
24. wise, the area sought as well as the remaining area

1. after such annexation; thereby one that would . . . such
2. an annexation or an area of compactness which might pro-
3. vide for two viable governments to keep on operating
4. and remaining viable. We were looking also for an area
5. with boundaries to a large degree in keeping with the
6. City's desires and in keeping with the testimony relat-
7. ing to the subject as to lines and locations.

8. Q. Did you compile some statistics with regard to the total
9. area as shown as can be seen through the Exhibit 92A?

10. A. As best as we could, Senator.

11. Q. Did you compile the statistics?

12. A. I did.

13. Q. Do you have the copies of them?

14. A. Yes sir.

15. MR. COGAR: Your Honors, please.

16. MR. FITZGERALD: Excuse me?

17. MR. COGAR: I was speaking to the Court. I
18. object to this exhibit on the grounds in the first place
19. it's absolutely outrageous. I think I made it clear at
20. the commencement of this proceeding that we had given the
21. County everything related to the basic elements of our
22. case that was required by the order of this Court. Now
23. after some three weeks into this case in the last hours
24. of the testimony, this witness comes forward with a

1. totally new proposition wholly at odds with anything that
2. was ever presented to the Commission on Local Government,
3. wholly at odds with the exhibits which he has heretofore
4. presented, wholly at odds with his prior testimony, ac-
5. companied by a detailed breakdown and information with
6. no prior effort on our part to look into it or be prepar-
7. ed for it. I cannot use a word any milder than outrageous.
8. To do this in these closing hours of this testimony, to
9. completely shift gears and take off into a new direction,
10. is in utter and total contravention of what the Court or-
11. der requires with respect to the pre-filing of exhibits.

12. MR. FITZGERALD: May it please the Court.

13. Throughout the City's presentation of its case I purpose-
14. ly called to the attention of the Court the numerous
15. times when exhibits were put up on that board, the
16. first time the County had ever seen them. We are
17. not the proponents, we are not the moving party here
18. in this case; we are defending it. And our defense does
19. not have to end when exhibits are filed. Now we could
20. take that off the board and have this witness sit here
21. for two days describing to you the area in testimony.
22. We are defending. We have to sit and listen. Talking
23. about a preposterous proposition, this whole thing is
24. preposterous. The area sought by the City is ridiculous.

1. And we are trying to show that the area does not comply
2. with the law that the City wants. We are trying to show
3. that they could have designed . . . we're not saying to
4. annex this area. We are saying that here is an area
5. that would comply with the law. But we certainly are
6. not saying that the City has proven any need for it. We
7. are showing that the City could have designed an area if
8. a need existed that would not violate Section 15.1-1042.
9. And that's the purpose of the exhibit. If this Court
10. found that it was a necessity in this case, then it
11. might want to consider something like this, but we are
12. certainly not suggesting that the City has made out any
13. case for any area.

14. MR. COGAR: With respect first to the re-
15. peated calling of attention to exhibits presented by
16. the City, I could name them off in a handful. There
17. was some little green overlay that was over here, there
18. were half a dozen photographs, and I think something else.
19. We have been handed--I think Your Honors have seen how
20. many times today they have already crossed this room and
21. handed us detailed financial exhibits and all sorts of
22. numbers which we haven't seen before. They come now with
23. this as the proposal which they put before this Court after
24. six years of the pendency of this annexation case. And

1. again, totally at odds with what they put before the
2. Commission on Local Government. I think the intent of
3. the order of the Court that the exhibits be pre-filed
4. was that the parties not be taken by surprise, because
5. the hundreds or thousands of citizens that are affected
6. by this annexation would have an opportunity to be fully
7. heard. And I say again, I think it's unconscionable to
8. come forward with this data at this time.

9. MR. FITZGERALD: I want to add one thing. All
10. those other papers I handed Mr. Cogar this morning, I
11. handed him before this trial started.

12. MR. COGAR: That's not a fact.

13. JUDGE MOON: Well, gentlemen, irrespective
14. of the history, we've got to rule on this.

15. (Judges Confer) .

16. JUDGE MOON: The Court is of the opinion that
17. the exhibit should be admitted with this proviso. That
18. if the City feels taken by surprise and needs some time
19. to look into it, we will give you some time to evaluate
20. the information and put on rebuttal evidence.

21. MR. COGAR: Your Honor, we are taken by
22. surprise.

23. JUDGE MOON: Well, I mean after looking at
24. it you may decide . . . you have to decide how surprised

1. you are as to whether or not you need additional time.

2. MR. COGAR: Thank you.

3. MR. FITZGERALD: I would just like to state
4. for the record, there is not a thing shown on that ex-
5. hibit that hasn't been on that land use exhibit since
6. it's been filed with this Court. All that's happened
7. is, we drew a line in effect around part of the area.

8. JUDGE MOON: You weren't objecting to this
9. exhibit anyway, were you?

10. MR. FITZGERALD: I thought he was objecting
11. to the map.

12. JUDGE MOON: Oh, I thought he was objecting
13. primarily to the data.

14. A. Well, the data relates to the map.

15. MR. COGAR: I don't want--to make this sort of
16. statement, that there is nothing on here that hasn't
17. been on this land use map, is to say that whatever per-
18. centages and sizes and areas that you want to examine
19. are all contained within . . .

20. JUDGE MOON: Well, it's obviously of great
21. significance or it wouldn't have been brought up. But
22. we feel it is a situation where the County has the right
23. to put on anything,--I assume this was not something you
24. had been holding back for six months that you just decided

1. to do.

2. MR. FITZGERALD: I'll ask the witness.

3. Q. Mr. Overman, when did you cut that piece of paper out?

4. A. Well, it was cut under my instructions probably about
5. 9:00 last evening, and this was not completed . . .

6. Q. You're talking about this exhibit, I don't believe we
7. gave that a number. I'd like that to be 92B.

8. A. This was probably not completed until after Court was
9. started.

10. JUDGE MOON: Well, we feel it is admissible
11. with the proviso that if the City needs time to analyze
12. it and even call the witness back to recross examine
13. him, we'll have to, I think, allow that.

14. MR. FITZGERALD: I just want to make it very
15. clear that we did not make it and hold it back. We
16. heard as much of the evidence in this case as we could
17. before it was made, that's the reason why it comes at
18. this time.

19. JUDGE MOON: All right, sir, you may proceed.

20. Q. Mr. Overman, in your opinion does the proposed cutout
21. or the cutout that you have done there and delineated
22. an area, more nearly comply with the statutory requirements
23. of 15.1-1042?

24. MR. COGAR: I object to the question. That's

1. for the Court to decide.

2. MR. FITZGERALD: Well, this whole thing is for
3. the Court to decide, Your Honor; necessity, expediency.
4. Witness after witness has expressed an opinion on neces-
5. sity.

6. MR. COGAR: I think based on the evidence
7. or the facts that the Court will draw a conclusion as
8. to what the law requires.

9. JUDGE MOON: Well, I sustain as to that.
10. Repeat your question, sir.

11. MR. FITZGERALD: All right, sir.

12. Q. Does what you have done on Exhibit 92A eliminate to a
13. great extent areas that are not adapted to City improve-
14. ments?

15. MR. COGAR: I object to that on the basis of
16. his leading of the witness.

17. MR. FITZGERALD: We've come a long way.

18. MR. COGAR: Yes, we have.

19. JUDGE MOON: Overruled. Answer that part of
20. the question. It's leading, but I'm sure . . .

21. MR. FITZGERALD: I think he's already answered
22. the question, Your Honor. I will ask it another way.

23. Q. What have you done with the areas you have testified to
24. that in your judgment were not adapted to City improve-

1. ments, mainly the active farm lands.

2. A. Well, I think I have said that in attempts to come up
3. with an area that would satisfy the requirement we at-
4. tempted to exclude as much farm land which we felt was
5. not adaptable to City improvements and which we felt in
6. our understanding was not necessary nor did it make for
7. a compact body, or a reasonable compact body.

8. Q. All right, just briefly, Mr. Overman, if this area were
9. joined with the existing City, what would be the increase
10. in area of the City?

11. A. The area would almost double in size; the City would be
12. increased about 92% or about five and a half miles. It
13. is now a little less than six square miles, it would be
14. increased to approximately eleven and a half miles, or
15. . 92%.

16. Q. How much vacant land would be in the City?

17. A. There would be a total in the composite City as indicated
18. there of 3,028 acres, which would include agricultural
19. lands which could not be excluded in our attempts. This
20. would be equivalent to an increase of 261% over what they
21. have today.

22. Q. I believe a City witness testified that the City ought
23. to have from 20% to 30% vacant land. What percentage of
24. vacant land would this give the City?

1. A. The last column on that particular Exhibit 92B would
2. indicate that 41% of the composite City would be in
3. vacant and agricultural land use categories.

4. Q. You mentioned the fact that the number of students in
5. ADM would be considerably less. How many would be in
6. this area?

7. A. There would only be 143 approximately, which is an in-
8. crease to the City of about 6%, which would not place an
9. undue burden we felt upon the City.

10. Q. Do you know where most of those students would be?

11. A. Well, we can show them very quickly. We know that Park
12. View, the Park View area, does not necessarily house
13. a lot of the school children who attend County schools.
14. We know that the children are located in this area,
15. Forest Hills and scattered through the County in subdi-
16. visions, and of course there are some in Park View. But
17. there are only 143 of them; but we do know where they
18. are and we tried to take that into consideration in
19. selecting the area so that they could be located in the
20. City school system.

21. Q. Mr. Overman, approximately what amount of the assessed
22. values of total assessable property would be included
23. in the area?

24. A. Including public service corporations, the best estimate

1. we could make based on this area would be in the area of
2. \$66,091,000.00 approximately, which would be an increase
3. of about 18% to the City.

4. Q. Now, you have shown the City's 1980 assessables for
5. consistency, is that correct?

6. A. That is correct, sir. We've attempted to do that.

7. Q. In fact, the City has over \$350,000,000.00 in real estate
8. assessables in the 1981 assessables, is that right?

9. A. As I recall, the pertinent data sheet does show that.
10. I can confirm it.

11. Q. That's all right, sir.

12. A. But that is approximately.

13. Q. But you have used the 1980 figure.

14. A. Yes sir.

15. Q. So the City would have considerable more if we added
16. it to their 1981 assessables.

17. A. Yes sir.

18. Q. What have you determined would be the sales tax gained
19. by the City as a result of this?

20. A. Local sales tax within the area, which is identified as
21. added area and as shown on this Exhibit 92A overlay,
22. would be \$270,000.00 approximately. Under the existing
23. City you see a figure of \$1,900,000.00 which is a state
24. estimate, and I think you have heard testimony to that

1. effect just recently. This would mean that the new com-
2. posite City column reveals a total of \$2,170,000.00 which
3. is 62% of the combined County-City total sales.

4. Q. The City would end up with 62% of the sales tax from the
5. County and City area?

6. A. That is correct, sir.

7. Q. And the County would still only have 38%?

8. A. That's correct.

9. Q. Yesterday there were a number of citizens testifying,
10. some of them were farmers, and to my recollection they
11. pointed out that they lived in the area to the west of
12. the City along the road coming down here.

13. A. Yes sir.

14. Q. What road is that?

15. A. It's Route 910. It generally parallels the proposed
16. annexation line on the west side.

17. Q. You have followed the City's proposal on that side of
18. the City, have you not, generally?

19. A. Well, yes sir. As we indicated to the Court a moment
20. ago, this was to try to satisfy, if we had to, some
21. boundaries that the City felt were appropriate to their
22. needs. The line has been followed all along the western
23. boundary and along the northern boundary to that point.
24. It stays with the City line on the two projections on

1. the other side of Route 33 which are already in the
2. City.

3. Q. It takes in the Sheraton?

4. A. This is the Sheraton in this location, this is Howard
5. Johnson's here, this is the Deer Run-Squire Hill multi-
6. family. We have attempted to follow a creek and we
7. have also provided as best we could, I mentioned earlier,
8. the railroad; leaving these in the area. A limited
9. amount along 42, but over on the southeastern portion,
10. rail with lands on both sides for future development be-
11. cause of the industrial development that would need rail
12. transportation.

13. Q. It would put into the City two of the major motels and
14. leave out of the City two major motels, is that correct?

15. A. That is correct. It also includes two of the inter-
16. changes. It provides ready access to the southern in-
17. terchange where the Holiday Inn is. It provides, as you
18. can see, vacant land and farm land and leaves basically
19. two interchanges in the County and two in the City.

20. Q. And one of those interchanges left in the County, there
21. is some question about whether it will ever be developed
22. or not?

23. A. That's correct. The one in the northern section, which
24. has not.

1. Q. That's Old Furnace Road?

2. A. A right-of-way has been obtained.

3. Q. If you drew a line down the westerly projection of that
4. area eliminating substantially the farms that were testi-
5. fied were in that area; would that in any way negate
6. your judgment that this area does provide for a balance
7. of land uses, afford the City considerable vacant land?

8. A. Well, this particular area would not affect it appreci-
9. ably. It's about ten inches, I guess; that's maybe
10. four hundred acres approximately. That's not going to
11. affect it one way or the other, there's not that much
12. development.

13. Q. There's no substantial commercial in that area?

14. A. No sir, there's multi-family and small residential.

15. Q. There's some red dots in there, do you know what they
16. are?

17. A. Right here are the radio towers, to orient the Court.

18. Q. No sales tax on that as you know of, is that right?

19. A. No sir. If it is, it's very small on these other ones,
20. but the radio towers don't provide any sales tax.

21. Q. So there are several more farms and farmers to be
22. eliminated if the line were drawn down there.

23. A. That's correct.

24. Q. Mr. Overman, you have throughout your testimony referred

1. to certain data and statistics relative to the City of
2. Harrisonburg. Would you tell the Court from your analy-
3. sis of all of the statistics, data and evidence that
4. you have seen and read in this case whether or not you
5. found there was any need for the City to annex anything.

6. A. All right, sir. Well, as to necessity and expediency
7. or the need for area by the City, in our evaluation of
8. the data that's been assembled and presented I can only
9. conclude that there is a lack of need. The City is
10. certainly in a very well off or good position financially
11. speaking, and certainly does not need additional vacant
12. land to accomplish these interest of growing; having
13. 839 of them already of its total area vacant, having
14. approximately 731 acres of the land annexed in 1962 as
15. being vacant. It would appear that they are zoned .
16. properly or could be rezoned to accommodate developments
17. that they want. There are some major tracts existing
18. that lie in areas that are accessible to interchanges,
19. to highways, to streets within their own system, that
20. would accommodate traffic across and through the City
21. and from the outside. Just in those alone there seems
22. to be no need for land. Financially speaking they are
23. in good shape, very well off. I am certainly prepared to
24. discuss with the Court again the necessity and expediency

1. angles of requirements as to sewage treatment which I
2. have testified to slightly. The area is served from a
3. sewage treatment standpoint by the Regional Authority,
4. a joint effort of not only the City and the County, but
5. other political subdivisions. The area being sought is
6. served where the needs have occurred. In some instances
7. by extensions or short minor extensions of the City's
8. lines into the area; and in other, and in most cases,
9. by the County itself. The water has likewise been pro-
10. vided within the area sought. The City obviously has
11. ample capacity to do this and is willing to sell it at
12. a profit, and has made a profit. It has extended its
13. services in some instances on its own and in others by
14. contractual arrangements, in which case the County is
15. serving areas. The County on the other hand is in the
16. process of developing its own water system, its own sewer-
17. age system; it has participated in the Regional Authority.
18. It has made a strong effort to get along and to move
19. forward with the development of its utility system. I
20. think I have presented data to the Court today reflecting
21. the impact on the loss of customers. We have been in-
22. volved in the development of utilities in counties and
23. in municipalities, but in this case we are talking about
24. counties. for twenty-some odd years and we have found

1. that it takes a great deal of effort and an awful lot
2. of time to develop county utility systems. It's the
3. patterns of growth that take place along old roads that
4. require additional growth. The utility systems do not
5. come by easy means, and they are very expensive, because
6. generally the development is scattered. We feel that
7. the impact on the County's utility system would really
8. be almost devastating at this stage of the game. In the
9. experience I've had I feel comfortable in saying that
10. because I have seen it happen where it could have happen-
11. ed elsewhere in the State of Virginia. As to solid
12. waste, I pointed out earlier the location of the City's
13. landfill. And it occurred to me when I sat down I did
14. not point out for the benefit of the Court, again, the
15. location of the County's landfill. The area is served,
16. the City is served, those needs are being met. The
17. City certainly does not need additional land, nor is
18. there any real benefit for annexing a sanitary landfill
19. or having it within the boundaries of the City. Collect-
20. ion is provided by whatever means. It's private in the
21. County and they do have a program for expanding of
22. funding. The planning, I think testimony as presented
23. to the Court, that has been presented, certainly indi-
24. cates that the City and the County have attempted to

1. plan their programs. The City has done a good job and
2. started early and had a more congested area to contend
3. with at an early stage. On the other hand, in their
4. planning process maybe they have been too rigid in doing
5. so to the point that businesses have not been attracted
6. to downtown. Maybe some attention will have to be given
7. to that particular subject somewhere along the next few
8. years in order to attract more private interests locally
9. as well as outside. There is certainly control on sub-
10. division development and zoning. Snow removal, I think
11. we've heard testimony regarding that, and we've heard,
12. I believe, the Resident or Local Engineer speak on the
13. subject of being able to clear all County roads within
14. Rockingham County within a period of twenty-four hours.
15. The City has such a system. I do not think they clear
16. the roads as quickly. I certainly am sure they clear
17. the main arteries. I think the Resident Engineer indi-
18. cated that that had not been true. Street maintenance
19. is certainly no problem. It's handled in different
20. manners. It is throughout Virginia. County government,
21. in counties throughout Virginia, it is generally the
22. service of streets and the maintenance and design is
23. generally done by the State Highway Department. Cities,
24. it can be done by a combination of the city and state

1. effort. Subdivision controls handle what streets need
2. to be built in new developments. But street maintenance
3. is certainly handled in both localities. Curbs and
4. gutters have not been provided in the areas of need, or
5. at least in the area sought and obtained in 1962 within
6. the City. There is a lacking of those improvements.
7. They afford better drainage in more congested areas.
8. Roads and streets as well as the curbs and gutters in
9. the area sought, there is maybe a lacking of curbs and
10. gutters in subdivisions, but the lots are larger, whereas
11. the controls of the subdivision ordinance provide curbs
12. and gutters will be required when the lots are smaller
13. or more congested and there is a need for them. It's a
14. different need. As to street lighting, we often concern
15. ourselves about crime. Certainly the City is equipped
16. with its own Harrisonburg Electric Commission. It does
17. serve part of the area sought, not all of it. The area
18. being sought by the City can be provided with street
19. lightings wherever it's necessary and when it's necessary
20. by arrangements between the Board of Supervisors and
21. with the power companies themselves, Vepco. I do not
22. think there has been any evidence indicating a strong
23. need for street lighting in the area sought. Certainly
24. in a more congested area it might be necessary, such as

1. in the City of Harrisonburg, but I think it's amply
2. covered presently. As to sidewalks, I mentioned earlier
3. that certainly the City is lacking in sidewalks as com-
4. pared with a city of this size and comparable to other
5. cities throughout the state. The area also lacks side-
6. walks, but there is not a need as strong in the area
7. sought as there is in the more congested areas of the
8. City. As to libraries, that's a joint effort by the
9. City and the County. It serves the City, it serves the
10. area sought, and the library facilities serve the area
11. that will remain. As to public recreation, both have
12. recreational programs. The City is certainly to be
13. congratulated on its recreational facilities in which
14. we had lunch one day. Which, as I understand, was fund-
15. ed by the federal government, but is certainly an asset
16. to the area as a whole and to the City in particular.
17. The County does have facilities. It makes efficient
18. use of the school facilities that are spread out through-
19. out the County and are available to the area sought, the
20. residents of that as well as the remaining area. And
21. they are developing programs all along. Their senior
22. citizens program is developing. As to community of
23. interest, certainly a community of interest exists. I
24. know that religion or churches mean a great deal in this

1. area. I remember testifying in December of the number
2. of churches that exist within the County as opposed to
3. those in the City. There are far more in the County
4. than there are in the City, and they are utilized ob-
5. viously throughout the area. There is shopping. There
6. are interests in businesses and so forth, people do
7. utilize the Valley Mall, people also utilize the down-
8. town area. I indicated to you the places of employment,
9. the number of establishments that have grown in the
10. City since 1962. The fact that employment, the number
11. of employees in establishments of four employees or more
12. has been somewhat outstanding since 1960.

13. Q. Mr. Overman, the Commission did find that the farming
14. community in the area sought for annexation had a strong-
15. er community of interest with the remaining portion of
16. the County. Do you concur with that finding?

17. A. Absolutely. I think it's evident and I think it was
18. very definitely a consideration of mine when I was at-
19. tempting to provide you with an answer to your question
20. on a compact body.

21. Q. If you could summarize.

22. JUDGE MOON: I think he's already summarized.

23. A. I think I have, Senator, pretty well touched on the
24. items.

1. JUDGE MOON: I think he's summarized every
2. witness who testified for the County.

3. MR. FITZGERALD: I was going to get him to
4. summarize his summary.

5. A. Actually, Your Honors, I think I have attempted to do
6. that. I think in the exhibits that we have prepared
7. and presented to you, a lot of it might appear to be
8. a duplication. It was to be added to your supply for
9. your benefit. I will not elaborate on every item and
10. number again, it's not my intention to do that.

11. Q. Suffice it to say, is it your judgment that the need
12. for annexation does not exist?

13. A. I do not feel that there is any need for annexation.
14. I don't find it expedient to do so.

15. MR. FITZGERALD: Your witness.

16. JUDGE MOON: We'll take a recess.

17. (Recess)

18.
19. MR. THUMMA: We would like to offer into evi-
20. dence Petitioner's Exhibits B and C, representing a metes
21. and bounds description of the property. I don't believe
22. that either the City or the County have any objections
23. as to the accuracy of the metes and bounds description.

24. MR. FITZGERALD: We don't have any objection

1. is simply update it.

2. A. I would say that is correct.

3. Q. Tell the Court the line that you offered to the Commis-
4. sion on Local Government?

5. A. I don't believe I offered a line to the Commission on
6. Local Government. I think it was a line that a member
7. of the Board of Supervisors had spoken to, and I said it
8. was in keeping with some area. I don't know that I offer-
9. ed a line; I don't think I used that language.

10. Q. Did you talk about another area less than the whole that
11. you thought would be desirable and meet the City's needs
12. if there was to be any annexation?

13. A. I'm not offering this line either, Mr. Cogar. I don't
14. think any area is necessary and expedient for annexation.

15. Q. I think you made that clear.

16. A. Yes sir, but I did not offer a line in December.

17. Q. Back to the question, did you tell the Commission that
18. if there was a need for annexation, that it ought to be
19. an area less than the whole and did you delineate that
20. area?

21. A. I delineated an area that had been discussed by a member
22. of the Board of Supervisors for the Commission.

23. Q. And that was an area which you recommended for annexation
24. if there was to be any annexation?

1. A. That is correct. I think it was commonly known as area
2. four.

3. Q. And you had an acetate overlay, did you not?

4. A. Oh, yes sir, I had an acetate overlay. I had two of
5. them, as a matter of fact; one showing all the study
6. areas and one showing the City with area four.

7. Q. I hand you an acetate overlay which says, "City Plus
8. Area No. 4."

9. A. I recognize it.

10. Q. And you took that and you imposed that on County Exhibit
11. 77 . . .

12. A. I don't believe so.

13. Q. Or the equivalent of that on the map you had before the
14. Commission on Local Government.

15. A. I cannot remember what map we imposed it on. It was a
16. map of the County area sought.

17. MR. FITZGERALD: If it please the Court, I've
18. let this go on a while to see if anything material came
19. out of it. From what the testimony is now, there was a
20. line that was drawn, as area, that was rejected both by
21. the Commission and the City; and, having been rejected
22. by the Commission and the City, we certainly are not
23. bound to stick our heads in the mud and not analyze some
24. other area. It's immaterial now since the City rejected

1. it and the Commission rejected it.

2. JUDGE MOON: Well, I think it's proper cross
3. examination. He suggests this area as being the compact
4. area today, and he suggested another at a different time,
5. and I think it's subject to cross examination. Overruled.

6. Q. All right, sir. The area that you discussed with the
7. Commission as one which if there was to be annexation
8. would serve the City's needs for growth, was what is
9. shown as Area No. 4, is that correct?

10. A. Yes sir, I just said that. Right, Study Area 4.

11. Q. And where is that, on what exhibit?

12. JUDGE ARTHUR: Eighty-two.

13. Q. You say you didn't offer Area No. 4 to the Commission as
14. the area to be annexed if there was to be some annexation?

15. A. I don't recall using the words "offer it" for annexation.

16. Q. All right.

17. A. I remember testifying certainly to the Study Area 4 and
18. the composite new city composed of existing plus Study
19. Area 4. Yes, I remember that. I do not remember the use
20. of the word "offer".

21. Q. You testified to Areas 1, 2, 3 and 4, is that correct?

22. A. Oh, yes sir.

23. Q. And of the four, you suggested to the Court that if there
24. was to be any annexation, it should just be Area 4, is

1. that not a fact?

2. A. Mr. Cogar, I don't remember my language being in that
3. fashion. I do not recall that. I do recall, as I indi-
4. cated to you a moment ago, that Mr. Hoover, a member of
5. the Board of Supervisors had testified just prior to my
6. doing so and had indicated some possibilities of includ-
7. ing Area 4 as opposed to the entire annexation area for
8. consideration by the Commission. And I think I did pre-
9. sent evidence of a composite nature, City-County, which
10. is why the overlay was presented.

11. Q. But you were not offering that as an alternative to the
12. whole?

13. A. I think I was offering evidence to the Commission along
14. that . . . I do not recall ever using the word "I offer
15. this to the Commission".

16. Q. You do not?

17. A. That is not . . . and, as I said . . .

18. Q. Let me see if you said this. I'm referring to Volume 4,
19. page 138, of your testimony which reads: "In this parti-
20. cular instance we were looking for an area that reflected
21. some compactness. It reflected the composition within
22. it that seemed to be compatible with the City of Harri-
23. sonburg. The line does, in fact, either follow rights-
24. of-way, roads or property lines. We took into considera-

1. tion service areas and drainage, water and sewer, as far
2. as service areas are concerned, we were guided to some
3. extent by the County of Rockingham. It was a matter of
4. obtaining something that seemed to be reasonable and of-
5. fered some compactness and somewhat in agreement with
6. what Mr. Hoover was speaking of earlier. That if there
7. is a need for annexation, it should, if it's demonstrated,
8. that it should be to the west." Do you recall making
9. that statement?

10. A. I don't think I said anything "offered" in there. I said
11. it might offer some compactness; I don't think I said I
12. offered it to the Commission.

13. Q. Let me just put it one other way, Mr. Overman. You tes-
14. tified that Area 4 would meet the needs of the City if
15. there was to be an annexation, did you not?

16. A. I think it would meet the needs of the City. Under the
17. circumstances at that time, I do. And, if you recall in
18. this instance I set forth some guidelines for myself to
19. determine a line, more in keeping with the requirements
20. altogether. And yet I do feel that Area 4 would more
21. than adequately meet any needs of the City if there is
22. found some need for expansion. Or, if you subscribe to
23. the theory that the City and all cities ought to be big-
24. ger. But, again, I prefaced any comments regarding this

1. area by a list of things we were keeping in mind. And I
2. think in that case I made mention of the fact that I was
3. guided by the Board of Supervisors for Rockingham County
4. and by Mr. Hoover.

5. Q. Area 4 is the product of five and a half years of your
6. involvement in this annexation proceeding, and that cut-
7. out that's before you is a product of four days work; is
8. that right?

9. A. No.

10. Q. Isn't that your testimony?

11. A. I don't agree with that statement. I really don't know
12. whether it's a statement or question, Mr. Cogar, and I
13. don't mean to evade your question, if that's it. It
14. sounds as if you were implying that five years of exper-
15. ience, that we came up with one idea, and in four with
16. another.

17. Q. I'm not suggesting, I'm saying that, and asking you if
18. it isn't true.

19. A. Well, I don't think that's true. I think that we have
20. been involved in this case for six years and have assem-
21. bled a tremendous amount of data, evaluated an awful
22. lot of things that have happened. We have even watched
23. this area grow and change, the City itself.

24. Q. Since December?

1. A. Since 1975. In fact, I have watched it since 1960 when
2. we were involved in the prior annexation case.

3. Q. Well, why not that line in December?

4. A. I told you the criteria under which I proposed the line
5. here or have put forth the line. I'm not even proposing
6. it to the Court as an annexation. I was asked the ques-
7. tion, and I established some criteria for myself, which
8. I recited to the Court and I'm sure they don't want to
9. hear it again, that I elected to use in reaching a con-
10. clusion.

11. Q. If we brought you back here next week with that same set
12. of criteria, you could draw another line.

13. A. The fact of the matter is, I gave attention to several
14. alternatives. In order to satisfy the criteria that I
15. established, this was the result.

16. Q. Well, now, what you actually did was sometime last week-
17. end or Friday you sat down and cinched up a noose just
18. about as tight as you could get it around the City of
19. Harrisonburg and then looked inside that line and deter-
20. mined what was in it, compiled this exhibit and brought
21. it here and testified to it today.

22. A. If that's a statement, I don't agree with that. If it's
23. a question, I will say no to it.

24. Q. Now, those criteria that you take into account, did you

tion of the Commission the same purpose, to provide papers on the subject, which I did.

Q. And on page three you show how many annexation proceedings you have participated in?

A. They are not all of them, sir. They are just a representative sample of them. There are about thirty of them.

MR. FITZGERALD: I can't hear you.

A. Excuse me.

MR. FITZGERALD: Could you speak up a little bit.

A. Approximately thirty to thirty-five cases are listed there, I believe; I haven't counted them. I'll be glad to count them for you.

Q. No, just tell me how many annexation cases you have participated in and testified in.

A. Of those listed I can see approximately fifteen at a quick count that I have actually testified in. I can see several there that were settled by the local governing bodies. All of them I have participated in.

Q. And in those cases in which you have testified, have you not consistently expressed the opinion that no annexation was required by the annexing city?

A. My only hesitancy is created by the Chesterfield County case, but as I recall that is probably correct, sir.

1. Chesterfield leaves me with a question in my mind.

2. Q. Did you testify to the need for annexation in that case?

3. A. I do not recall offhand as to exactly . . . I definitely
4. participated in the case, it was tried twice before the
5. judges, and I testified twice. I know the case was set-
6. tled by the governing bodies, the Court accepted the line
7. proposed by the governing bodies, even though all testi-
8. mony was presented for the case. And I participated in
9. both the settlements, as did your partners.

10. Q. And neither in that case or any other in which you have
11. testified have you ever seen any need for any annexation,
12. is that correct?

13. A. I said, I'm sure that is probably the case. Chesterfield
14. leaves some question in my mind in answering it.

15. Q. And your firm does work around the state and have for
16. a number of years?

17. A. We have represented county governments by and large in
18. Virginia. We have represented city governments.

19. Q. Can you tell the Court of any town or city in the State
20. of Virginia that in your opinion by the criteria that you
21. use, require or need any annexation?

22. MR. FITZGERALD: Well, I don't believe the
23. witness has testified he's made studies of every county,
24. town or city in the state.

1. JUDGE MOON: Unless you know of one. You can
2. answer it then.

3. A. As a matter of fact, I have prepared studies regarding
4. annexation for municipalities.

5. Q. The question is, do you know of any locality, town or
6. city within the state today, that you would be willing
7. to testify was in need of annexation?

8. A. I thought you were relating it to studies, and had I done
9. such a thing in the past. I understood your question
10. in that direction. At this moment I am not able to
11. answer that question, Mr. Cogar, without knowing all the
12. counties and all the cities that might be involved in
13. your question.

14. JUDGE MOON: Just the ones you know. He's
15. asking you in your experience have you run across any,
16. do you know of any today? If you don't know, just say
17. you don't know.

18. A. I know of nine. But, as it relates to the future, I do
19. not.

20. Q. Now, throughout the trial of this case, Mr. Overman,
21. and all the cases that preceded it in which you and I
22. have been involved, I have seen numerous acetate overlays
23. repeatedly imposed on maps which have the benefit of
24. showing the association between that which is included

1. and that which is excluded, they both can be seen. Now,
2. why did you not use an overlay for your cutout?

3. A. Well, I think I can explain that very simply. I think
4. that compactness sometimes is . . . we are led to think
5. of compactness, as in the case of most of the exhibits
6. the City and the County have before this Court, is only
7. related to a piece of paper on which those exhibits are
8. shown. I think they have to relate to all other matters.
9. In this case we felt that all other exhibits had taken
10. this same impression. If you look at the exhibits pre-
11. pared by both your city consultants and ourselves, they
12. are related to the outside boundary of the area being
13. sought, and it indicates . . .

14. Q. Excuse me . . .

15. A. . . . compactness. Yes sir.

16. Q. While you're doing this, and you tell me what you're go-
17. ing to do, I would like for Mr. Raming to take this red
18. pencil and draw around the boundary of that in order that
19. we may discuss it a little more fully, and I'll ask you
20. some other questions and not take up the Court's time
21. while that's done.

22. MR. FITZGERALD: Do you wish to hire him?

23. (Mr. Raming draws on exhibit.)

24. MR. COGAR: I want it on the map.

1. MR. FITZGERALD: May it please the Court, I
2. don't mind trying to accommodate Mr. Cogar, and I know
3. that whole thing up there bothers him quite a bit; but
4. the exhibit under that is one of our exhibits.

5. JUDGE MOON: Well, I thought you might object
6. to that. Do you have just a regular exhibit that size?
7. You know, there are some of these maps that didn't have
8. any material on them, aren't there? Do you have a copy . .

9. A. A blank, yes sir.

10. MR. COGAR: That's without the land use on it.
11. Is our land use the same size?

12. MR. FITZGERALD: Do you want to put a piece of
13. acetate over that, Mr. Cogar?

14. MR. RAMING: This won't mark on acetate.

15. MR. FITZGERALD: It won't mark on acetate.

16. Q. Until we get that matter resolved, let's talk about what
17. we can see. Where within the area that is shown has this
18. area seen any significant industrial development within
19. the last twenty years?

20. A. I don't know that I can be specific as to the years in
21. which some of these blue industrial areas have developed.
22. I did not make a study as to that period of development,
23. so I'm not able to answer your question. I made no land
24. use study involving time or periods of development.

1. Q. You made no effort to ascertain the growth patterns and
2. where the action is in terms of residential and commercial
3. and industrial development?

4. A. Well, I don't think . . .

5. Q. For the purposes of evolving that cutout?

6. A. I think growth patterns become quite obvious on the map,
7. especially a land use map. I don't think they are neces-
8. sarily related to whether they were built in 1958 or 1978.
9. The patterns are generated and can be illustrated by use
10. of the coding which is done here, the color coding. I
11. can't answer your question.

12. Q. I think that if we had the benefit of the whole area,
13. that we could see the growth experience within the area;
14. but, unfortunately, through that cutout we can only see
15. that which immediately surrounds Harrisonburg as shown
16. there. You say you go back in the sixties in your know-
17. ledge of Harrisonburg, you said that a little earlier,
18. didn't you?

19. A. I think I explained that I was involved in the 1960 case.

20. Q. And my question once more is, what significant industrial
21. development has occurred within that part of the annexa-
22. tion area visible through our cutout?

23. A. And I said I don't know to your question. I said that,
24. sir.

1. Q. Is that not a significant consideration to be taken into
2. account in determining where an annexation line ought be
3. located?

4. A. As to the time, no.

5. Q. As to its potential for development?

6. A. I don't think the time, as to the year it was built, has
7. any bearing. It has some relationship to the patterns
8. that are generated, and I think the patterns are clear
9. on the map, the development trends.

10. Q. Well, Mr. Overman, if I've got four million acres in the
11. middle of the Sahara Desert and nothing has been put
12. there since the beginning of time, you would accept the
13. fact that anything is unlikely to occur within the rea-
14. sonably near future in that area, wouldn't you?

15. A. Besides it would be a poor investment, but I would agree
16. with you, yes sir.

17. Q. Now, from the standpoint of meeting any needs for indus-
18. trial development, would you tell me what the industrial
19. growth pattern has been within the area that I can see
20. through that hole.

21. A. I think it's followed the railroads, which are very typ-
22. ical; you've got a following here. I think a pattern of
23. industrial development is following to the north along
24. the railroad here (indicating on map). We know that this

1. is the Frazier Quarry, it existed in the sixties. There
2. is industrial development occurring along the Waterman
3. Drive area, in the City here, and it could continue along
4. that area. This is the quarry operation behind the Sher-
5. aton area, north of there.

6. Q. Excuse me, you mentioned specifically two things, that's
7. two quarries.

8. A. You asked me to show the trends.

9. Q. All right, now, what other industry by name and by the
10. nature of business, has located within this hole within
11. the last twenty

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

13. Q. But you do know if you take the City into account from
14. all the testimony that you've heard, that the only thing
15. that's located within the City is Kawneer and Dunham-
16. Bush, which required friendly annexations. Is that cor-
17. rect?

18. A. They required annexations, or annexations took place in
19. conjunction with them.

20. Q. Now, within this thing I'm . . . whatever I'm looking
21. through here . . .

22. MR. FITZGERALD: It's the City of Harrison-
23. burg.

24. Q. There is one interchange, is that correct?

1. A. No, there are two. There's the Cloverleaf interchange
2. and then there's another interchange, this one here at
3. Port Republic Road.

4. Q. What is the extent of development at those two inter-
5. changes?

6. A. Howard Johnson's is there, as well as the Train Station
7. Restaurant I think exists right in this area. This is
8. Forest Hills.

9. Q. What is the potential for development to the east of
10. 81?

11. A. Potential?

12. Q. Yes.

13. A. I think both for business and, of course you're confined
14. to the James Madison University property here, that they
15. intend to continue with that; but certainly residential
16. growth around the interchange as well as further business
17. development.

18. Q. Let's stay in that area.

19. A. What is the potential you asked?

20. Q. Yes sir, in terms of land available at that interchange,
21. what is the potential for development?

22. A. I just told you, both residential and business potential
23. in my opinion.

24. Q. Well, where could you have some business potential?

1. A. Well, these are long lots and small houses. These are
2. all available or possibly available for conversion to . . .

3. Q. It's already in a residential use, isn't it?

4. A. It may be, but the potential is still there; it's a major
5. interchange.

6. Q. Well, now, how many businesses today are going to come in
7. and buy residential property at that location, when there
8. are miles and miles surrounding the City beyond that
9. hole which don't require the removal of properties in
10. order to build new ones?

11. A. Well, the Train Station Restaurant is brand new, or rela-
12. tively new, I know that, near the Howard Johnson's which
13. has developed there in recent years.

14. Q. Let's come on down south. From that point to the south-
15. ern end, what is the access in there?

16. A. Access is the interchange in the area.

17. Q. That road system does not lend itself to development,
18. does it?

19. A. What, the interstate?

20. Q. Well, it's a limited access highway, is it not?

21. A. It does not lend itself to development along it except
22. by interchanges, that is correct, and connecting roads.

23. Q. Let's come over to the west side. This is basically your
24. Area 4 that was offered, discussed . . .

1. A. Study Area 4.
2. Q. Yes, the last time.
3. A. That is some portion of it, yes sir.
4. Q. Now, what industry has located in there, or what commercial enterprise has located in there in the last twenty
5. years?
- 6.
7. A. Well, Frazier Quarry has expanded, I'm aware of that. As
8. to a location of specifically industry, I do not know.
9. I answered that question earlier. Specifically as to a
10. business, as to a time of arrival of any business, I cannot
11. answer that specifically. I did not study it with
12. relationship to dates. I think there is a pattern of development
13. occurring and existing, for example, in this
14. area which is a mixture of commercial and industrial development;
15. at the intersection near . . .
16. Q. You have a little block down there you could cover with
17. your thumb that's got some buildings on it, what is . . .
18. A. Well, a scale of one inch equals eight hundred; I could
19. easily do that. But this happens to be on U. S. Route
20. 42. I might point out, Mr. Cogar, this is the area the
21. City is seeking, including this interchange and including
22. that area around the interchange.
23. Q. It's part of the area the City is seeking.
24. A. But you're still seeking it. They will still develop,

1. the patterns are there. They will develop whether there
2. is larger or smaller.

3. Q. They will? Well, why are we left with--take whatever fig-
4. ure you want, twenty percent of vacant land in the City
5. that hasn't developed when the City is experiencing enor-
6. mous growth patterns all around it? What is your explana-
7. tion for that?

8. A. Well, I don't think you probably have made it as palatable
9. to developers and to private money. I think development
10. has occurred; I indicated there had been increases in the
11. numbers of establishments of businesses in the City in
12. the last twenty years.

13. Q. On that score, did you compile any figures to indicate
14. what the gross sales of businesses were?

15. A. No, I did not.

16. Q. On that map on which you show some businesses that have
17. gone in after other tenants have left the City, did you
18. make any study as to what the revenues were that were
19. generated by those in contrast to those which had moved
20. out of the City.

21. A. I don't know which exhibit you're talking about, sir.

22. Q. The one with the pictures on right behind the agricultur-
23. al use map.

24. A. Well, this is County Exhibit 99 having to do with the

1. relocation of businesses. And you asked me, I'm sorry,
2. I didn't understand.

3. Q. Have you made any study to ascertain how the gross sales
4. of the businesses that have come into these properties
5. that were formerly occupied by businesses which have
6. moved into the annexation area, how those sales compare
7. to the sales of businesses that left?

8. A. No sir. The purpose of this exhibit was to illustrate
9. the fact that even though businesses may have moved from
10. some of these buildings, such as these residences that
11. were occupied by businesses, they have converted to a use
12. or . . .

13. Q. For any building there is always some use.

14. A. They have obviously converted to a use, although there
15. are approximately four that remain vacant at the time.

16. Q. Now, let's go back to the peep show over here. Within
17. this area that you have delineated, what are the major
18. residential areas?

19. A. Well, existing and one which is known, as a matter of
20. fact one which petitioned for annexation in 1961 and was
21. denied, was the Forest Hills. That's one of the major
22. ones. That is a subdivision that's been there for some
23. while. This was the Bruce property of that suit, which
24. was denied.

1. Q. Well, if you want to you can give me the history, but I'm
2. just asking you . . .

3. A. I'm just pointing that out. Of course, residentially
4. speaking, Park View as we saw on the tour is a heavily
5. developed residential area, in both multi and single fam-
6. ily categories. To the left or west of the City, a group
7. of houses here that have formed a pattern.

8. Q. Is that a planned subdivision that has a name?

9. A. I cannot right offhand remember, but I'll be glad to find
10. that for you.

11. Q. Of all the residences in that area, of the residents who
12. reside in there, how many are in Park View and how many
13. are in the rest of the area?

14. A. How many residences?

15. Q. How many residents are in the Park View area compared
16. with the rest of the area?

17. A. I don't know, sir.

18. Q. You don't regard that as a significant fact to put before
19. the Court.

20. A. No, I don't. I don't. I think it's available, if the
21. Court would like to have it. I did not make a count of
22. houses or units. I could probably get it without a great
23. deal of trouble, if the Court would like to have it.

24. Q. Were you here when Mr. Byrd testified about the Mennonite

1. communities today?

2. A. No, I was not.

3. Q. I think that he testified that the Mennonite communities
4. are essentially self-contained, would that be your obser-
5. vation?

6. A. Here you mean?

7. Q. Yes.

8. A. In this area? That's possibly so to some degree anyway.

9. Q. And do you know that of the school age children in that
10. area a very large percentage of them do not attend public
11. schools?

12. A. A good portion of them do, I'm sure. I don't remember
13. what the count was, but we did have a count on it, on the
14. bulk of the area.

15. Q. Well, you know that a very large percentage of students,
16. school age students . . .

17. A. No, I do not know it by percentages.

18. Q. Well, look it up in your exhibits or in your information.

19. A. I don't think I have it here.

20. Q. Do you have your study areas broken down?

21. A. As to land uses, I believe I do.

22. Q. Do you have anything in your exhibits that indicate in
23. your study areas what the number of school age population
24. is that's enrolled in the public schools?

1. A. I beg your pardon, that was an exhibit, but I don't recall
2. the number of that exhibit. You're speaking of Study
3. Area 4 in which Park View lies? The school ADM, student
4. ADM, in Study Area 4 was 156.

5. Q. How many of those attend public schools?

6. A. That is the ADM of the public school system.

7. Q. What is the school age population?

8. A. Approximately 283.

9. Q. While that is far and away the most significant residen-
10. tial area within the cutout, is it not fair to say that
11. the area of interrelationships as they are formed over
12. the years in public schools, there is less community of
13. interest in that particular area than in any other around
14. here?

15. A. Less community of interest with . . .

16. Q. The City of Harrisonburg. Or would be in the event of
17. annexation.

18. A. I'm not sure that I can answer that without a little
19. more thought on the subject; because it is, as you say,
20. a community somewhat unto itself as a neighborhood. On
21. the other hand, its dependency upon the City is for ser-
22. vices and things of that nature, purchases and that type
23. of thing, are pretty strong and always have been.

24. Q. In the event it's annexed it's going to have a signifi-

1. cantly heavier leaning on the City in terms of what needs
2. to be done within that water and sewer system, is that
3. not correct?

4. A. It's going to have some needs for improvement in the
5. water and sewer system, yes sir; which, I assume, the
6. City would have to provide. If annexed to the City, it
7. would have to be, regardless of whether it's this area
8. or the area which you're seeking in the ordinance that
9. you filed.

10. Q. In drawing that line you have excluded within the annex-
11. ation area a number of other areas which receive City
12. water, have you not?

13. A. Oh, yes sir.

14. Q. And City sewer?

15. A. Which in many instances have been providing the services
16. for a number of years, yes sir. Fairway Hills, I believe,
17. is an area to the north of U. S. 33 served by the City.

18. Q. You have also excluded to the east the most significant
19. commercial and industrial development in the environs
20. of Harrisonburg in the last twenty years, is that not
21. true?

22. A. You're speaking, I assume, of the Valley Mall. Yes sir,
23. I did exclude it.

24. Q. How about the Industrial Park south?

1. A. You mean just to the south of the Valley Mall?
2. Q. Southwest.
3. A. South . . .
4. Q. In the southwest part of the annexation area.
5. A. Southeast you mean, sir?
6. Q. Southeast.
7. A. Yes, that is excluded.
8. Q. And the rather considerable commercial development occurring on Route 11?
- 9.
10. A. Yes sir. But, as I said, in my effort to draw a line, I
11. was attempting to satisfy what I interpret the statutory
12. requirements, what they speak to, and that is the provision
13. of properties or lands in which the City may develop,
14. not already developed, commercial and industrial property.
15. It's lands into which they may develop the City.
16. Q. Let's pull that back again now.
17. A. What's that?
18. Q. The . . .
19. A. 52A?
20. Q. If that's what it is.
21. A. (Cutout removed)
22. Q. Tell the Court, if you will, please, now that we have the
23. whole area sought before us, the areas that are not adaptable
24. to City services.

1. A. Most of the green area are not adaptable readily to it,
2. they are farm land. There is no need for the service,
3. and they are certainly not adaptable to it.

4. Q. I didn't say in need of it at the present time, but not
5. adaptable to it when development comes.

6. A. I don't believe the farm land is adaptable to public
7. services; the need doesn't exist, so there's no adaptabil-
8. ity requirement one way or the other.

9. JUDGE MOON: Well, if the need exists, is it
10. adaptable? I believe that's the question.

11. A. If the facilities were there, certainly they could be,
12. Your Honor. Just as much so as the areas that are devel-
13. oped into which the needs and services have been provided.
14. I was thinking of water and sewer in those cases. There
15. are other services of government that may offer some prob-
16. lems. The farm land into a City, I pointed out, and in
17. drawing the line as such, I was attempting to address this
18. problem of land use assessments. The variations in that.

19. JUDGE MOON: Well, the question is adaptable.
20. What does that mean? I mean, I assumed it meant could
21. you run water and sewer to it. What else does it mean?

22. A. Well, that's the interpretation I made of his question.
23. Unless he wanted further services.

24. Q. Your testimony is that it is not adaptable?

1. A. As the need arrives and the services are there, it is
2. adaptable, yes.

3. Q. And is that not what has happened at the outer peripheral
4. of all that line and isolated pockets leading back into
5. the City over the last several years.

6. A. As it has happened in Belmont Estates and Massanetta
7. Springs, as the need arises.

8. Q. And the Industrial Park and the Mall and everything else
9. that you want to speak to on the outer perimeters, as that
10. has gone into the marketplace it has been adaptable to
11. City services, has it not?

12. A. Yes sir.

13. Q. And I think you have agreed with me before that farm
14. land is the best land for development.

15. A. In December you asked me the question, and I agreed with
16. you that it is very good for development.

17. Q. Now, with respect to sink holes and slopes and flood
18. plains and the like, let me ask you if you agree with
19. this. The general rule is that commercial, industrial,
20. development is economically feasible on land that slopes
21. up to five percent and preferably under three percent,
22. residential development is considered feasible on slopes
23. up to fifteen percent. Do you agree with that?

24. A. I would say I would agree with that, sir. It is feasible

1. beyond that point too though. I don't think the feasibil-
2. ities are limited just to five percent or three percent.

3. Q. But you get into matters of economies of scale the
4. rougher the terrain, right?

5. A. Well, I think that's true with any site development.

6. Q. Now, in the 1962 area, would you give us again the infor-
7. mation you had there with respect to what has occurred
8. since that annexation. I think you gave a percentage of
9. vacant land in that area at the time of annexation.

10. A. Nine hundred and thirty acres, 48.3%, were in agricultural
11. and vacant categories, based upon a land use study that
12. I conducted, as a matter of fact, in the 1961 case when
13. I was employed by Langley, McDonald and Overman, and it
14. was done in November; these were calculations made in
15. November, 1962 following the award of the area.

16. Q. You were not suggesting to the Court that that same per-
17. centage of vacant land continues to remain in the 1962
18. annexation area.

19. A. I don't believe I said that, sir.

20. Q. What was it you said?

21. A. I said . . .

22. Q. You said that's approximately the same percentage as you
23. now have in the entire City after the 1962 annexation?

24. A. No, I think the statement I made is that based upon the

1. City's own exhibit, there are 339 acres of vacant land.

2. Q. In the entire City?

3. A. That is correct.

4. Q. There were . . .

5. A. And that that is equivalent to approximately ninety per-
6. cent of all the vacant land, or the vacant land amount,
7. annexed in 1962. It so happens that in studying we pre-
8. pared an existing land use of the area which was annexed
9. in 1962, we prepared an updated one in 1981, which was
10. on a map exhibit, which showed approximately 731 acres
11. or approximately 38% of the area annexed in 1962 as being
12. still vacant.

13. Q. What percentage?

14. A. Approximately 38%.

15. Q. You were here when Mr. Wade testified to the census fig-
16. ures indicating that since the 1962 annexation the popu-
17. lation has grown from some nine hundred to over nine thou-
18. sand people?

19. A. A lot of that . . . the growth is related in the City as
20. a whole to the J.M.U. or James Madison. I think the City
21. exhibit shows that.

22. Q. Would you say it's a fair assumption or fair to say, Mr.
23. Overman, that a substantial percentage of the land that
24. was vacant when the City annexed in 1962 remains vacant

1. today?

2. A. I think I said that, 731 acres out of 930, a substantial
3. amount remains vacant.

4. Q. Of the City that annexed in 1962, within those boundar-
5. ies, we know a great deal of that land continues to be
6. vacant.

7. A. Within the area annexed in 1962 . . .

8. Q. No sir, within the City that annexed in 1962.

9. A. All right, sir, I wanted to make sure. Now, would you
10. ask the question, I was confused about it.

11. Q. Within the City that annexed in 1962, a substantial per-
12. centage of the land that was then available continues
13. vacant until this day.

14. A. Some portions of it, yes sir. As a matter of fact, be-
15. tween December and April your City exhibits alone show
16. that you used 166 acres of your vacant land in four months.
17. I don't quite understand where, but in your update of your
18. land uses.

19. Q. Well, whatever is vacant in the City today was vacant in
20. the annexing City in 1962, is that fair to say?

21. A. I wouldn't say all of it is necessarily vacant.

22. Q. Well, we may have had a building burn down or taken down.

23. A. There could be some changes.

24. Q. But for the most part that's fair to say, isn't it?

1. A. I do not know that though.

2. Q. Do you agree with the conclusion of the Commission on
3. Local Government that the sites within the City of Harri-
4. sonburg for residential, industrial and commercial are
5. not as competitive as sites within the area sought to be
6. annexed?

7. A. No sir, I don't altogether.

8. Q. Wherein do you disagree with that?

9. A. Well, I attempted to show earlier that I believe there
10. are sites within the City, and from the studies that we
11. did make, and even in photographs we took and displayed
12. earlier on an exhibit, we do feel that there are a number
13. of sites within the City that are good for industrial and
14. business development.

15. Q. Where in the City would you put a Walker Plant?

16. A. Well, I don't know that you could necessarily put a Walk-
17. er Plant. There are plenty of industries that don't re-
18. quire the land size or have the same requirements of de-
19. velopment as Walker. I don't know that you will have
20. more than one Walker-type manufacturing plant in an area.

21. Q. Where within the City would you put a Dunham-Bush?

22. A. That is in the City. I don't know where you would find
23. a need for that much land. Dunham-Bush has a lot of land
24. that is not in use; but I think it could be built in the

1. northern area. I don't know the exact square footage of
2. Dunham-Bush, but its acreage is illustrated by this,
3. but that is certainly not the acreage or the size of the
4. building or the parking area.

5. Q. Where in the City would it be economically feasible to
6. put a commercial enterprise such as the Valley Mall?

7. A. I pointed that out earlier. I think there's a site here
8. that could have been developed for commercial develop-
9. ment, right here off of 11, with access from 42. It's
10. approximately seventy-five to eighty acres. It's border-
11. ed generally to the north by Pleasant Hill Road, on the
12. east side Route 11, it's within a short distance of the
13. interchange, the southern interchange, and then north
14. along 11. It's not far from U. S. 42, which leads in
15. from Bridgewater and also from Dayton. It's accessible
16. through the City. The City has done a fairly good job
17. on its roads and broadening Main Street, making it wider.
18. It's accessible from the City along that for the City
19. citizens.

20. Q. My question is . . .

21. A. That is the site.

22. Q. Are you telling the Court that that site which you have
23. just referred to is equally attractive and would be as
24. economically feasible to develop a Valley Mall on as the

1. site that the Valley Mall developed?

2. A. From a development standpoint, economically, I think it
3. might be even easier, because of the way the land pre-
4. sently is situated and as it relates to slopes. The
5. Valley Mall was not a very economical site to develop.
6. It was loaded with rocks and . . .

7. Q. Well, for the purposes of my question I'm not taking
8. into account cost of construction.

9. A. Well, you said economics.

10. Q. Economic feasibility takes in a lot of considerations
11. other than costs.

12. A. Well, I was relating it to the site itself.

13. Q. You're saying the site is big enough to accept a building
14. of that size.

15. A. I am, yes sir.

16. Q. From the studies that you've done and your planning ex-
17. perience, is that as desirable a site for a regional
18. shopping center as the site chosen at the Valley Mall?

19. A. It's very much as reasonable as several I can think of
20. right now.

21. JUDGE MOON: But he asked you as to that
22. particular one.

23. A. Yes sir, I think it is as reasonable.

24. Q. Even without the fact that the Valley Mall is immediately

1. adjacent to an interchange, is situated on Route 33?

2. A. I took that into consideration in my answer, yes sir.

3. Q. As a matter of fact, you really wonder why they went up
4. there when there was no water and sewer when they could
5. have gotten it in the City down at that site.

6. A. And water and sewer are available to the site, yes sir.

7. Q. If you had been the developer, it would have just been
8. a flip of the coin?

9. A. No sir, I didn't say that. The land, I said, is a site,
10. in response to your question, and I think it's suitable
11. for development of a mall-type structure.

12. Q. Well, it hasn't developed, has it?

13. A. No sir, it has not. It's zoned residential.

14. Q. Do you know of anybody who has sought rezoning?

15. A. No sir, I don't. It so happens that it's bordered with
16. businesses right along the highway. It's behind that
17. property and to the west; it's zoned residential.

18. Q. You're aware of the fact that the City ordinances do
19. permit rezoning?

20. A. I'm aware that they do.

21. Q. All right, sir. On your Exhibit 22 . . .

22. A. As I recall that's the lines and boundaries.

23. Q. Yes, is that in the book?

24. A. There is one in the book.

1. Q. You prepared the exhibits for the Commission on Local
2. Government, did you not?

3. A. I didn't prepare them for the Commission on Local Govern-
4. ment; we prepared them for the County to present, yes sir.

5. Q. You had a great number of map exhibits there at that time
6. to which you testified?

7. A. Yes sir.

8. Q. My question is this, that in all those that you put be-
9. fore the Commission on Local Government you showed the
10. National Forest and Parks in this manner. Now, has some-
11. thing happened up there?

12. A. No, I will explain that, if I may. The maps that were
13. prepared for the Commission on Local Government reflected
14. a boundary which is known as an acquisition line, which
15. is shown on this map. This is Exhibit 22, County Exhibit
16. 22, entitled "Lines and Boundaries". You will see a shad-
17. ed boundary. This line is identified as an acquisition
18. line. Congress, I assume, or whatever powers to be have
19. granted to the agency in control of these lands to acquire
20. any of the lands--to acquire any of the lands within those
21. boundaries. This was obtained from a letter directly from
22. the agencies, and I'll be glad to furnish it for you.

23. Q. Well, why did you cover it all green on all the exhibits?

24. A. They were acquisition lines. The federal government has

1. the right, the George Washington National Forest, can be
2. expanded to those boundaries, and they have permission
3. to do so today. They have the acquisition right to do
4. that, to acquire them, if they need them.

5. Q. But you did not make that explanation to the Commission,
6. did you?

7. A. No, I did not. But that's what the line is. The green
8. areas are the areas that they do own right at this time.
9. But they have the power to extend it beyond that point.

10. Q. Your Exhibit 61, would you turn to that, please, sir.
11. Now, what purpose were you attempting to accomplish by
12. subtracting the town populations from the County popula-
13. tion?

14. A. They are incorporated places. We were showing . . .

15. Q. Well, at the risk of being abrupt, so what? I mean, for
16. the purposes of this case.

17. A. They are incorporated, they have generally their own
18. means of providing services. We were removing Harrison-
19. burg, we removed the other incorporated places which are
20. indicated on there.

21. Q. Well, the residents of Harrisonburg are not taxed by
22. Rockingham County.

23. A. Not to my knowledge.

24. Q. So, the residents of Harrisonburg are not residents of

1. Rockingham County.
2. A. Not to my knowledge, that's correct.
3. Q. Residents of the towns are taxed by Rockingham County.
4. A. Right.
5. Q. They are County residents as well as town residents, are
6. they not?
7. A. That's right. But the towns have their own town councils
8. and they have their own means of providing services and
9. control of their area. That's the basic reason. They
10. operate somewhat as a
11. Q. Well, that's a plus effect for the County, is it not?
12. A. What is?
13. Q. The fact that they provide their own services, the addi-
14. tional amount they tax themselves.
15. A. Well, I think they became incorporated to provide what
16. services they may want themselves.
17. Q. To the extent that they do it for themselves, it relieves
18. the County of that obligation, does it not?
19. A. To that extent. Other services are required by them very
20. definitely and available to them.
21. Q. From the County?
22. A. From the County.
23. Q. Have you got a list of those?
24. A. I don't have them, but I could probably recite some of

1. them. The County offices, this Courthouse, belongs and
2. is utilized and maintained for the benefit of the town
3. residents, as one example. Certainly the County, in one
4. of the best demonstrations, has participated recently by
5. providing funds to provide the water line and the avail-
6. ability of their well and tank by contractual arrange-
7. ment for the benefit of the Town of Dayton.

8. Q. Well, Dayton is putting their share in that line, isn't
9. it?

10. A. That is correct, but it is also being participated in.
11. It is available to it.

12. Q. Well, that's a joint project.

13. A. True, and the County is constructing it, administering
14. it, and handling the entire construction of the project.

15. Q. Turn over to 84, 85 and 86, please, sir. Would you just
16. tell me what these three exhibits were supposed to show?

17. A. As I recall, they relate to--I haven't found them yet,
18. but they relate to the James Madison data, if I'm not
19. mistaken. They are supporting data of the children with-
20. in the school. I certainly have it here, Mr. Cogar; I'm
21. having a little difficulty finding it.

22. Q. It's in the book.

23. A. It's gotten out of place in the exhibits. Mine has just
24. slipped out of place, I'm sorry. (Exhibits given to wit-

1. A. Well, I didn't say that, sir. I didn't mean to imply
2. that, no.

3. Q. You did say that you had been in some cases where cities
4. had been required to install sidewalks. Would you list
5. the other cities that have been required by courts to
6. install sidewalks? I have a complete collection of the
7. orders here if you'd like to look at them.

8. A. No sir, the one that came to mind was the City of Bris-
9. tol in 1962. I cannot remember anymore right this second.

10. Q. You don't have any others.

11. A. I remember that at the time.

12. Q. Would you put up your Exhibits 68 and 69? Excuse me,
13. 67 and 68.

14. A. That's water and sewer, is that correct, sir?

15. Q. Yes. Now, what do you show in blue on there, on both
16. of them, 67 and 68, you show in blue shaded areas what?

17. A. The general areas of service.

18. Q. Well, there are lines within the areas and then there is
19. coloring around them. Are the lines where the lines are
20. located?

21. A. Approximately. You know, on a map this scale it's very
22. difficult when you're dealing with a piece of tape that's
23. almost a quarter of an inch thick, to show an exact lo-
24. cation. This is a generalization of location.

1. Q. Is the same true of your sewer map?

2. A. That's the approximate location, yes sir.

3. Q. What is the blue shading?

4. A. I said service areas, general service areas of those sys-
5. tems.

6. Q. Well, wouldn't it have been fairer in your opinion, Mr.
7. Overman, if you were going to show your lines and then
8. shade in the service areas, where you have City water and
9. sewer lines out there, why didn't you shade in their ser-
10. vice areas?

11. A. Well, we were speaking of areas of service, and as the
12. chart indicates, it says "County Service Areas", and that
13. was what I was trying to demonstrate.

14. Q. I understand. Well, you're aware that the City on their
15. exhibits, comparable exhibits, showed both City and County
16. lines and City and County services areas, didn't they?

17. A. I don't think there was any attempt to deprive you of
18. a service area. In the City this is an area of service
19. certainly surrounding the green. We were utilizing this
20. to demonstrate the areas of service of the County, to
21. which I was specifically testifying.

22. Q. Well, the impact to the eye would certainly be signifi-
23. cantly different if you had covered in the service areas
24. of the City lines, wouldn't it?

1. A. Well, there was no intent to deprive you of your service
2. areas, and I would be glad to demonstrate to the Court
3. the areas of service or color them in.

4. Q. Well, you've done that before, haven't you?

5. A. What's that?

6. Q. That sort of thing.

7. A. I don't recall right offhand whether we've done it. I
8. think generally we have probably shown the service areas
9. of the City and the County, as a matter of fact.

10. Q. How about before the Commission.

11. A. I have a feeling we probably showed them both; I don't
12. remember.

13. Q. All right, sir. Turn over to Exhibit 70.

14. A. All right, sir.

15. JUDGE MOON: Gentlemen, what we'd like to do
16. is finish all this evidence this evening some time, and
17. we'll hear the closing arguments tomorrow morning. So,
18. if you're filibustering . . .

19. MR. COGAR: I'm not filibustering.

20. A. We're on County Exhibit 70?

21. Q. Well, let's turn back to 67 just for a minute. Up at
22. the Mall area you show our little green lines up there,
23. do you not?

24. A. Yes.

1. not been constructed, the tank is proposed generally in
2. this location (indicating on map), and then the black
3. line has been constructed. There's a booster station
4. required near the town limits of Dayton, generally in
5. that vicinity, off of Route 701.

6. Q. And Dayton is going to pump water from Silver Lake up
7. into that tank, is that correct?

8. A. It works both ways.

9. Q. And the well is going to pump into the tank.

10. A. With the booster.

11. Q. Well, Dayton is going to pump . . .

12. A. Both water supplies can be fed to the tank.

13. Q. All right.

14. A. That's my understanding of the plan; one is a backup to
15. the other.

16. Q. Now, given the availability of water when that's complet-
17. ed, which in turn makes sewer permissible, does it not?

18. A. Makes what?

19. Q. Sewerage systems permissible, if you have water avail-
20. able.

21. A. I don't know that I can answer that. Sewerage systems
22. can be available without water; I'm sorry.

23. Q. Well, I'm not talking about septic tanks, I'm talking
24. about sanitary sewer. Well, in your opinion what do you

1. think the presence of those lines in that southwest quad-
2. rant will have in terms of increasing pressures for devel-
3. opment in this prime farm land?

4. A. Increasing pressure? I think there probably will be
5. some good pressure in the lines that have just been con-
6. structed or will be constructed, sir. The line routing
7. is chosen because of economics, the location of the tank
8. site as being a high one and one to serve the area and
9. the need for extension of the lines in the County at a
10. later time. The system hasn't been designed just for
11. Dayton or just for what parallels those water lines.

12. Q. The line is there when it is shown, is that correct?

13. A. Approximately, or will be where it is in red color.

14. Q. And to the extent that it is there, it can serve future
15. development?

16. A. Yes sir, just as much so as the City lines that have
17. been extended into the County or the annexation area.

18. Q. And history teaches us, does it not, that the installa-
19. tion of water and sewer lines increase the pressures for
20. development?

21. A. I'm sorry, Mr. Cogar, I didn't understand you.

22. Q. Does not history teach us that the installation of
23. water and sewer lines in agricultural land described by
24. you as the best land for development, does increase the

1. pressures for development.

2. A. Possibly so, possibly so. I don't think it's necessarily
3. the only . . . this is the area that you're proposing to
4. be annexed that you're speaking of, I assume.

5. Q. Now, turn over to 69.

6. A. There's a revision, 69R on that one. Is that the one
7. you want?

8. Q. Yes sir. Now, do you have in here on Exhibit 69R identi-
9. fied all water and sewer facilities within the area pro-
10. posed for annexation?

11. A. That is what the exhibit has been prepared to show, yes
12. sir.

13. Q. To the extent that you show lengths of lines, are you
14. showing only the lengths within the corporate limits or
15. are you showing any parts of the lines which extend be-
16. yond the annexation line?

17. A. Well, to begin with, as footnoted, there are 2,300 linear
18. feet of lines included. If you'll notice under the South
19. County, under the water, that are to be constructed in
20. 1981; and, as you remember I said earlier, that I felt
21. they should be included because by any effective date of
22. any annexation that facility will be completed.

23. Q. All right, let me try again.

24. A. I would say yes, it does, I think. I'm pointing out one

1. Q. Now, let's return to Exhibit 70. As I understand, trying
2. to put it in a summary way what we have done here in
3. 70 and 71, is to tell the Court that if we are granted
4. the lines which we seek within the annexation area, the
5. County will have a customer capital investment after an-
6. nexation of some forty thousand dollars per customer?

7. A. That is not Exhibit 70, Mr. Cogar.

8. Q. Seventy-two . . . 70, 71 and 72.

9. A. Seventy speaks of the subject of customers affected by
10. the proposed annexation area.

11. Q. Yes, but I'm asking you, you take all three of them and
12. come down in the end to show that the customer invest-
13. ment, or customer capital investment after annexation
14. is some forty thousand dollars.

15. A. Seventy-one doesn't relate to 72, I mean, one has to do
16. with the revenues.

17. Q. All right, well, 70 and 72 do then?

18. A. Seventy and 72 have a relationship. They show the capital
19. investment of the County per customer before and
20. after annexation.

21. Q. On Exhibit 72, you start out with a facilities investment,
22. County owned, of \$2,684,914.00. Is that correct?

23. A. Yes sir. This is Exhibit 72R I think you're speaking
24. of. That was a revised exhibit.

1. Q. All right, sir, the number is the same, isn't it?
2. A. That is correct.
3. Q. Is there reflected anywhere in any exhibits, anyplace the
4. Court or I or anybody else that may be interested, can
5. find how you arrived at that figure?
6. A. That data was furnished to us by the County.
7. Q. Well, how is it broken down?
8. A. I don't have the data in front of me. I'll be glad to
9. make it available if I can, but I don't have it.
10. Q. Well, have you ever seen it?
11. A. We requested that it . . . that data was furnished to us
12. as we requested it.
13. Q. Well, is there anything that I can go on, or do I just
14. accept on faith that that's the County investment? Do
15. you have any work papers?
16. A. It's a request we made. I have no work papers.
17. Q. Well, given the way you have approached all these other
18. exhibits, do you think this figure was derived in the
19. same manner? Is this replacement cost?
20. A. It's investment. I don't know. We asked for the invest-
21. ment of the facilities be provided, and that is the fig-
22. ure that was given to us by the County.
23. Q. So, you don't know what that really represents?
24. A. That is the investment made by the County of Rockingham

1. related to the facilities; water and sewer improvements
2. in the County.

3. Q. Well, is it reproduction cost, is it present value, or
4. is it original cost?

5. A. I don't know. That's the investment made; that was the
6. value that was furnished to us. I cannot speak to that.

7. Q. And you can't tell the Court how it was arrived at?

8. A. I do not know. I do not know.

9. JUDGE MOON: Well, you would divide the in-
10. vestment by the number of customers, wouldn't you?

11. A. Excuse me, sir?

12. JUDGE MOON: Wouldn't you divide the total
13. investment by the number of customers?

14. A. That's what we did.

15. JUDGE ARTHUR: The question is how did they
16. arrive at the investment figure. And the witness said
17. this figure was supplied by the County.

18. JUDGE MOON: Oh, the two million was supplied
19. by the County.

20. A. Yes sir. We requested the data and it was furnished. I
21. have no reason to believe that it's not correct. I cannot
22. answer regarding the source, and I've said so.

23. JUDGE TRABUE: Do you assume that that's pre-
24. sent value?

1. A. I said I don't know, sir. It's the investment made, the
2. capital investment made by the County.

3. JUDGE TRABUE: When?

4. A. That is the data furnished. We requested what is the
5. capital investment. I assume it is the investment they
6. have expended toward those improvements in the County for
7. water and sewer.

8. JUDGE TRABUE: Did you assume that it took
9. into account depreciation?

10. A. No, I did not.

11. Q. Did you assume it took into account all funds expended
12. without regard to source?

13. A. I assumed that it's a correct figure based on what we
14. requested, and that was what investment has been made
15. in the water and sewer improvements.

16. JUDGE MOON: I think he's pretty well said he
17. doesn't know.

18. Q. Now, in number two you had subtracted out or added in
19. the contribution to the Rockingham Sewer Authority, is
20. that correct, the million three?

21. A. That is an addition, A.2. is an addition, that is correct,
22. the million three hundred thousand dollars.

23. Q. Now, in the Park View . . . let's turn back here to Park
24. View, if you will, on page 70. You show in number three

1. an investment, I guess, of a hundred and forty-four thou-
2. sand, a hundred sixty thousand, totaling approximately
3. three hundred and five thousand dollars.

4. A. You are referring to County Exhibit 70?

5. Q. Seventy-two.

6. A. I thought you said refer back to 70.

7. Q. I'm sorry, 72.

8. JUDGE MOON: How long do you expect to be,
9. Mr. Cogar?

10. MR. COGAR: I think probably another twenty
11. minutes or twenty-five.

12. JUDGE MOON: Why don't we take a break for
13. a few minutes.

14. (Recess)

15. Q. All right, we were referring to Exhibit 70 and 72 which
16. purport to show what your customer investment is going
17. to be after annexation. You say something in the neigh-
18. borhood of forty thousand dollars. Now, on 72, A.1.,
19. there is shown Project W-2-79, and I take it that's the
20. capital investment opposite that, \$613,575.00?

21. A. Yes sir, that's what it says. Yes sir.

22. Q. What project is that?

23. A. As to its exact area of service, right this second, Mr.
24. Cogar, I don't remember. I can certainly make an effort

1. to find it.
2. Q. Well, that's Donnelley, isn't it? Isn't it Donnelley?
3. A. I think it is.
4. Q. Well, will you accept it as being Donnelley?
5. A. I'm sure it is, it's W-2 and the year is 1979. All right,
6. sir, I'll accept it as that. But I'm sure that's what it
7. is. If I need to prove it further, I will.
8. Q. So, what's your capital investment in that one customer?
9. A. According to this, \$613,575.00.
10. Q. Now, beneath that is Project W-3-79, the South County
11. Water line.
12. A. That is correct, sir.
13. Q. What is your investment in that?
14. A. That's the estimate as provided by the engineers of
15. \$1,680,000.00.
16. Q. And that's the South County Water line.
17. A. That is correct, sir.
18. Q. What is the customer investment in that project?
19. A. Per customer investment?
20. Q. Yes.
21. A. I don't know that I can give it to you. It's a line
22. that's proposed as I've described before, from the well
23. to Dayton.
24. Q. It's a million six hundred and eighty thousand dollars

1. investment for no customer at this time, isn't it?

2. A. Today. It's a projected service, certainly.

3. Q. And if someday you connect more customers to that and
4. continue to extend the line, then that figure can be in-
5. stead of a million six hundred and eighty thousand dollars
6. for no customers, it can be a continually reducing fig-
7. ure depending on what occurs, is that correct?

8. A. That's certainly true with any utility, but it takes an
9. initial investment to get to the point of receiving custo-
10. mers. And, as I said earlier, it takes a considerable
11. length of time and the financing is quite difficult in
12. the early stages. As a result, it's higher per customer
13. in the first year, as it would be lower in the second
14. year.

15. Q. All right, sir. What you're saying is things just are
16. continually in a state of flux and change with respect to
17. connections on water and sewer lines. Is that not cor-
18. rect?

19. A. What I'm saying is that annexation will have a tremendous
20. impact upon the utility system, if annexation is granted
21. and the City only compensates the County to the tune of
22. eight hundred and fifty-three thousand eight hundred and
23. five dollars, and if all the utilities in the area are
24. granted to the City.

1. Q. All right, sir, let's continue to examine your exhibit.
2. When you put your million three in the Harrisonburg-
3. Rockingham Regional Sewer Authority, when you put it in
4. you didn't have any customers, did you?

5. A. I'm not sure about the timing. I will say no, because
6. there were other improvements that . . .

7. Q. You had a capital investment of a million three hundred
8. thousand without any customers. In Park View Sanitary
9. District you show . . . my adding of those two figures
10. opposite it, an investment of three hundred and five
11. thousand three hundred and twenty-three dollars.

12. A. I'll accept that.

13. Q. If you look back on Exhibit 70, of the customers which
14. you have who will be annexed, you've got 393 water custo-
15. mers and 367 sewer customers. Is that correct?

16. A. Seven hundred and sixty, yes sir.

17. Q. Seven hundred and sixty. Divide that seven hundred and
18. sixty into the three hundred and five thousand three hun-
19. dred and twenty-three dollars.

20. A. The numbers were three hundred and five thousand divided
21. by the number of customers.

22. Q. Seven hundred and sixty.

23. A. Seven hundred and sixty. Approximately \$402.00.

24. Q. Four hundred and two dollars per customer investment.

1. A. That is the result of the division.
2. Q. There are no County funds in Park View, County local
3. funds.
4. A. I think there have been improvements made to Park View
5. with County funds.
6. Q. Are you aware of the prior testimony that there is not
7. any County local funds, and that's the answer to the in-
8. terrogories given in this case?
9. A. I don't recall that specifically, but I will accept that.
10. Q. Are you aware of your own knowledge of any County invest-
11. ment in it?
12. A. In the original system it was a Sanitary District, Mr.
13. Cogar, it was Park View.
14. Q. All right, sir. Now, if you look over on Exhibit 70,
15. of the customers to be taken if this annexation be grant-
16. ed, 393 of the 562 are in Park View, are they not?
17. A. That's what is stated by the exhibit, yes sir.
18. Q. And 367 of 445 sewer customers in Park View.
19. A. That is correct, sir.
20. Q. And they are brought out at a customer cost of \$401.00,
21. is that correct, or \$402.00?
22. A. That's the figure you had me calculate.
23. Q. And you intend to retain your capacity in the sewerage
24. treatment plant for which you paid the million three hun-

1. dred thousand, do you not?

2. A. Yes sir.

3. Q. And for Donnelley you have a \$613,575.00 investment, which
4. you're still going to have in any event, are you not?

5. For the one customer?

6. A. Have what, the investment or the customer?

7. Q. The customer.

8. A. I hope we do, yes sir.

9. Q. And if you lose that customer, you will be compensated,
10. will you not?

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

12. Q. Well, let me ask you, Mr. Overman, given the exercise
13. that we have just done, showing different systems with
14. different values, and the fact that the overwhelming num-
15. ber have a very low capital investment, those in Park
16. View, do you really think this is a fair presentation
17. to the Court of the utility situation?

18. A. Yes sir, I do. I think it shows the impact in a sense
19. on the customers remaining in the area in the event an-
20. nexation is granted who are burdened with supporting a
21. system with an investment of that magnitude. I very de-
22. finitely do. The system that remains will have to be
23. maintained and operated, and it's a rather high propor-
24. tion of an investment related to only 140 customers. I

MARVIN MILAM,

having been previously sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. State your name, please.

A. Marvin Milam.

Q. You are the City Manager of the City of Harrisonburg,
are you not?

A. Yes sir.

Q. And you have previously testified in this case?

A. Yes sir.

Q. And you were sworn?

A. Yes sir.

Q. Were you present when Mr. O'Brien testified?

A. Yes sir, I was.

Q. Do you recall my questioning him about whether he had
had a conversation with you during the Summer of 1977
in your office after his employment here as County
Administrator in the Spring of that same year?

A. Yes sir.

Q. Did such a conversation take place?

A. Yes sir.

Q. Would you tell the Court the essence of the conversation
between you and Mr. O'Brien which he did not recall.

A. Mr. O'Brien came to my office at one time in the Summer

1. of 1977 and indicated to me that Rockingham County would
2. not permit the City of Harrisonburg to lay anymore water
3. and sewer lines in Rockingham County because that's his
4. jurisdiction.

5. JUDGE ARTHUR: Because of what?

6. A. Because that is his jurisdiction.

7. Q. Has the City attempted to lay water and sewer lines in
8. that area since that time?

9. A. We had plans prepared before Mr. O'Brien took office,
10. we had plans prepared by Wiley and Wilson to extend the
11. twelve inch line to East 33. We had plans to build a
12. tank behind Kroger. And in view of that conversation,
13. we had to retreat.

14. MR. COGAR: That's all the questions I have.

15.

16. Cross Examination by Mr. Fitzgerald:

17. Q. Mr. Milam, did Mr. O'Brien tell you that the County and
18. the County citizens were tired of paying double rates
19. for water and sewer?

20. A. I don't recall him saying that.

21. Q. Your memory doesn't . . .

22. MR. COGAR: Just let him answer.

23. Q. All right, go ahead.

24. A. Mr. O'Brien apparently was carrying out a policy of the

1. Board at that particular time.

2. Q. And he didn't tell you that the people of the area were
3. tired of paying the City double water and sewer rates?

4. A. No, I don't recall that.

5. Q. You don't recall it. Did you ever formally write a let-
6. ter to the Board of Supervisors requesting to run water
7. lines or service any area after that meeting?

8. A. Well, in a subsequent meeting to that Mr. O'Brien came
9. back with the County Engineer. The County Engineer, if
10. I recall, went to my bookshelf and pulled out Title 15
11. and pointed to 15.1-341 and said, "This is a new pro-
12. vision whereas it prevents the City from laying lines
13. in the County."

14. Q. Did the County Engineer tell you that the County and its
15. citizens were tired of the City charging the people of
16. the County double rates?

17. A. No sir, I don't recall that.

18. Q. You don't recall that. Did you answer my question? Did
19. the City ever request the governing body of the County
20. for permission to serve any of the areas of the County?

21. A. No sir. Since that particular date we felt that was a
22. policy of the Board, and the City of Harrisonburg has
23. not laid any water mains or any sewer mains in Rockingham
24. County.

1. Q. Who was going to have to pay for that water tank behind
2. Kroger and K-Mart?

3. A. The City of Harrisonburg.

4. Q. The whole thing?

5. A. Yes sir.

6. Q. You were not going to charge Kroger or K-Mart anything?

7. A. Well, as I mentioned, we had plans prepared before Mr.
8. O'Brien took office to extend the twelve inch line from
9. the City's concrete reservoir out Old Country Club Road
10. to serve that particular corridor, and we laid the twelve
11. inch line. And the sequence of events leading up to
12. that, in the 33 corridor the City of Harrisonburg had
13. made connections to the Poultry Federation in the year
14. of about 1973, we made connections to the two banks, we
15. made connections to Kroger and K-Mart, and we made con-
16. nections to General Growth Development, the trailer; all
17. before Mr. O'Brien delivered that policy, apparently it
18. was a policy of the Board.

19. Q. Now can you tell the Court if that was assumed by you
20. to be the policy of the Board and you thought you shouldn't
21. or couldn't extend anymore lines out into the County,
22. how is it you furnished sewer to Country Club Hills
23. after that conversation?

24. A. We consider that as a service line and not a main. They

JOHN DRIVER,

having been previously sworn, testified as follows:

Direct Examination by Mr. Cogar:

Q. Would you state your name, please, Mr. Driver.

A. John Driver.

Q. And you are the Assistant City Manager of the City of Harrisonburg?

A. Yes sir.

Q. And you have previously testified and been sworn in this case?

A. Yes sir.

Q. You have been present during the testimony that has been adduced?

A. Yes sir.

Q. You have heard as recently as today testimony with respect to the lines F, G and H?

A. Yes sir.

Q. And you have served on the Authority Board since when?

A. Since sometime in 1975, I don't remember the exact month.

Q. Would you tell the Court the history of the provision of those three lines, F, G and H.

A. Yes sir. Lines F, G and H were on the original design of the Regional Sewer Authority for plant and trunk lines

1. within Rockingham County and to the cities and towns.
2. Due to the lack of grant funds they were not included
3. in the original contract, only the trunk line that came
4. to the City of Harrisonburg, the trunk lines that went
5. to the Town of Dayton, and the trunk lines that went to
6. Bridgewater. That's all that was included in the origi-
7. nal contract. Sometime about the time that I went on
8. the Authority the State Water Control Board said that
9. they had additional grant money and could fund lines
10. F, G and H if the Regional Sewer Authority would put
11. up the local 20%; they would fund 80%. The Sewer Auth-
12. ority felt, beings the lines were in Rockingham County,
13. that Rockingham County should pay the local 20%. Their
14. member on the Authority who at that time was Mr. Larry
15. Garber, he was a member of the Board of Supervisors. He
16. was asked to fund the local 20%. Now, the lines F, G
17. and H went on for a period of probably a year or a year
18. and a half, it wasn't a short-term thing. So, after he
19. was asked to fund it he came back and said that the
20. County would not put up the local share for F, G and H.
21. So not knowing where the money would come from and feel-
22. ing that something should be done, that that area south
23. of the City and east of the City should be served when
24. it was possible to get 80% of the funding from the

1. state and federal government, Mr. Milam, the City Manag-
2. er, who was on the Authority at that time, went to the
3. Harrisonburg City Council and asked if they would put up
4. the local 20% for lines F, G and H. The City Council
5. adopted a resolution to that effect. It was sent to
6. the Regional Sewer Authority. The Sewer Authority ac-
7. cepted the resolution and voted to accept the City's
8. proposal. After accepting that proposal, bids were let
9. for the three lines, and the bids came in at a reasonable
10. cost, which was well below the estimate. Some couple
11. months later the Rockingham County representative, who
12. then went from Mr. Larry Garber to Mr. Jennings Morris,
13. came back to the Sewer Authority and said that Rockingham
14. County wanted to fund the local 20%. So that left the
15. Sewer Authority not knowing what to do or how to handle
16. it. They had accepted the resolution from the City to
17. fund the 20% and now the County wanted to fund the 20%.
18. So they left it up to the City of Harrisonburg and Rock-
19. ingham County and the attorney for the Regional Sewer
20. Authority to work out an agreement of how the funding
21. could be handled. And that is what was referred to this
22. morning that has taken a good bit of time, it went on
23. for a couple of months and many meetings, and it was
24. finally worked out and decided that the City and the

1. County would jointly together fund the 20% of the local
2. share, and the customers would be the customers of the
3. Regional Sewer Authority, which they are. The Regional
4. Sewer Authority charges these customers for a connection
5. fee and they charge operation and maintenance charges;
6. and at the end of the year, what money is left over, it's
7. refunded jointly between the City and the County. So,
8. an agreement was written between the County and the City
9. and the Sewer Authority with this funding, and upon com-
10. pletion of the annexation case, which customers are in
11. the area if annexation is granted will become customers
12. of the City of Harrisonburg and the ones outside the
13. area will become customers of Rockingham County.

14. JUDGE ARTHUR: No matter who owns the line?

15. A. The line is owned by the Harrisonburg-Rockingham Regional
16. Sewer Authority.

17. JUDGE ARTHUR: It's still owned by the Author-
18. ity?

19. A. Yes sir.

20. Q. And will it continue to be owned by the Authority?

21. A. It will continue to be owned by the Authority.

22. Q. All right, the joint funding is in which of the three
23. lines?

24. A. It's in F and G; H is funded . . . the local 20% was

1. funded by Rockingham County.

2. Q. In the context of the filing of the annexation ordinance,
3. will you tell us in a time sequence when the County agreed
4. to put up their share of the local funding?

5. A. No sir, I'm not positive of those dates. I'm not posi-
6. tive of the date that they agreed to do the funding. I'm
7. not positive of the exact date that annexation was asked
8. for. I could go to the Sewer Authority minutes and find
9. the answer to that, but I do not know.

10. Q. Do you remember in what year they agreed? The County
11. agreed.

12. A. It would have had to have been the latter part of 1975
13. or 1976.

14. MR. COGAR: That's all.

15.
16. Cross Examination by Mr. Fitzgerald:

17. Q. Mr. Driver, line F also serves the City, doesn't it?

18. A. Yes sir.

19. Q. Line H would have never been built if the County hadn't
20. agreed to put the collector sewer system in Ashby
21. Heights, would it?

22. A. That is a stipulation that the Sewer Authority put on
23. line H for the County to pay the full 20%, and the
24. Sewer Authority stipulated that the County had to put

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

CITY OF HARRISONBURG,

Plaintiff

V.

COUNTY OF ROCKINGHAM,

Defendant


VOLUME X

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 1st day of September, 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 17th day of September, 1981, at Harrisonburg, Virginia.

REPORTING SERVICE, INC.


Christine Bradshaw
Court Reporter

1. JUDGE MOON: Is the City and the County ready?

2. MR. COGAR: Yes sir.

3. MR. FITZGERALD: Yes sir.

4. JUDGE MOON: Who wishes to proceed?

5. MR. COGAR: If Your Honor please, I guess the
6. City is the movant in this instance. We have tendered a
7. sketch of a proposed final order, which has been given to the
8. County and mailed to each of Your Honors. Unfortunately we
9. learned that you had not received yours yesterday, Judge
10. Arthur.

11. We have met nine days ago with counsel for the
12. County, and we have not been able to resolve certain
13. differences with respect to the order. The extent of those
14. differences aren't really known to me, and I suspect that Mr.
15. Fitzgerald will be speaking to the objections that they have.

16. I would, by way of preface to our position on
17. the order like to say, and a little more of this may come up,
18. but we've come to that time in this proceeding when certain
19. housekeeping has to be done, and in covering anything of the
20. magnitude and breadth of a case of this sort with thousands
21. of pages of testimony and hundreds of exhibits, necessarily
22. some tidying up has to be done at the end, as it is done in
23. every case. In the preparation of the order and the reading
24. and re-reading of it, we make some mistakes, and we would

1. MR. FITZGERALD: Mr. Cogar has straightened
2. that out, but he's just gone halfway.

3. JUDGE ARTHUR: Do you have any objection to
4. this part of the order as it's drafted?

5. MR. FITZGERALD: Yes sir, we just think that it
6. shouldn't be in there at all. Of course, it's the same thing
7. as not being in there. If neither the Town of Dayton or the
8. County wants to sell it, it doesn't get sold, and I assume
9. the County doesn't want to sell it.

10. JUDGE ARTHUR: Well, he was trying to draft the
11. order in compliance with our opinion. Maybe we should--after
12. we confer we may decide to change that part of the opinion.
13. Maybe it shouldn't go in here at all. I don't know.

14. MR. FITZGERALD: At any rate, we feel that the
15. Court should reconsider all of this opinion. That's just one
16. part that we think is not right. The County needs certain of
17. these facilities that will end up in the City; they are
18. transmission mains or facilities like the water storage tank
19. that they built, again with their revenue sharing funds that
20. all the citizens of the County are entitled to, built to
21. serve on beyond this area in the future. And with that
22. regard we would like to proffer, if I can find it here--this
23. follows the evidence before the Court as to the facilities
24. that will be needed by the County. The facilities that would

1. not be needed are the ones set forth in County Exhibit 113.

2. What I have said with regard to the sewer
3. applies to the water. If the Court leaves this language in
4. here about the south county water system--we would have to
5. agree that that cleans up the question of whether the Court
6. has the authority to compel the County to convey something
7. the County doesn't want to convey, since it gives us one of
8. the say-so's; but there is a language in here on the top of
9. page 14, it says, "If within ninety days after the entry of
10. this order," that should be after the effective date of
11. annexation. Because this order may not be effective if the
12. Supreme Court grants a writ within that time.

13. The Court, if it agrees with us, that these
14. facilities that are shown in that exhibit, which we ask be
15. identified as County Exhibit 1,003, should remain in the
16. County, that the order provide that the County shall have
17. reasonable access to these lines to maintain, replace, repair
18. or whatever, make connections to them, that they may have to
19. do to these facilities, because they'll be coming through
20. parts of the fringes of the City to do that. But they are
21. absolutely essential for the County to be able to survive in
22. the future.

23. Does the Court want me to go on from there, or
24. do you want me to

1. JUDGE ARTHUR: Well, could the County and the
2. City both then sell water, for instance, within the corporate
3. limits of the City? Do you contend you all could use your
4. lines for that purpose?

5. MR. FITZGERALD: If the line is essential for
6. the extension where the County is already serving off that
7. line, yes sir, I would say they could. That happens all over
8. the state, where one municipality serves areas in one; almost
9. everyplace we've ever been that's been the case.

10. JUDGE ARTHUR: That's the kind of thing we're
11. trying to get away from.

12. MR. FITZGERALD: If the County had put this
13. into an authority, they'd have a statutory right to do it for
14. as long as they were in business, as long as they had
15. obligations. I know the Court wanted to try to avoid that,
16. but unless the City and the County are entirely merged,
17. you're going to have that problem no matter where you draw
18. the line.

19. JUDGE TRABUE: We were hoping that the citizens
20. could have the avoidance of sewer and water type litigation
21. that's going on in the state in federal courts in other areas
22. that have recently been affected by annexation. And what
23. you're saying is there's nothing the Court can do to prohibit
24. it for the benefit of the citizens.

1. care of it.

2. MR. FITZGERALD: Yes sir.

3. MR. COGAR: Well, we do have certain dollar
4. amounts which must be spent within certain times, and if
5. anybody wants to come back in four years and say, "You
6. haven't spent a dime on any of the projects," I suppose at
7. that time the Court would say, "You haven't done what you
8. were supposed to." But it seems to me that this record is
9. going to remain intact.

10. JUDGE ARTHUR: Is there any objection to
11. including a reference to that exhibit?

12. MR. COGAR: No sir.

13. JUDGE ARTHUR: Well, let's do that, and that
14. takes care of the objection. What is the number of that
15. exhibit?

16. MR. FITZGERALD: Exhibit 33.

17. JUDGE ARTHUR: On City Map Exhibit H-15 and
18. H-33.

19. MR. FITZGERALD: Are you ready for the next
20. one?

21. JUDGE MOON: Yes sir.

22. MR. FITZGERALD: On schools. Probably as much
23. attention was focused on the City's plan for providing for
24. education for this area, for this new City, as any other

1. basic facet of the case. We believe that the statute
2. requires the Court to specify the terms and conditions in
3. this respect as much as it does any other respect. And we
4. respectfully submit to the Court that what the Court has said
5. in its opinion and what the City has provided here in the
6. Court's order does not meet the requirements of the statute.

7. This is really no terms and conditions. What
8. it does is tell the City, whose burden it was to prove all
9. aspects of this case, "Your proof didn't satisfy us in regard
10. to schools."

11. JUDGE MOON: The problem is it over-satisfied
12. us.

13. MR. FITZGERALD: Over-satisfied--that may be
14. true too; but, whatever it was, their plan was not acceptable
15. to the Court.

16. JUDGE MOON: Well, it was totally acceptable,
17. we just didn't see any need to dictate the expenditures of
18. funds if it should occur they could do the thing on a more
19. economical basis.

20. MR. FITZGERALD: Yes sir, but I believe it was
21. a burden on the City, if it could be done on a more
22. economical basis, in all the time they had to study this
23. thing and come up with it, they came up with two plans, one
24. for the Commission, one for the Court, to have come up with

1. something to show the Court, and not for the order to just
2. turn the City loose with no . . .

3. JUDGE MOON: We're not turning the City loose.
4. The standards of quality of education, that's the standard
5. that every locality must meet, isn't it?

6. MR. FITZGERALD: Yes sir, but it's always a
7. question in a case like this of how you go about meeting it
8. and what is required. That's a very broad term, "quality of
9. education". I think the people of this area ought to have
10. some right to know what to expect; the people of the City
11. too, as to what to expect in the way of education for their
12. children over the next ten years. And this leaves it
13. entirely in the hands of the City, and says, "Do the best you
14. can, but maintain the quality of education." I am just
15. drawing to the Court's attention that this does not give the
16. citizens, in my judgment, any guide, any redress, of what the
17. City is supposed to do. Anything that they can expect for
18. their children is totally in the hands of the City as long as
19. they are consistent with the standards of quality of
20. education presently maintained by the City.

21. Well, we know that their plan is to discontinue
22. their intermediate school system. And what the Court is
23. saying, "That meets that standard." It may or may not, we
24. don't know. So, I suspect--first of all, I don't believe

1. this meets the requirements of the statute in specifying the
2. terms and conditions of annexation; and I suspect it's going
3. to create considerable problems with respect to the education
4. of the children over the next five to ten years.

5. JUDGE TRABUE: Do you have a proposed
6. substitution for that section that you think might better . .

7. MR. FITZGERALD: Yes sir. The only evidence
8. before the Court as to what plan shall be followed is the
9. plan submitted by the City. That's their plan; that's their
10. evidence. Now, what the Court is saying is that we don't
11. have enough evidence to devise a plan to require the City to
12. do. So, the alternative to that is to tell the City, "Now,
13. here are the lines of annexation, they are different than
14. what you came up with, you come back with a plan that we can
15. consider. And, if it meets our requirements, put in the
16. order."

17. JUDGE TRABUE: I think what the Court has said
18. and what Judge Moon has just said is that this Court felt
19. like the standard of quality of the City school system should
20. be not less than the standard that they have already adopted
21. for their other schools, nor should it be less than the
22. standards set by the State Board of Education.

23. MR. FITZGERALD: Yes sir.

24. JUDGE TRABUE: And so long as the City and the

1. state comply with those standards as required now by law and
2. by the standards adopted by the Commonwealth, this Court
3. should not impose more stringent or less flexible conditions
4. upon it.

5. MR. FITZGERALD: Well, I just call to the
6. Court's attention that their present standard of quality of
7. education provides for an intermediate school. Their plan
8. that they propose does not. The Court's order allows them to
9. discontinue it, I would assume, or it doesn't--I don't know.
10. Is that the same quality of education that they now have, the
11. same standard, if they do away with their intermediate
12. school? That's what I'm talking about.

13. JUDGE MOON: Well, they testified that--their
14. evidence was they would do away with the intermediate school.

15. MR. FITZGERALD: Yes sir. Our position was
16. that that was detrimental to their school system; that did
17. not provide the same quality of education. Now, does this
18. order allow that or does it not allow it?

19. JUDGE ARTHUR: Your draft of this paragraph,
20. Mr. Fitzgerald, seems to be almost identical.

21. MR. FITZGERALD: Yes, it probably is. We
22. didn't change certain things. We just changed the various
23. things on these pages that came out on another order that was
24. presented to us. We don't have any language for this; we

1. don't believe anybody can have any language for this, because
2. the City has not put before this Court an acceptable plan.
3. We feel that the burden is on the City to come up with a plan
4. that is acceptable. Maybe they promised too much, maybe they
5. promised nothing. But, whatever it was, this Court did not
6. accept it. The burden is on them, in our judgment, to come
7. up with a plan.

8. JUDGE MOON: Well, that's your interpretation,
9. Mr. Fitzgerald, that the Court didn't accept it. You put it
10. negatively in that respect. We do not accept your
11. interpretation on that matter.

12. JUDGE ARTHUR: Well, one thing, the school
13. proposed a specific new building, as I recall, a junior high,
14. to be built by a certain year at a certain cost. And we said
15. we're not going to mandate that. Who knows what it's going
16. to cost or when it can be constructed? But we expect at
17. least, as a minimum, the same quality of schools to be
18. maintained hereafter as are maintained presently. And if
19. this isn't done, I suspect there are ways we can see that it
20. is done. But I think it would be impossible and unwise,
21. really, to sit down and specify exactly what the school board
22. is to do, step by step, to comply with this.

23. MR. FITZGERALD: I respect what Judge Moon has
24. said, that the Court didn't accept my position. And most of

1. what I say here is an attempt to call to the Court what I
2. believe is my duty to do at this hearing, where I think the
3. Court has erred in its opinion. The point I make is, Your
4. Honors, I realize what you've done and why you've done it,
5. because you said in the opinion why. The fact of the matter
6. is though, I at this point don't know if the discontinuance
7. of the three stage school system that the City has now into a
8. two stage system is maintaining the same standard of
9. education. I don't know that, and there's nothing in the
10. evidence, nothing in the opinion or the order to show that.
11. And I believe it's going to cause, if not . . .

12. JUDGE MOON: I think that I recall questioning
13. your expert on that, and he said there was no evidence that
14. it made any difference.

15. MR. FITZGERALD: He could very well. But
16. whether the Court accepted that and says that this is a plan
17. that is acceptable or not, we don't know.

18. JUDGE MOON: We're satisfied with it.

19. MR. FITZGERALD: The mobile home parks, it's
20. entitled, Section G; but when you get down and read it it
21. speaks only of mobile homes. Now, that may be just a
22. clerical error, but we called that to the attention of our
23. friends nine days ago, that the opinion says mobile home
24. parks shall be grandfathered. That's a lot of difference.

1. operation and" to be deleted.

2. MR. FITZGERALD: Well, there are certain
3. matters of operation of procedure in here that ought to be
4. suspended too that are not covered by perhaps the word
5. "execution". The whole operation of the order should be
6. suspended.

7. MR. COGAR: So, you don't mind departing from
8. the statutory language here?

9. MR. FITZGERALD: I don't think it departs from
10. it. It specifically focuses on an annexation case there.
11. But the thereafter is a matter of importance, because the
12. court does not consider it until it gets it.

13. JUDGE MOON: Mr. Fitzgerald and Mr. Cogar, as
14. we get back if we decide on any particular issue, we may call
15. you in and tell you so that you all can start working on
16. anything that that decision might affect. We're not trying
17. to keep any secrets.

18. MR. COGAR: All right. While you are doing
19. that, I will be reviewing with Mr. Fitzgerald the revised
20. metes and bounds description.

21. JUDGE MOON: We'll recess at this time.

22. (Recess)

23. JUDGE MOON: Gentlemen, the Court has
24. considered all the matters that had been brought up

1. previously to date. We have ruled on those matters, filed a
2. supplemental opinion, and informed counsel of the rulings and
3. they have been incorporated into the opinion.

4. Is there any other matter that needs to come
5. before the Court? The final order has been entered by the
6. Court as of today. If there is nothing further, Court is
7. adjourned.

8. (End of Day's Proceedings)

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